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

----------X

VITO J. FOSSELLA, *et al.*

Plaintiffs-Respondents,

-against-

ERIC ADAMS, in his official capacity as Mayor of New York City, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, CITY COUNCIL OF THE CITY OF NEWYORK,

Defendants-Appellants,

-and-

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

Defendants-Intervenors-Appellants.

NOTICE OF MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF AMICUS CURIAE

App. Case No. 2022-05794

Richmond County Index No. 85007/2022

----------X

PLEASE TAKE NOTICE that, upon the annexed affirmation of Veronica Salama, dated November 4, 2022, and the exhibits annexed thereto, a motion will be made at a term of this Court to be held at 45 Monroe Place, Brooklyn, New York, 11201 on November 14, at 10:00 a.m., or as soon thereafter as counsel can be heard, for an order granting the New York Civil Liberties Union leave to file the proposed Brief of Amicus Curiae in Support of Defendants-Appellants Eric

Adams, in his official capacity as Mayor of New York City, Board of Elections in the City of New York, City Council of the City of New York, and Defendants-Intervenors-Appellants Hina Naveed, Abraham Paulos, Carlos Vargas Galindo, Emili Prado, Eva Santos Veloz, Melissa John, Angel Salazar, Muhammad Shahidullah, and Jan Ezra Undag, attached hereto as Exhibit A. Pursuant to 22 NYCRR §§ 670.4 and 1250.4, this motion will be submitted on the papers and personal appearance in opposition to the motion is neither required nor permitted.

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

Dated: New York, New York
November 4, 2022

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Michael Petrov, Wafik Habib, Phillip Yan Hing Wong,
New York Republican State Committee and
Republican National Committee

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

VITO J. FOSSELLA, *et al.* *Plaintiffs-Respondents*, -against- ERIC ADAMS, in his official capacity as Mayor of New York City, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, CITY COUNCIL OF THE CITY OF NEWYORK, *Defendants-Appellants*, -and- HINA NAVEED, ABRAHAM PAULOS, CARLOS VARGAS GALINDO, EMILI PRADO, EVA SANTOS VELOZ, MELISSA JOHN, ANGEL SALAZAR, MUHAMMAD SHAHIDULLAH, and JAN EZRA UNDAG, *Defendants-Intervenors-Appellants*.	App. Case No. 2022-05794 Richmond County Index No. 85007/2022

AFFIRMATION OF VERONICA R. SALAMA IN SUPPORT OF MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE

VERONICA R. SALAMA, an attorney duly admitted to practice before this Court, affirms under penalty of perjury pursuant to CPLR 2106, as follows:

1. I am a member of the bar of the State of New York. and am a staff attorney at the New York Civil Liberties Union (the "NYCLU"), the proposed amicus curiae. I am not a party to this action and am in good standing in the Courts of the State of New York.
2. Pursuant to this Court's Rule of Practice 1250.4 [f], the NYCLU requests permission to appear as amicus curiae in the above-captioned case.
3. On November 3, 2022, I communicated with counsel for Plaintiffs-Respondents, Defendants-Appellants, and Defendants-Intervenors-Appellants to request their consent for *Amicus Curiae* to seek leave to participate as amicus curiae in this case. Counsel for Defendants-Appellants *New York City Mayor Eric Adams* and *City Council of the City of New York*, as well as counsel for Defendants-Intervenors-Appellants consented. Counsel for Plaintiffs-Respondents and counsel for Defendant-Appellant *Board of Elections in the City of New York* took no position.

Background and Procedural History

4. This appeal raises the question whether the lower court erred in invalidating New York City's Local Law 11-2022 as contrary to the New York State Constitution as well as the statutory provisions of the New York State Election Law and Municipal Home Rule Law.

5. In December 2021, the New York City Council passed Local Law 11 of 2022 (the "Municipal Voting Law"). This law enfranchises between 800,000 and 1 million immigrants in New York City—most of whom are people of color. Specifically, the Municipal Voting Law enfranchises NYC residents who hold green cards or work authorizations and who have lived in the City for at least 30 days before the election to vote in municipal elections—for offices of mayor, public advocate, comptroller, borough president, and city council member.
6. On June 27, 2022, the Supreme Court, Richmond County granted a motion filed by a group of Republican voters, elected officials, and Republican organizations to permanently enjoin the City from implementing the Municipal Voting Law. In doing so, the trial court determined that the law violates the New York State Constitution, the Election Law, and the Municipal Home Rule Law
7. The City Defendants as well as the Intervenor-Defendants—nine individual NYC residents, immigrants who would be entitled to register and vote in municipal elections under the Municipal Voting Law— have appealed the trial court's decision and order.
8. Among other rulings, the trial court determined that the term, "citizen," in Article II, Section 1 of the New York State Constitution, which establishes

the qualifications of voters, "means every citizen of the United States" (*Fossella et al. v Eric Adams et al.*, Index No. 85007/2022 at 8). Based on this interpretation, the trial court trial court concluded that the state constitution permits *only* U.S. citizens to vote in any election, and that the Municipal Voting Law's expansion of the right to vote to a subset of non-U.S. citizens in local elections necessarily violates the State Constitution.

