To be Argued by:
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(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)

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Date Completed: October 15, 2024

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– 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.

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PRELIMINARY STATEMENT

The City of New York, exercising the powers delegated to it to manage its own local affairs, validly enacted Local Law 11 to allow certain non-citizens to vote in its own municipal elections. Nothing in the state's constitution or laws prevented the City from enacting this law and deciding to extend the franchise to New Yorkers who reside in the City, pay taxes, contribute to the community's economic and social life, and bear the impacts of decisions made by local officials.

Respondents offer a series of arguments in response that largely parrot the majority decision below. But, like the Appellate Division, Respondents ignore the constitutional text, longstanding decisional authority from this Court and other courts of the state, and the plain language of the statutes in question. For the reasons more fully explained below, the Court should reject Respondents' arguments and restore Local Law 11.

Perhaps most significantly, Respondents ignore this Court's recent decision in *Stefanik v Hochul* (2024 WL 3868644 [NY, Aug. 20, 2024]), which upheld a state law allowing for universal mail-in voting and offers significant guidance in deciding this case. Among other things, *Stefanik* reaffirmed that "it is a 'well settled [rule] that [l]egislative enactments are

entitled to a strong presumption of constitutionality…, and courts strike them down only as a last unavoidable result" (*Stefanik*, 2024 WL 3868644, at *3, quoting *White v Cuomo*, 38 NY3d 209, 216 [2022]). Indeed, this principle of powerful legislative deference and the presumption of constitutionality highlighted in *Stefanik* applies to all legislatures, statewide or local. As this Court wrote recently, in "local laws —like state statutes—enjoy an 'exceedingly strong presumption of constitutionality'" (*Police Benevolent Association of NYC v City of New York,* 40 NY3d 417 [2023], quoting *People v Stephens,* 28 NY3d 307, 312 [2016]; *see also Lighthouse Shores v Town of Islip,* 41 NY2d 11 [1976] ("unconstitutionality must be demonstrated beyond a reasonable doubt")).

As discussed below, Local Law 11 is consistent with the text of the State Constitution and decades of decisional authority construing it. But were there any doubt, the principles reiterated in *Stefanik* resolve this case. In *Stefanik*, the lack of unequivocal textual support for the challengers' argument that the State Constitution barred mail-in voting mean that they could not "overcome the very strong presumption of constitutionality we must afford to the Act" (*Stefanik v Hochul*, 2024 WL 3868644 at *10). Local Law 11 is entitled to the same "very strong presumption." As

Stefanik put it: "the question in determining the constitutionality of a legislative action is therefore not whether the State Constitution permits the act, but whether it prohibits it" (*id.* at *3). Absent a finding that Local Law 11 is facially unconstitutional beyond a reasonable doubt under the State Constitution, Election Law, or Municipal Home Rule Law, Respondents' challenge to the constitutionality of the law must be rejected (*id.*; *see also Overstock.com, Inc. v New York State Dept. of Taxation & Fin.*, 20 NY3d 586, 593 [2013]; *Matter of 1160 Mamaroneck Ave. Corp. v City of White Plains*, 211 AD3d 723, 725 [2d Dept 2022]).

ARGUMENT

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

A. *Spitzer* and its progeny make clear that Article II, Section 1 does not apply to local elections

1. Appellees misread Spitzer and conflate Article II with Article XII

This Court's decision in *Spitzer v Village of Fulton* (172 NY 285 [1902]), makes clear that Article II, Section 1 does not apply to local elections (Respondents' Brief 13-14). Repeating the error made by the majority below, Respondents mistakenly read *Spitzer* to exclude elections to choose

officeholders, reading a limitation into the decision's reference to a municipality's "financial interests or private affairs" (Respondents' Brief 14). A close look at *Spitzer* and its progeny does not square with this reading.

In *Spitzer*, this Court clearly stated that "[a]rticle two must be construed with article twelve" (172 NY at 289). Article XII is plainly addressed to local elections, and confines to the state the power to protect taxpayers and to regulate the power of cities and villages in financial matters:

> When read together, we have two provisions of the Constitution which relate to this question. The first [, Article II,] was intended merely 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*; the second, [Article XII,] a provision by which it is made the duty of the legislature to protect the taxpayers of every city and village in the state and to restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent any abuse thereby. *One is general, relating to the whole state*. The other is in effect local, relating only to the cities and villages of the state

(*Spitzer*, 172 NY at 289-90 [emphasis added]). Nowhere in *Spitzer* did this Court limit its holding regarding elections involving municipalities' financial interests or private affairs.

Indeed, *Spitzer* went to great lengths to distinguish between Article II and Article XII's applicability. Contrary to Respondents' contention, the

Court found that Article II was of general applicability, "relating to the whole state" and "*only* to the general governmental affairs of the state" (*Spitzer*, 172 NY at 289-90 [emphasis added]). 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, especially when, as in this case, it relates to borrowing money or contracting debts" (*id.* at 289). Article XII, meanwhile, is "local, relating only to the cities and villages of the state," and concerns "the business or private affairs of the municipalities specified." *(Id.*) Though the Court read these articles together, it did not find that Article II and Article XII were duplicative of each other. Rather, it held that Article XII concerned local affairs, while Article II in contrast related to general, statewide elections (*see id*).

Respondents' misreading of *Spitzer* requires them to insert limitations that do not appear in the decision. *Spitzer* clearly said that courts should be "especially," not exclusively, mindful of reading Article II's applicability into local decisions involving borrowing money and contracting debts (*id.* at 289). More broadly, it did not remove municipal voter qualifications from the scope of a locality's "financial interests or private affairs"

and indeed did not limit or define the concept of "financial interests or private affairs" at all. In short, *Spitzer* did not find that Article II applied to local elections in any meaningful way. Respondents' insertion of limitations into *Spitzer* essentially drains the decision of its meaning, a meaning that, as shown below, courts since have validated and restated in the 120 years since *Spitzer* was decided.

2. Respondents fail to explain why *Spitzer* and its progeny should be overturned

Respondents' contention that Article II, Section 1 applies to local elections would require that *Spitzer* and its subsequent cases be overturned (Respondents' Brief 12).Courts of this State have restated *Spitzer's* holding numerous times. In *In re Carrick* (183 App Div 916, [4th Dept 1918], *affd* 223 NY 621 [1918]), decided shortly after *Spitzer*, the Appellate Division held that "the provision of section 1 of article 2 of the Constitution, which entitles a citizen qualified as therein stated to vote at an election upon all questions which may be submitted to the vote of the people, applies *only* to such propositions as relate to the general governmental affairs of the state, and *not to local affairs of municipalities*" (emphasis added). Fifty years later, a State Supreme Court restated this holding (*see Turco v Union Free Sch. Dist. No. 4, Town of N. Hempstead*, 251 NYS2d 141, 143 [Sup

Ct Nassau County 1964], *affd* 22 App Div 1018 [2d Dept 1964] (finding that *Spitzer* has authoritatively settled this question when it held that Article 2, Section 1 applied "only to general elections relating to governmental affairs of the whole State").

Other cases invoking *Spitzer* do not limit that principle. Contrary to Respondents' argument, far from opining on the applicability of Article II, Section 1 to local elections, *Johnson v City of New York* does not mention local elections at all, holding only that the purpose of the provision 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" (*Johnson*, 274 NY 411, 419 [1937], quoting *Spitzer*, 172 NY at 289). Similarly, no mention of local elections appears in *Blaikie v Power* (13 NY2d 134 [1964]). The court there stated that the "obvious purpose of that article (art. II, s 1) was to prescribe the general qualifications that voters throughout the state were required to possess to authorize them to vote for public officers or upon public questions relating to general governmental affairs" (*Blaikie*, 13 NY2d at 141, quoting *Spitzer*, 172 NY at 289).

3. Article II, Section 1's reference to localities concerns residency requirements and not the applicability of Article II, Section 1 to local elections

Respondents misread Article II, Section 1's reference to localities. Article II, Section 1 sets forth a voter's qualifications to vote in *state* elections. The section begins by outlining a voter's eligibility to vote: all voters are eligible to vote provided they are at least eighteen years old and have been a resident of the state for the thirty days preceding an election (NY Const art II, § 1). Section 1's reference to localities concerns the provision's residency requirements, not the type of elections to which the section applies. For example, a voter's residency determines her state assembly or senate district— state offices covered by Article II, Section 1.

Respondents similarly place too much reliance on brief references to localities in Article II, Sections 5 and 7. Section 5 concerns the voter registration process, while Section 7 directs all elections to preserve secrecy in voting (NY Const art II, §§ 5, 7). And Article IX addresses qualifications of local government officials and the requirement that they be elected by "the people" of such localities, not voter qualifications (NY Const art IX). Read-

ing Article II, Section 1 in conjunction with another article of the Constitution does not transform that section into a mandate about voter qualifications in local elections (*see Spitzer*, 172 NY at 289).