9. The trial court failed to consider the plain text of the New York State Constitution, the records of the constitutional conventions that introduced and interpreted the term "citizen" in Article II, Section 1, and the historical practice of Black male suffrage in New York State after the Supreme Court's ruling in *Dred Scott v Sanford*, 60 U.S. 393 (1857), which stripped Black people of their U.S. citizenship prior to the ratification of the 14th Amendment. Analysis of the text, records, and history of Article II, Section 1 shows that the term "citizen" in the State Constitution is not—and has never been—tethered to U.S. citizenship, except where expressly qualified.

Statement of Interest of Proposed Amicus Curiae

10. The New York Civil Liberties Union is the New York State affiliate of the American Civil Liberties Union, and a non-profit, non-partisan organization with more than 85,000 members and supporters. The NYCLU is dedicated to

the principles of liberty and equality enshrined in the United States and New York State Constitutions.

11. In support of those principles, the NYCLU has litigated on behalf of voters in cases involving the right of electoral suffrage under New York state law, including *Palla v Suffolk Cnty Bd of Elections* (31 NY2d 36 [1972]); *Amedure v State* (—NY3d—, 2022 WL 16568516 [3d Dept 2022]); *People by James v Schofield* (199 AD3d 5 [3d Dept 2021]); *Spring Valley Branch of the NAACP v Rockland County Bd Of Elections*, (Index No 035092/2020 [Sup Ct, Rockland County, Oct. 29, 2020]); and *League of Women Voters of N.Y. State v N.Y. State Bd of Elections*, 2019 WL 4899034 ([Sup Ct, NY County, Oct. 4, 2019]), and in cases involving the proper interpretation of the New York State Constitution, such as *Hernandez v State*, (173 AD3d 105 [3d Dept 2019]).

12. Amicus curie brings expertise in the New York State Constitution and a strong interest in ensuring the correct analysis of the term "citizen" as used in Article II, Section 1.

Request to File Proposed Brief

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

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

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

WHEREFORE, the proposed amicus curiae the NYCLU respectfully requests that it be permitted to file its proposed brief.

Dated: New York, New York
November 4, 2022

Veronica R. Salama

EXHIBIT A

Appellate *Case No.* 2022-05794

New York Supreme Court

Appellate Division – Second Department

VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, JOSEPH BORRELLI, NICOLE MALLIOTAKIS, ANDREW LANZA, MICHAEL REILLY, MICHAEL TANNOUSIS, INNA VERNIKOV, DAVID CARR, JOANN ARIOLA, VICKIE PALLADINO, 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,

-against-

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

Defendants-Appellants,

-and-

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

Defendants-Intervenors-Appellants,

BRIEF OF THE NEW YORK CIVIL LIBERTIES UNION AS AMICUS CURIAE IN SUPPORT OF DEFENDANT-APPELLANTS AND DEFENDANT-INTERVENOR-APPELLANTS

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
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Dated: November 4, 2022

Counsel for Amicus Curiae

Richmond County Clerk's Index No. 85007/2022

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PRELIMINARY STATEMENT

In invalidating the municipal voting law at issue in this case, the trial court relied in part on Article II, Section 1 of the New York State Constitution, which establishes the qualifications of voters. The New York Civil Liberties Union submits this brief to assist this Court in its interpretation of that constitutional provision, focusing specifically on the meaning of the term "citizen." The trial court erroneously concluded that "citizen" in this section exclusively refers to citizens of the United States. Yet, the term "citizen" in the State Constitution is not—and has never been—tethered to U.S. citizenship, except where expressly qualified. This is evident, first, from the text itself. The use of the term "citizen" throughout the State Constitution shows that when the framers intended to limit its application to citizens of the United States, the text does so expressly. Second, records of the relevant constitutional conventions reveal a considered and repeated choice not to tie the definition of "citizen" to federal citizenship. And third, historical evidence shows that, in the period between the Supreme Court's decision in *Dred Scott v Sanford* (60 U.S. 393 [1857] *superseded* [1868]) and ratification of the 14th Amendment to the U.S. Constitution, a time when the federal government deemed Black men not to be U.S. citizens, New York allowed thousands of property-owning Black men to vote—as citizens of this state.

Contrary to the trial court's conclusions, it was *not* the intent of the framers of the State Constitution for non-U.S. citizens to be omitted from Article II, Section 1. The trial court's constitutional ruling flies in the face of both the text and history of the New York State Constitution. It should be reversed.

INTEREST OF AMICUS CURIAE

The New York Civil Liberties Union is a non-profit, non-partisan organization with more than 85,000 members and supporters and is the New York State affiliate of the American Civil Liberties Union. The NYCLU is dedicated to the principles of liberty and equality enshrined in the United States and New York State Constitutions. In support of those principles, the NYCLU has litigated on behalf of voters in cases involving the right of electoral suffrage under New York state law, including *Palla v Suffolk Cnty Bd of Elections* (31 NY2d 36 [1972]); *Amedure v State* (—NY3d—, 2022 WL 16568516 [3d Dept 2022]); *People by James v Schofield* (199 AD3d 5 [3d Dept 2021]); *Spring Valley Branch of the NAACP v Rockland County Bd Of Elections,* (Index No 035092/2020 [Sup Ct, Rockland County, Oct. 29, 2020]); and *League of Women Voters of N.Y. State v N.Y. State Bd of Elections*, 2019 WL 4899034 ([Sup Ct, NY County, Oct. 4, 2019]), and in cases involving the proper interpretation of the New York State Constitution, such as *Hernandez v State*, (173 AD3d 105 [3d Dept 2019]). Amicus curiae brings expertise

in the New York State Constitution and a strong interest in ensuring the correct analysis of the term "citizen" as used in Article II, Section 1.

ARGUMENT

I. A PLAIN READING OF "CITIZEN" THROUGHOUT THE STATE CONSTITUTION SHOWS THAT THE TERM IS NOT SYNONYMOUS WITH "CITIZEN OF THE UNITED STATES."

Article II, Section 1 of the New York State Constitution provides that "[e]very *citizen* shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election" (NY Const art. II, § 1) (emphasis added). A plain reading of the term "citizen" in this provision—particularly in the context of the State Constitution as a whole—shows that it does not impose a federal citizenship requirement. When the State Constitution limits its application to citizens of the United States, it uses the express phrase "citizen of the United States." Conversely, when there is no intent to limit prescribed rights and privileges to U.S. citizens, the State Constitution does not add this qualifier.

The term "citizen" appears twelve times in the State Constitution.[1] In three instances, the State Constitution makes express reference to United States

[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.

citizenship or immigration status and in nine instances, it does not. The State Constitution qualifies the term "citizen" with reference to the United States when setting the qualifications for members of the legislature, governor and lieutenant governor, and for certain appointments to civil service (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"] [emphasis added]; *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*"] [emphasis added]; *id*. art. V, § 6 [providing specific qualifications for certain veterans who may qualify for civil service appointments]).

It is a well-established and "basic tenet of constitutional and statutory interpretation that the clearest and 'most compelling' indicator of the drafters' intent is the language itself" (*Hernandez v. State*, 173 A.D.3d 105, 111 [3rd Dept 2019]). The drafters of the State Constitution make clear when the word "citizen" is qualified by reference to the United States and use express language to accomplish this result. Pursuant to the cannon of construction of *expressio unius est exclusio alterius*, "an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded" (NY Stat Law § 240). The term "citizen" in Article II, Section 1 does not have this qualifier— "of the United States" — and thus leads to the inference that it was intentionally excluded (*see Matter of Jose R.*, 83 NY2D

388, 394 [1994]; *Kirshtein v. AmeriCU Credit Union*, 65 AD3d 147, 151 [4th Dept 2009] [using this cannon to distinguish the terms "capacity" and "legal capacity" in the UCC]). If "citizen," standing alone, were enough to mean only a U.S. citizen, it would be redundant and superfluous to qualify the term with the reference, "of the United States," as seen in Articles III and IV (*see* NY Stat Law § 231 ["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*"] [emphasis added]).

This plain reading is further supported by the presumption of consistent usage—that "a term generally means the same thing each time it is used" (*United States v Castleman*, 572 US 157, 174 [2014] [Scalia, J., concurring]). All nine other uses of "citizen" in the State Constitution are not qualified by reference to the United States. If, as the trial court concluded, "citizen" in Article II, Section 1 means "U.S. citizen," the presumption of consistent usage would require this interpretation to apply to *every* constitutional provision that uses the term. But it could not and none of the uses of "citizen" in the State Constitution that are currently not qualified by "of the United States" have *ever* been held to mean U.S. citizenship.

Reading "U.S. citizen" into each of the nine standalone uses of "citizen" would contravene the historical application of such rights to all New Yorkers. It also would lead to absurd and untenable results (*See People v Badji*, 36 NY3d 393, 406–

07 [2021] *citing* NY Stat Law §§ 141, 143, 145, 146 ["A construction of a statute will be rejected… if it renders the statute absurd or produces objectionable, anomalous, or unjust results"]).