B. Article II, Section 1 does not prevent municipalities from expanding the franchise to non-citizens

The plain text of Article II, Section 1—which states that certain individuals are "entitled" to vote—establishes only a constitutional minimum for the franchise; it restricts who the legislature may *exclude* from the franchise, but does not determine a ceiling for who may be *included*. That is, the constitution identifies those who are "entitled" to vote under the constitution, but it does not *prohibit* others from voting if they are elsewhere granted the right to do so. This is in keeping with this Court's view of the function of the State Constitution in *Stefanik*. "[R]ather than enumerating the legislature's permitted functions, the State Constitution generally operates to limit this plenary authority by imposing restrictions on the legislature's exercise of its powers" (*Stefanik* 2024 WL 3868644 at *7).

Respondents' primary answer is that because Article II, Section 1 declares that "every citizen shall be entitled to vote," it "follows that noncitizens are not entitled to vote." Respondents' Brief 8. According to Re-

spondents, this result follows from the application of the doctrine of *expressio unius*—that the inclusion of one implies the exclusion of others (*Id.*) Putting aside that *Stefanik* recently questioned the wisdom of applying the *expressio unius* maxim as an interpretive tool for the constitution (*see Stefanik* at *8), Respondents' argument fails on its own terms. Even if Article II, Section 1 did not "*entitle*" non-citizens to vote, that would mean only that the franchise for non-citizens was not guaranteed or extended by the constitution itself. It does not mean that the constitution would *prevent* the legislature or a municipality from choosing to extend the franchise. In other words, the authority for non-citizens to vote—if any—would have to come from somewhere other than the constitution. Here, it comes from Local Law 11.

Respondents' next point to a series of cases they contend have already decided this issue. *See* Respondents' Brief 8-9. Not so. Most of these cases are more than a century old—and they do not help Respondents. They first cite *Hopper v Britt* (203 NY 144 [1911]), for the proposition that the "qualifications of voters are proscribed by section 1 of article 2 of the Constitution, and those qualifications are exclusive." *Hopper*, however, did not deal with voter qualifications; it instead addressed how candidates nominated

by more than one political party should appear on the ballot. But the dicta Respondents cite is just another way of stating the point made above. Article II, Section 1 sets out the exclusive qualifications that are *guaranteed* under the constitution. While the legislature cannot restrict the rights of voters identified in that section (the tangential issue discussed in *Hopper*), Article II, Section 1 does not prohibit the legislature from going beyond that constitutional floor.

The same can be said of the other cases Respondents cite, which interpreted a predecessor version of Article II, Section 1. *People ex rel. Smith v Pease* (27 NY 45, 53 [1863]) and *Spitzer* (172 NY 285 [1902]), acknowledged that the constitution provided voter eligibility requirements that individuals "were required to possess" in order to vote for public office. But these cases at most reiterate the principle that the constitution itself does not convey the right to vote beyond those listed in Article II, Section 1. They did not concern—and surely do not stand for the proposition that—the constitution prohibits a municipality to expand the eligibility requirement for local elections. The last case Respondents cite, *Blaikie v Power* (13 NY2d 134 [1963]), in fact underscores the floor-versus-ceiling princi-

ple. It declares that the purpose of Article II, Section 1 was "to protect otherwise qualified voters from electoral discrimination;" that is, to *guarantee* the franchise to certain voters against electoral "discrimination"—to prevent the legislature (or a municipality) from *denying* the franchise to certain citizens (*Blaikie*, 13 NY2d at 187-88). Its purpose was not to prevent municipalities from expanding the franchise to others.

Indeed, the floor-versus-ceiling principle is rooted in the historical record. That is, the State Legislature's historical understanding is that it could extend the franchise in local elections to populations who were understood to not have the right of suffrage under Article 2, Section 1. For example, in 1901, the State Legislature authorized women to vote on tax questions in towns and villages, despite the fact that women were excluded from voting in statewide elections at the time (*see* Charles Z. Lincoln, *The Constitutional History of New York*, vol III 1894-1905 83 [1905]).