For example, Article I, Section 8 establishes that "*[e]very citizen* may freely speak, write and publish his or her sentiments on all subjects…" (NY Const art. I, § 8 [emphasis added]). The free speech protection is understood to be—and has historically been—applied to New Yorkers generally, without regard to whether they are U.S. citizens (*see, e.g.*, *Holmes v Winter*, 22 NY3d 300, 307 [2013] [referencing New York's "long tradition, with roots dating back to the colonial era, of providing the utmost protection of freedom of the press"]; *O'Neill v Oakgrove Const., Inc.*, 71 NY2d 521, 531 [1988] [Kaye, J. concurring] [contemplating free press with respect to "the citizens of this State under the State Constitution"]). Indeed, the free speech provision of the State Constitution is known to provide broader protections than the First Amendment, which protects non-U.S. citizens (*see Underwager v Channel 9 Australia,* 69 F.3d 361, 365 [9th Cir. 1995] ["the speech protections of the First Amendment at a minimum apply to all persons legally within our borders"]; *Immuno AG. v Moor-Jankowski*, 77 N.Y.2d 235, 249 [1991] ["[T]he 'protection afforded by the guarantees of free press and speech in the New York Constitution is often broader than the minimum required by the Federal Constitution"]).

Another example is Article XIV, Section 5, which states, "A violation of any of the provisions of this article may be restrained at the suit of the people or, with the consent of the supreme court in appellate division, on notice to the attorney-general at the suit of *any citizen*" (NY Const art. XIV, § 5 [emphasis added]). Article XIV governs stewardship of the environment—specifically forest and wildlife conversation in New York State—and Section 5 gives "citizens" standing to sue for a violation of any provision therein. It would be absurd to suggest that only U.S. citizens can file lawsuits on behalf of the environment.

Based on the text of the New York State Constitution, it is clear the word "citizen" in Article II, Section 1 without qualification or restriction reflects a deliberate choice not to limit it to U.S. citizens. Accordingly, the trial court's conclusion that it was "the intent of the framers for non-[U.S.] citizens to be omitted," (*Fossella et al. v Eric Adams et al.*, Index No. 85007/2022 at 8), is in error.

II. THE CONSTITUTIONAL CONVENTIONS THAT FRAMED ARTICLE II, SECTION 1 CONFIRM THAT "CITIZEN" WAS—AND CONTINUES TO BE—INTENTIONALLY DIVORCED FROM U.S. CITIZENSHIP.

Given the plain language of the State Constitution, this Court need not look further to determine that "citizen" in Article II, Section 1 is not limited to U.S. citizens. But if there were any doubt, the records of the constitutional conventions of 1821, 1846, and 1867 that introduced and interpreted the term "citizen" further

support this reading and show a considered and repeated choice by the framers for the word *not* to be tied to U.S. citizenship.

A. In 1821, Delegates to the Constitutional Convention Chose to Ascribe State Citizenship to Article II, Section 1.

The term "citizen" was first introduced in the 1821 Constitution and the legislative intent is traced to that convention[2] (Robert Allen Carter, *New York State Constitution: Sources of Legislative Intent*, 13 [2d Ed, 2001]).[3] At the time, there was a widespread understanding of two distinct citizenships: state citizenship and federal citizenship. The Convention Act of 1821, which recommended holding a constitutional convention, was passed on March 13, 1821. All eligible persons who cast a ballot for the convention were administered an oath that required them to state, 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,*

[2] The first New York State Constitution of 1777 enfranchised "every male inhabitant" who met specific residence and land ownership requirements to vote for assemblymen (NY Const Art. VII [1777]). It was not until the 1821 State Constitution that the term "citizen" was introduced (*See* NY Const Art. II, § 1 [1821]; *id.* art. III, § 2).

[3] The Court of Appeals has repeatedly cited this treatise on the New York State Constitution as the authoritative source on legislative intent (*see Leading Age New York, Inc. v Shah*, 32 NY3d 249, 279 n.2 [2018] [*citing* Carter]; *Maron v Silver*, 14 NY3d 230, 251 [2010] [same]).

convened at Albany, June 1, 1846, Convention Act of 1821, 25-26 NEW YORK STATE LIBRARY DIGITAL COLLECTIONS [1846]).

At the same constitutional convention, the phrase "native citizen of the United States" was added to the gubernatorial qualifications provision in Article III, Section 2, making clear that the framers knew how to qualify the term when they so intended (*compare* NY Const. art. III, § 2 [1821] *with id*. art. II, § 1).[4] The juxtaposition of the unqualified word "citizen" in the voter qualifications provision of the 1821 Constitution against the phrase "native citizen of the United States" in the gubernatorial qualifications provision reveals that the delegates to the 1821 Constitution understood a distinction between the two terms.

Moreover, the delegates to the 1821 Constitution deliberately chose not to qualify, "male citizen" in the suffrage provision with "of the United States," despite the existence of this language in at least five state constitutions. The manual to the 1821 convention included a digest of the "qualification of electors" provision(s) in the existing state constitutions (*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]). The

[4] The New York State Constitution of 1846 ("1846 Constitution") then amended the gubernatorial qualifications provision to remove the word, "native" prior to "citizen of the United States" (*compare* NY Const. art. IV, § 2 [1846] *with* NY Const. art. III, § 2 [1821]). Still, the word "citizen" in Article II, Section 1 of the 1846 Constitution remained unqualified (*id.*).

delegates referenced existing state constitutions throughout the proceedings.[5] By this time, the constitutions of Maine, Mississippi, Missouri, Alabama, and Indiana had already limited suffrage to "citizen of the United States" in some form (*id.*). By contrast, the Massachusetts constitution allowed "every male citizen," subject to specific restrictions, to vote (*id.*). Still, the delegates to the 1821 constitutional convention voted to amend the State Constitution's suffrage provision from the 1777 language of "every male inhabitant" to "every male citizen," rather than to "every male citizen *of the United States*" (NY Const. art. II, § 1 [1821]).