C. Article II, Section 1 does not impose a federal citizenship requirement

1. The plain language of Article II, Section 1 does not qualify the term "citizen"

Respondents concede that the New York State Constitution contemplates and expressly employs the term "state citizen" in Article I, Section 1 as distinct from the term "citizen" employed in Article II, Section 1,

which has no such qualification (Respondents' Br 26). Thus, by their own account, the term "citizen" in Article II, Section 1 is not synonymous or interchangeable with the term "U.S. citizen" (Respondents' Brief 8–12). In fact, Respondents' narrow construction of the term "citizen" conflicts with New York statutory interpretation law. New York law states: "In the construction of a statute, meaning and effect should be given to all its language…words are not to be rejected as superfluous when it is practicable to give to each a distinct and separate meaning" (McKinney's Cons Laws of NY, Book 1, Statutes § 94). Indeed, of the twelve times the term "citizen" appears in the State Constitution,[1] only in three specific instances does it expressly qualify the term "citizen" by making a reference to U.S. citizenship or immigration status.[2] Notably, none of these involve voter qualifi-

[1] NY Const art I, § 1; art I, § 8; art II, § 1 (twice); art II, § 5; art II, § 7; art III, § 5; art III, § 7; art III, § 19; art IV, § 2; art V, § 6; art XIV, § 5.

[2] NY Const art III, § 7 ("[n]o person shall serve as a member of the legislature unless he or she is a citizen of the United States and has been a resident of the state of New York for five years"); *id.* art IV, § 2 ["[n]o person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States"]; *id.* art V, § 6 [providing specific qualifications for certain veterans who may qualify for civil service appointments]).

cations: all three references to "U.S. citizen" involve eligibility for state officeholders or individuals who may qualify for civil service appointments and not voter qualifications. (*Id.*)

The word "citizen" alone in Article II, Section 1 without qualification reflects a deliberate choice by the drafters of the constitution not to limit "citizen" to United States citizens (NY Const art II, § 1). If "citizen" alone were enough to mean only U.S. citizen, it would be redundant and superfluous to qualify "citizen" with "of the United States" as seen in Articles III, IV, and V. Respondents' narrow construction of the term "citizen" in Article II, Section 1 to mean only United States "citizen" is simply not supported by the provision's plain language, nor is reading it so narrowly consistent with the use of the term "citizen" throughout the State Constitution. At a minimum, the inconsistencies show that the term "citizen" in Article II, Section 1 has no fixed meaning, and there is no basis to find that it bars New York City from permitting New York State citizens who are not U.S. citizens to vote in municipal elections.

2. The legislative history of Article II, Section 1 casts doubt on Respondents' assertion that "citizen" was intended to mean "U.S. citizen"

The legislative history of Article II, Section 1 also undermines Respondents' assertion that the term "citizen" has consistently been understood to mean U.S. citizen (Respondents' Brief 24–25). The term "citizen" was first introduced into Article II, Section 1 in 1821 (*see* Robert Allen Carter, *New York State Constitution: Sources of Legislative Intent* 13 [2d Ed, 2001]). At that time, it was widely understood that there were two distinct formulations of citizenship, state and federal. The New York State Convention Manual required all eligible individuals who cast a ballot for the convention to administer an oath that stated in part: "I _____, do solemnly swear or affirm (as the case may be), that I am a natural born, or naturalized citizen of the state of New York, or of one of the United States (as the case may be), of the age of twenty-one years, or upwards…" (*Manual for the use of the Convention to revise the Constitution of the State of New York, convened at Albany, June 1, 1846, Convention Act of 1821* 25-26 New York State Library Digital Collections [1846]).

In fact, at the same 1821 convention, the phrase "native citizen of the United States" was *added* to the gubernatorial qualifications; evidently,

the framers knew how to qualify the term "citizen" when they found it necessary to do so (*compare* 1821 NY Const art III, § 2, *with* NY Const art II, § 1). Additionally, the 1821 delegates were aware that five other state constitutions at the time had already limited the right to vote exclusively to "citizens of the United States".[3] Weighing these differences, the delegates made the deliberate choice not to qualify the term "citizen" with "of the United States" (*compare* 1777 NY Const art II, § 1, *with* 1821 NY Const art II, § 1).

Additionally, while the legislature has revised Article II, Section 1 several times since 1821, none of the revisions qualified the term "citizen" with "of the United States." The addition of the term "of the United States" to the term "citizen" to Article II, Section 1 was considered twice, in 1867 and 1967, and it failed both times (s*ee Proceedings and Debates of the Constitutional Convention of the State of New York Held in 1867 and 1868*

[3] At that time Maine, Missouri, Mississippi, Alabama, and Indiana had already limited the right to vote to U.S. citizens in some form. This is in contrast to Massachusetts which allowed "every male citizen" (*Convention Manual: A Constitutional Guide to the Objects of the New York State Constitution, Synopsis of the Principal Features of the Constitutions of the United States and the Several States* 25–27 [1821]; s*ee generally*, *A Report of the Debates and Proceedings Of the Convention Of the State Of New-York: Held At the Capitol, In the City Of Albany, On the 28th Day Of August, 1821* New York State Library Digital Collections [1821]).

517–18 Hathi Trust Digital Library; s*ee also* O*fficial Text of the Proposed Constitution to the State of New York* 7 [Nov. 7, 1967]; s*ee also Votes Cast For and Against Proposed Constitutional Conventions and Amendments*, *available at* https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_Votes-Cast-Conventions-Amendments-compressed.pdf [last accessed Oct. 14, 2024] (reflecting that the proposed 1967 Constitution was rejected on November 7, 1967 by a vote of 3.5 million against to 1.3 million in favor). For two centuries, the legislature and the electorate have rejected defining "citizen" in Article II, Section 1 as "citizen of the United States."

3. Article II, Section 1 has not historically been read to be exclusive of U.S. citizenship

There have been at least two instances in New York history where individuals who fall outside the category of U.S. citizens were allowed to vote. The first instance of non-citizen voting occurred during the period following the Supreme Court's ruling in *Dred Scott v Sandford*, (60 US 393 [1857]), which denied Black men the right of U.S. citizenship. Historical records show that Black men voted in New York elections notwithstanding the fact that they were deemed to be non-U.S. citizens (*see* David W. Blight, *Frederick Douglass: Prophet of Freedom* 445 [2018]; *see also* Van

Gosse, *The First Reconstruction: Black Politics in America from the Revolution to the Civil War* 435 [2021]; *see also id.* at 477 ["In 1858, [B]lack New Yorkers occupied a momentarily privileged position, which internal disagreement only strengthened; no one could take for granted their 'eleven thousand votes'"]; Hanes Walton, Jr., T*he African American Electorate: A Statistical History* 129–30 [2012] (discussing how Black voters played a significant role in shaping presidential elections during that period)).

More recently, from 1968 to 2003, non-U.S. citizen parents voted in New York City school board elections under New York State Education Law, Section 2590-c. That provision stated that "every parent of a child attending any school under the jurisdiction" of the school board "who is a citizen of the state, a resident of the city of New York for at least 30 days and at least eighteen years of age shall be eligible to vote" (1969 Educ Law § 2590-c(3)). The Education Law provision excluded only those New York residents affirmatively barred from voting under Section 5-106, an Election Law excluding certain categories of voters such as individuals adjudged to be incompetent by a court order or individuals who receive compensation for giving or withholding a vote at an election. Section 5-106 of

the Election Law notably contained no discussion of U.S. citizenship status. It was not until 2003, when New York City's school boards were dissolved through changes to the education law and the centralization of public-school decision making in an executive Department of Education, that voting for school board officers ended for *all* New York City residents and parents, citizen and non-citizen alike (L 2002, ch 91; s*ee* Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional, and Theoretical Meanings of Alien Suffrage*, 141 U Pa L Rev 1391 [April 1993]). Contrary to Respondents' suggestion, historically Article II, Section 1 has not been used to narrow the right to vote.

Ultimately, Respondents have not established beyond a reasonable doubt that the term "citizen" in Article II, Section 1 must be limited to U.S. citizen, as required by *Stefanik*. First, the plain language of Article II, Section 1 does not contain an express U.S. citizen qualification (NY Const art II, § 1). Second, legislative history makes clear that the term "citizen" was understood to be distinct from "U.S. citizen" and more akin to state citizenship. Lastly, Article II, Section 1 has not historically been understood or been applied to be exclusive of U.S. citizenship. All of these factors cast

serious doubt that the term "citizen" was intended to be limited to U.S. citizens in Article II, Section 1.

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

As Intervenors showed in their opening brief, Article IX also does not impose a federal citizenship requirement that prevents the City from expanding the franchise beyond the floor set by Article II, Section 1. Article IX 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 (NY Const art IX, § 3). "Mean or include" is classic language of expansion—not exclusion. Thus, Article IX reinforces the notion that the Constitution establishes only a floor on those who *must* be "included" in the franchise for local and municipal elections. And it does so by incorporating by reference the same constitutional floor in Article II, Section 1 for statewide elections. But just as nothing in Article II, Section 1 prevents a municipality from expanding the franchise to additional voters for local elections, nothing in Article IX does so, either.

Respondents offer several responses, but none is persuasive. Rather, Respondents evade the plain language of Article IX—including its express

instructions that it should be "liberally construed"—and otherwise apprehend the constitutional scheme and Intervenors' and the City's arguments.