B. In 1846, Delegates to the Constitutional Convention Acknowledged that the State Constitution Did Not Define "Citizen" in Article II, Section 1 to Mean U.S. Citizen and Affirmed That Interpretation.

Records from the Constitutional Convention of 1846 provide a nearly contemporaneous understanding of "citizen" in Article II, Section 1 as introduced in the 1821 Constitution. Delegates to the 1846 constitutional convention expressed both an understanding that the term was purposefully untethered from U.S. citizenship, as well as an intention to maintain that separation.

The delegates proposed and unanimously approved a resolution about citizenship and the right of suffrage entitled, *The Naturalization of Citizens,* which explicitly addressed the issue of United States citizenship. The resolution proposed:

[5] *See 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].

"That the committee on the elective franchise inquire into the expediency of providing in the constitution for the exercise of the right of suffrage, so that in no instance shall the exercise of that right depend on the naturalization laws of congress" (*Debates and proceedings in the New-York State Convention, for the revision of the Constitution*, 74 NEW YORK STATE LIBRARY DIGITAL COLLECTIONS [1846]).

Alvah Worden, a prominent lawyer and member of the legislature, was the sponsor of this resolution and explained its purpose.[6] In his supporting speech, he specifically noted that, as written, the State Constitution conferred the right of suffrage on "citizens" but "did not say whether persons should be citizens of this state or of the United States" (*id.*). Thus, the New York State Constitution afforded the legislature space to define contours of citizenship. In turn, the state legislature had "held that no person not natural born can become a citizen of this State except through the action of the federal Congress" (*id.*). Delegate Worden acknowledged that, to the extent the rights and privileges of New York state citizenship had been defined in terms of U.S. citizenship, that had been a creature of statute, rather than a

[6] L.B. Proctor, *Lives of Eminent Lawyers and Statesmen of the State of New York, with Notes of Cases Tried by Them, Speeches, Anecdotes, and Incidents in Their Lives,* 594 (1882). Proctor describes Worden's supporting speech as one of "great power and force" and notes that the resolution "became one of the provisions of the new Constitution" (*id.* at 594). Worden was later appointed as one of three commissioners to simplify the state's legal codes (*id.* at 597-98).

constitutional matter. However, to avoid having the federal Congress "legislate against the express will of the people of this state," Worden asserted it would be "expedient" if, in the new constitution, they "should have a fixed rule of suffrage, as applicable to that class of persons called aliens—and that their right to vote *should in no case depend on the action of the federal Congress*" (*id*).

C. In 1867, Delegates to State Constitutional Convention Rejected Tethering "Citizen" in Article II, Section 1 to U.S. Citizenship to Avoid Disenfranchising Black Men Who Were Stripped of U.S. Citizenship by the Dred Scott Decision.

Constitutional framers reaffirmed that "citizen" in Article II, Section 1 was not limited to U.S. citizenship at the 1867 convention. The 1867 New York State constitutional convention took place at a critical juncture for the meaning of citizenship and voting rights in both the state and federal constitutions. In the shameful *Dred Scott* decision of 1857, the U.S. Supreme Court ruled that Black people were incapable of being U.S. citizens but could nonetheless be citizens of a state with "rights and privileges of the citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State" (*Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 404-05 [1857], *superseded* [1868]). *Dred Scott* remained the law of the land until the ratification of the 14th Amendment in 1868. The records of the 1867 constitutional convention make clear that the delegates understood, explicitly debated, and reaffirmed their desire to maintain a separation between

"citizen" and "U.S. citizen" in Article II, Section 1 of the State Constitution, just as they had done in 1846.

An amendment to add "of the United States" after "citizen" in Article II, Section 1 was proposed—and failed—for the first time at the 1867 constitutional convention (*Proceedings and Debates of the Constitutional Convention of the State of New York Held in 1867 and 1868* ["1867 Convention Proceedings"], 517-18 HATHI TRUST DIGITAL LIBRARY). The amendment's sponsor, a Mr. Fuller, viewed this change as a powerful way to affirm the U.S. citizenship of Black New Yorkers, in a forceful and defiant response to *Dred Scott.* He stated, "I am not in favor of making any such concession . . . in deference to [*Dred Scott*] that a colored man is not a citizen of the United States . . . I am unwilling to admit or concede that there is any such doubt" (*Id.* at 517).