To begin, the plain language contravenes Respondents' interpretation. Article IX, Section 3 provides that the term "people" shall "mean or include … persons entitled to vote as provided in section one of article two of this constitution" (NY Const art IX, § 3). Respondents acknowledge, as they must, that "mean" and "include" have significantly different definitions: "mean," they say, "denot[es] equivalency," while "include," refers to "representative examples" (Respondents' Brief 19). That is, Respondents do not dispute that the term "include" is a term of expansion, not exclusion. Nonetheless, Respondents contend that "people" is *limited* to those individuals listed in Article II, Section 1, and only them. That construction, as Respondents tacitly admit, ignores the term "include" entirely—rendering it fully superfluous. To Respondents, the term "include" simply does not apply to the construction of the term "people" at all (s*ee* Respondents' Brief 19–20).

None of Respondents' excuses for this unnatural reading hold water. Respondents contend that because the associated description of the term

"people" "specifically cross-references another constitutional provision," it must be "understood to import a definition elsewhere as an 'interchangeable equivalent'"—that is, narrowly and limiting (*id.* at 20). Respondents never explain why that must be so.[4] Instead, they mistakenly rely on *U.S. Steel Corp. v Gerosa* (7 NY2d 454, 459 [1960]). But *Gerosa* interpreted the phrase "mean or include" in a wholly separate statutory context relating to the tax law, where governing canons of construction 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, by contrast, 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).

[4] Respondents reference the Supreme Court's interpretation of these terms in *Helvering v Morgan's, Inc.* (293 US 121, 125 n1 [1934]). But *Helvering* discusses these terms as they are applied in the Revenue Act of 1926, and ignores the context of Section IX as a whole.

Next, Respondents argue that because the phrase "mean[s] or include[s]" appears in introductory language relating to a list of several different terms, the word "mean[s]" selectively applies to some of the terms on the list, and the word "include[s]" applies to others (*see* Respondents' Brief 19). But Respondents never explain how one is to determine which of the words "mean or include" applies to from the terms on the list. Certainly, nothing in the text of Article IX, Section 3 provides that guidance. Rather, as noted above, the text of Article IX offers the contrary instruction: the terms should be "liberally construed." That is also consistent with the purpose of Article IX, which was added to the State Constitution in 1963 with the intention of expanding municipal rights (*Black Brook v State*, 41 NY2d 486, 487–88 [1977]; Bill Jacket, *Public Papers of Nelson A. Rockefeller*, 1962 at 824). The combination of the term "mean or include" as applied to all terms listed in Section 3, with the historical context of Article IX, clearly signifies that it should be given an expansive, rather than narrow interpretation.

Respondents also contend that Intervenors' interpretation would render the meaning of the term "people" in Article IX "indeterminate" and "unbounded," and would allow different municipalities to assign different

meanings to the term across the state (Respondents' Brief 20-21). Respondents continue that this interpretation would upset the "fundamental principle" that the judicial branch determines the rights of the State Constitution because it would "allow each municipality to independently construe a constitutional definition" (*id.* at 21–22). And Respondents argue that "every other municipality in the state is necessarily violating the Constitution by excluding those non-citizens from participating in local governance", leaving the Constitution's language "up for grabs in a state with more than a thousand local jurisdictions" (*id.* at 21).

All of these hyperbolic arguments are misguided, proceeding from a fundamental misunderstanding of Intervenors' and the City's interpretation of Article IX. The constitutional language has the same meaning everywhere in the state: in providing that the "people" entitled to vote in municipal elections "include[s]" those who are entitled to vote in state elections, it guarantees that municipalities extend the constitutional floor to those voters. Importantly, Article IX does not *mandate* that municipalities extend the franchise any broader than the reach of Article II, Section 1. But just as importantly, Article IX does not *limit* a municipality's decision

to extend the vote beyond what is constitutionally required. And in so extending the franchise, a city would be exercising its home rule powers as a statutory matter—not offering its own take on the constitution. That proper understanding of Article IX eliminates all of Respondents' handwringing that Intervenors' and the City's interpretation would somehow cede constitutional-interpretation to the various municipalities around the state.

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

Local Law 11 is also consistent with the Municipal Home Rule Law, which grants municipalities the authority to manage their own local affairs. As Intervenors and City explained (*see* Intervenors' Brief 62), no referendum was required to enact Local Law 11 because, although it expands the electorate for municipal elections, it does not change the "*method* of nominating, electing, or removing an elective officer" (Municipal Home Rule Law § 23(2)(e)) (emphasis added). Respondents' argument to the contrary fails to grapple with the plain language of the Municipal Home Rule Law; dodges the question by relying on authority construing *different* provisions of the Municipal Home Rule Law's referendum requirement; and

ignores this Court's most recent decision in *Stefanik*, which provides instructive guidance on what constitutes a "method" of conducting an election. This Court should reverse.

To begin, Respondents do not appear to dispute that this question of statutory interpretation should begin—and end—with the text; that is, the plain meaning of the term "method." But Respondents do not offer a definition of that term. This Court recently supplied one in *Stefanik*: "a procedure or process for attaining an object" or "a way, technique, or process of or for doing something." [Slip Op at 26]. That is the same definition relied on by both the majority and dissent below. (Joint R. App. 1840, 1859; *see also* Intervenors' Brief 60).

As Intervenors explained, Local Law 11 does not change a "method" of conducting an election under that definition (Intervenors' Brief 61-63). That is, the law does not modify any election "procedure," "technique," or "process." It does not change the process for casting votes, how votes are counted, or the like. Indeed, *Stefanik* offers a recent clear example of what *would* change a method of conducting an election: allowing voting by mail rather than in person. But Local Law 11 does not effect that type of change. Expanding the scope of *who* may cast a vote, and not *how* votes

are cast, does not constitute a change in the method of conducting an election.

Rather than supply any definition of "method"—or explain how Local Law 11 changes voting methods under the definitions agreed-upon below and offered by Intervenors and the City—Respondents turn to decades-old, nonbinding Attorney General Opinions concerning different, and clearly distinguishable, changes in voting laws (Respondents' Brief 29-30). Respondents first point to a law that changed how primary elections in Saratoga were conducted, for which the Attorney General concluded a referendum was required. These changes included adding a requirement that voters enroll in a political party to participate in primary election and changing the number of signatures required for a candidate to appear on the ballot (*see* 1967 Op Att'y Gen No 73 [Apr. 5, 1967], 1967 WL 157112). These are plainly changes to the "process" or "procedure" of "nominating" an elected official, unlike the modification of municipal voter qualifications contemplated by Local Law 11.

Respondents also cite a proposal to change the method of selecting an Acting City Judge from appointment by the Mayor to an election by the city electorate (*see* 1966 Op Att'y Gen No 71 [Apr. 6, 1966], 1966 WL

146388). The Attorney General concluded that a referendum would be required to enact this law, too, but not because it changed the "method" of nominating or electing an "elective officer"—indeed, the Acting City Judge had not previously been elected. Instead, the Attorney General concluded that a referendum was required because it would "abolish" the power of the mayor (*see id.* at *2), triggering a separate provision of the Municipal Home Rule Law, which requires a referendum when a law "[a]bolishes, transfers or curtails any power of an elective officer" (Municipal Home Rule Law § 23(2)(f)).

Respondents also argue that a referendum is required under Municipal Home Rule Law Section 23(2)(e) because Local Law 11 supposedly works a "structural" change to "the method of electing municipal officeholders" (Respondents' Brief 30). Respondents appear to be relying on authority relating to yet another provision of the Municipal Home Rule Law, requiring a referendum when a law would "change[] the membership or composition of the legislative body" (Municipal Home Rule Law § 23(2)(b)). In *Molinari v Bloomberg* (564 F3d 587, 613 [2d Cir 2009]), the Second Circuit held that a law extending term limits did *not* trigger this referendum

requirement. Interpreting the word "membership" to refer to the "structural characteristics" of the legislature, the court observed that "structural changes" to the legislature's membership—such as "a law directly increases or decreases the number of seats in the legislative body"—might require a referendum (*id.* at 613). But because the law might affect only the identity of the individual lawmakers—and only indirectly at that—it was not a structural change to the legislative body (*id.* at 614, citing *Lane v Johnson*, 283 NY 244, 261 [1940] (holding that even a change that indirectly increased the number of members of a town's Board of Supervisors did not change the "form or composition of any elective body")). Against this backdrop, Respondents appear to argue that Local Law 11 triggers a referendum requirement because it is a "structural" change that "replac[es] the existing electorate for municipal offices with a differently-constituted electorate" (Respondents' Brief 30).

Respondents' argument is misplaced. For one thing, Section 23(2)(e)—the only provision of the referendum requirement that has been invoked here—does not mention "structural" changes—or indeed any changes—to the "electorate," its composition, membership, or anything

else. The analogy to Section 23(2)(b) and the examples discussed in *Molinari* is therefore inapposite. In any event, Local Law 11 does not work a structural change in the method of "electing, nominating, or replacing" city officials. It does not "replace" one electorate with another; no current member of the existing electorate would be replaced by expanding the franchise to a select group of additional non-citizen voters.