However, Charles J. Folger, a delegate to the convention who was also a Republican member of the state senate and President Pro Tem—and later Chief Judge of the Court of Appeals (1880-81)[7]—spoke forcefully against the proposed amendment (1867 Convention Proceedings, 517-18). He noted that declining to insert the phrase "citizen of the United States" offered a more legally defensible position to ensure that Black men would continue to be able to vote (*id*.). That there

[7] *Charles James Folger*, HISTORICAL SOCIETY OF THE NEW YORK COURTS.

was "an express decision" on the judicial records of this country and on the records of the executive department "to the effect that the colored man is not a citizen of the United States," was not something that could be ignored. According to Folger, while there were principled reasons to push back against the *Dred Scott* decision, attempting to do so in this manner could have the adverse effect of disenfranchising Black men, who were already considered citizens of this state and enjoyed the suffrage guaranteed to them by the State Constitution and the laws of this state. (*Id*.) Folger stated:

> "If it be true—I do not say it is or is not—but it may by possibility be true, that the colored man is not a citizen of the United States. And then if we put that phrase into our Constitution and say that because he is a citizen of the United States, he shall be a voter here—while we have come together with that subject in our minds among others, and with the desire to give the colored citizens of this State the right to vote, *we are using language which may defeat the exercise of that right*."

(*Id.* [emphasis added].) So, rather than adding a phrase that is not in the State Constitution at all "and never was from 1777," keeping "the language of the Constitution of 1846," would require the delegates to give nothing up. The understanding of "citizen," as it currently stood in the voter qualifications provision, had already been settled. Folger concluded: "I say, it is part of the wisdom to eliminate all such doubts from our Constitution and plant ourselves on certainties, which we surely do plant ourselves upon when we adhere to the *language which has*

been settled for twenty years." (*Id*. [emphasis added].) Fuller's proposed amendment failed, (*id*.), and "Citizen of the United States" was not included in the proposed Constitutional amendment.

In 1967, an amendment to qualify "citizen" by reference to U.S. citizenship was proposed once more (*See Official Text of the Proposed Constitution to the State of New York*, 7 [Nov. 7, 1967]). This amendment was also rejected, this time by the voters of New York State.[8] Thus, since the term's first appearance in Article II, Section 1 of the New York State Constitution in 1821, "citizen," has never been qualified by reference to the United States.

[8] *See* Votes Cast For and Against Proposed Constitutional Conventions and Amendments NYCOURTS.GOV, at 37 (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). To the extent Intervenors-Defendants-Appellants ("Intervenors") contend that prior to 1967, the term "citizen" in Article II, Section 1 meant "U.S. citizen" because of the durational citizenship requirement for voting that existed prior to that time, they are incorrect. (*See* Intervenors Br. 28-29). The durational citizenship provision in Article II, Section 1 dates back to 1846 (NY Const art II, § 1 [1846]), and co-existed with the term "citizen" in Article II, Section 1 at a time when it was well-understood that the use of "citizen" was not and should not be tethered to U.S. citizenship (*see* section II.B *supra*). Furthermore, neither of the two cases cited by Intervenors held that the U.S. citizenship requirement mentioned in either of those cases was constitutional in nature (*see* Intervenors Br. 28-29, *citing Phillips v Hubbard*, 284 NY 152, 158 [1940]; *Haub v. Inspectors of Election in 12th Election Dist of 37th Assembly Dist of State of NY*, 126 Misc. 2d 458, 460 [Sup Ct, Queens Cnty, 1984]). As Carter's *Sources of Legislative Intent* shows, the term "citizen" was added to the State Constitution in 1821 and has not changed since then (*see* section I.A *supra*).

III. AFTER THE *DRED SCOTT* DECISION, BLACK MEN VOTED IN NEW YORK STATE BETWEEN 1857 AND 1868 AS CITIZENS OF THIS STATE.

Between 1857 and 1868—a time when the United States Supreme Court denied Black people their status as U.S. citizens—thousands of Black men still cast ballots in New York State, as citizens of this state.

It is widely understood that the abhorrent *Dred Scott* decision in 1857 "stripped the citizenship of free Blacks born in the United States whom Northern states considered to be citizens" (Rose Cuison-Villazor, *Rejecting Citizenship*, 120 Mich. L. Rev. 1033, 1052 [2022] *citing* Martha S. Jones, *Birthright Citizens* [2018]). Notwithstanding this ruling, Black men continued to vote in New York between 1857 and 1868 ("the *Dred Scott* period").

The most famous recorded example of non-U.S. citizen voting in New York during the *Dred Scott* period occurred when Frederick Douglass, the renowned abolitionist and New York State citizen, cast his ballot in Rochester, New York in the presidential election of 1864 (*see* David W. Blight, *Frederick Douglass: Prophet of Freedom* 445 [2018]). Douglass was hardly the only Black man to cast a ballot in New York during the decade in which Black people could not be U.S. citizens. In a speech in September 1858, William J. Watkins, an African American abolitionist and minister, addressed the New York State Suffrage Association and advised the "eleven thousand colored voters of this State" to vote for the Republican party (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'"]). Indeed, it is well-documented that between 1832 and 1860, Black voters in New York consistently played either an active or influential role in the presidential elections (Hanes Walton, Jr., *The African American Electorate: A Statistical History*, 129-30 [2012]).

Black New Yorkers voted during the *Dred Scott* period as "citizens" within the meaning of the voter qualifications provision of the State Constitution. Importantly, New York did not nullify *Dred Scott* in permitting Black men to vote. In the famed *Lemmon* Slave Case, the Court of Appeals acknowledged the vitality of *Dred Scott* and its applicability to New York through the Supremacy Clause. (*Lemmon v. People*, 20 N.Y. 562 [1860]). Instead, the Court of Appeals distinguished *Dred Scott*, noting that the precedent did not altogether impair New York's ability to exercise authority "As a sovereign State [to] determine and regulate the *status* or social and civil condition of her citizens, and every description of persons within her territory" (*id.* at 616). In allowing Black men to vote during this time, New York State was exercising its authority as a sovereign state to determine the status of its own citizens, and to interpret its own constitution. Article II, Section

1 of the New York State Constitution does not bar the legislature from enacting non-U.S. citizen voting. And the trial court's ruling that "citizen" in the State Constitution means U.S. citizenship is inconsistent with the historical record.

CONCLUSION

The trial court's interpretation of "citizen" is contradicted by the plain text of the New York State Constitution, the records of the constitutional conventions that framed the term "citizen" in Article II, Section 1, and the historical practice of Black male suffrage in New York State during the *Dred Scott* period. Article II, Section 1 of the New York State Constitution does not bar a legislature from enfranchising non-U.S. citizens to vote in municipal elections because the term "citizen," is not—and has never been—tethered to U.S. citizenship. For the reasons articulated in this brief, the trial court's decision cannot hold constitutional muster. It should be reversed.

Dated: New York, New York
November 4, 2022

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APPENDIX OF NON-PUBLICLY AVAILABLE SOURCES

EXHIBIT 1

1821 Convention Manual: A Constitutional Guide to the Objects of the New York State Constitution, Synopsis of State Constitutions (excerpt)

A

CONSTITUTIONAL GUIDE

TO THE OBJECTS OF THE

New-York State Convention;

CONSISTING OF THE

CONSTITUTION OF THE STATE,

WITH AN ABSTRACT OR DIGEST OF THE MATERIAL POINTS AND FEATURES OF THE CONSTITUTIONS OF THE UNITED STATES AND THE TWENTY-FOUR SEVERAL STATES OF THE UNION,—AND THE EXISTING PROVISIONS OF THE ACT FOR CALLING A CONVENTION.

NEW-YORK:
PRINTED BY JOSEPH KINGSLAND & CO.
1821.

As a Convention is soon to be held, "*for the "purpose of considering the Constitution of this "State, and making such alterations in the same as "they may deem proper, and to provide the man-"ner of making future amendments thereto,*" the Editor of the following pages has flattered himself that he should render a public service by furnishing an abstract of the law calling the Convention; the Constitution as it was originally framed; and a digest of the different state constitutions, to serve as a MANUAL, not only for those who may be more immediately called to act on this important occasion, but as a general summary of the constitutional provisions of the different states, interesting alike to the statesman and to the citizens at large.

CONTENTS.

SYNOPSIS

OF

The Principal Features

OF

THE CONSTITUTIONS OF THE UNITED STATES,

AND

THE SEVERAL STATES.

ELECTORS—*their Qualifications, &c.*

[To CONGRESS.—All qualified to vote for the popular branch of the legislature in each state.]

In *Maine*—Every male citizen of the United States 21 years old,* 3 months resident—excepting persons not taxed, in naval or military service, students, &c.

New-Hampshire—Every male inhabitant, of 21 years of age, 3 months resident in the state—excepting students, paupers, &c. as usual.

Massachusetts—Every male citizen, resident 1 year in the state, and 6 months in the town, who has paid a tax within 2 years, or is exempted by law from taxation.

Rhode-Island—No constitution. By charter of Charles II., all freemen.

Connecticut—Every white male citizen, a legal resident for 6 months, with a freehold of $7 per annum, *or* having performed military duty 1 year, *or* paid a state tax, and of good moral character.

* And so in all other states; minors being in no case known or recognised as electors;—a matter of necessary inference, although expressly provided against by the formal mention of the term of *full and lawful age, 21 years, in every constitution.*

Vermont—Every man, 1 year resident in the state, of quiet and peaceable behaviour.

New-York—Every male inhabitant, resident 6 months, having paid taxes, and possessing a freehold worth £20, or paying 40s. yearly rent. For senators, freeholders of £100 clear estate.

New-Jersey—All inhabitants worth £50 proclamation money clear estate, and 12 months resident.

Pennsylvania—Every freeman, 2 years resident, having paid a tax, and their sons between 21 and 22.

Delaware—Every white freeman, 2 years resident, having paid a tax, and their sons between 21 and 22.