Indeed, in most respects, Local 11 is similar to *Calandra v City of New York* (90 Misc 2d 487, 488 [Sup Ct NY County 1977]), in which no referendum was required to enact a law changing district boundaries. The law certainly changed the make-up of the electorate for various offices, but did not otherwise modify *how* those voters cast their vote. Respondents only allude to this decision in their brief (*see* Respondents' Brief 29), but do not offer a persuasive response. Indeed, they seem to agree that a law which does not alter "the same basic procedures" of voting does not "'change the method' of an election" (*Id).*

Finally, Respondents do not defend the lower court's erroneous assertion that the Local Law 11 would create legal opportunities for non-citizens to hold public office. Local Law 11 by its terms grants noncitizens *only* the ability to *vote* in local elections. There are no provisions of the law

that even discuss, much less authorize, non-citizens to run for office or hold elective office.

IV. Local Law 11 Was Not Preempted by New York State Election Law § 5-102(1)

A unanimous Appellate Division correctly held that Local Law 11 was not preempted by New York State Election Law (*see* Joint R. App. 1838-1839, 1853-1858). To be sure, Election Law Section 5-102(1) provides that "No person shall be qualified to register for and vote at any election unless he is a citizen of the United States." That provision directly conflicts with Local Law 11. But the Election Law expressly explains what to do when there is such a conflict: "Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law" (Election Law § 1-102). Local Law 11 clearly is "any other law," that "shall apply"—and Election Law Section 5-102 does not contain the "notwithstanding" carve-out. Accordingly, the state Election Law does not preempt Local Law 11.

Respondents' lengthy alternative argument to reverse the Appellate Division's holding boils down to a plea for this Court to ignore the plain

meaning of the phrase "any other law." (Respondents' Brief 32–43). Respondents' arguments fail.

The Appellate Division correctly "discern[ed] no ambiguity" in the phrase "any other law." As the majority opinion pointed out, "[h]ad the legislature intended to reference any other *state* law, 'it easily could have so stated' by including the word 'state'" (Joint R. App. 1838–1839) (emphasis in original) (internal citation omitted). The clear and unambiguous plain text of the Election Law shows that it does not preempt Local Law 11.

Further, even if the plain language were ambiguous, the legislative history of Section 1-102 also shows that it was intended to be inclusive of local laws. As the dissent pointed out below, the legislature openly contemplated and expressly permitted local laws to conflict with New York Election Law at the time of passage in 1922 (Joint R. App. 1853-1858).

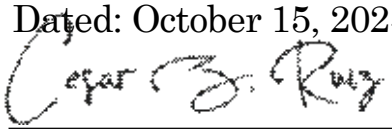
Moreover, the vast majority of New York courts analyzing the provision have found § 1-102 to apply to local laws. For example, in *N.Y.P.I.R.G.—Citizen's All. v City of Buffalo* (130 Misc 2d 448 [Sup Ct, Erie County 1985]), the court held that petitioners could not rely on the Election Law to invalidate a provision of the Buffalo City Charter, because

the "Election Law was unavailable to these Petitioners" under Section 1-102, which "render[s] itself inapplicable when inconsistent with any other law" (*id.* at 449). Similarly, in *McDonald v N.Y.C. Campaign Fin. Bd* (40 Misc 3d 826, 840 [Sup Ct, NY County 2013]), the Supreme Court found "persuasive" New York City's argument that Section 1-102 permitted local laws that might be inconsistent with State Election Law. In doing so, the court specifically addressed legislative history: "[N]ot only did the legislature specifically reenact § 1-102, it even chose to amend and extend its scope" (*id.* at 840). Finally, in *City of New York v N.Y.C. Bd. of Elections* (No. 41450/91, 1991 NYMisc LEXIS 895 [Sup Ct, Apr. 3, 1991], *affd* 1991 NY App Div LEXIS 18134 [1st Dept, Apr. 5, 1991]), the court upheld charter revisions dismissing arguments that the City Charter section at issue "is not a 'law' within the contemplation of Election Law § 1-102 because it is not a state statute" (1991 NY Misc LEXIS 895, at *4). One lone trial court decision to the contrary – *Castine v Zurlo* (46 Misc 3d 995 [Sup Ct Clinton County 2014]) – cannot overcome the plain language, legislative history, and weight of authority making clear that local laws as well as state laws are encompassed in Section 1-102. Election Law Section 5-102 therefore does not preempt Local Law 11.

CONCLUSION

For the foregoing reasons, this Court should reverse.

Dated: October 15, 2024



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NEW YORK STATE COURT OF APPEALS
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Dated: October 15, 2024

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