Maryland—All freemen, with 50 acres freehold, or £30 property, and resident 1 year.

Virginia—Freeholders of 100 acres, 25 acres and a house, or a town lot, actually resident in the county.

North-Carolina—All freemen, with 50 acres freehold, 1 year resident, for senators; and all freemen, of 12 months residence, having paid taxes, for members of the house of commons.

South-Carolina—Every free white citizen, 2 years resident in the state, with a freehold of 50 acres, or resident 6 months in election district, and having paid a tax.

Georgia—Citizens and inhabitants, who have paid taxes, and 6 months resident where they vote.

Louisiana—Every free white male citizen, 1 year resident, having paid a tax, or being a freeholder.

Kentucky—Every free white male citizen, 1 year resident where he votes, or 2 years in the state.

Ohio—All white male inhabitants, resident 1 year, and having paid a state or county tax.

Tennessee—Every freeman, an inhabitant and freeholder in the state, or resident 6 months in a county.

Mississippi—Every free white male person, a citizen of the United States, 1 year resident in the state, and 6 months in the county, enrolled in the militia, or paying a tax.

Illinois—All white male inhabitants, 6 months resident in the state.

Missouri—Every free white male citizen of the United States, 1 year resident in the state, and 3 months in the county.

Alabama—Every white male of 21, a citizen of the United States, resident 1 year in the state, and 3 months in the county.

Indiana—Every white male citizen of the United States, resident 1 year in the state.

ELECTIONS—*their Periods, Durations, &c.*

[All held and concluded in one day, excepting where otherwise expressed.]

In *Maine*—On the 2d Monday of September, for governor, senators and representatives, annually forever.

New-Hampshire—In March, annually, for senate, council, and representatives.

Massachusetts—For governor, senators, and councillors, 1st Monday in April, and for representatives ten days before last Wednesday in May.

Rhode-Island—Semi-annually, 1st Wednesday in May, and last Wednesday in October.

Connecticut—Annually, 1st Monday in April.

Vermont—Annually, 1st Tuesday in September.

New-York—Annually, last Tuesday in April, and the two following days.

New-Jersey—Yearly, 2d Tuesday in October.

Pennsylvania—2d Tuesday of October.

Delaware—1st Tuesday of October.

Maryland—1st Monday of October.

Virginia.

North-Carolina.

South-Carolina—Biennially, 2d Monday in October and day following.

Georgia—Annually, 1st Monday in November.

Louisiana—1st Monday in July, every two years.

Kentucky—1st Monday in August, every year, and two days longer, if desired.

EXHIBIT 2

David W. Blight, *Frederick Douglass: Prophet of Freedom* [2018] (excerpt)

FREDERICK DOUGLASS

PROPHET of FREEDOM

DAVID W. BLIGHT

Simon & Schuster
NEW YORK LONDON TORONTO SYDNEY NEW DELHI

Simon & Schuster
1230 Avenue of the Americas
New York, NY 10020

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Front endpaper: Frederick Douglass, February–April 1863, Westfield, Massachusetts, Thomas Painter Collins photographer, *carte de visite*.
Rear endpaper: Frederick Douglass, May 10, 1894, Denis Bourdon photographer, Notman Photograph Company, Boston, Massachusetts.

CONTENTS

Chapter 21

SACRED EFFORTS

> And the dove came in to him in the evening; and, lo, in her mouth was an olive leaf plucked off: so Noah knew that the waters were abated from off the earth.
>
> —GENESIS 8:11

During the final months of the Civil War, Frederick Douglass's emotions and ideas careened from fear to exhilaration, from hope to despair, and in and out of Old Testament–style tribulation and redemption. In a special address to a black convention in Syracuse in October 1864, Douglass tackled many of the war's personal and existential meanings. This national gathering, the first such convention to be held in nine years, attracted approximately 150 representatives from eighteen states, including small delegations from Mississippi, Missouri, Florida, Virginia, and North Carolina. The delegates collectively denounced colonization and explicitly demanded "equality before the law."[1]

Possibly no previous convention had drawn a list of African American luminaries of such diverse backgrounds and talents. Virtually every major black religious, political, literary, or community leader attended. For nearly four days, all manner of rivalries were largely checked at the door while such men as Henry Highland Garnet, William Wells Brown, George T. Downing, John Mercer Langston, Jermain Loguen, and others matched wits over the great issues of the war: equality in the army for black soldiers; the dire necessity of complete abolition as the war's aim; equal civil and political rights in the aftermath of emancipation. These men were both former slaves and freeborn; some were longtime "friends" of Douglass's, and others had already spent much energy as his rival, a trend that would only increase in the postwar era. Douglass's closest black comrade, James McCune Smith, ill with the beginnings of congestive heart failure, did not join the fifty-three-member New York delegation.[2]

The delegates elected Douglass as their president; he was ushered with "great applause" to the stage by the younger, Oberlin-educated Langston. Douglass swiftly announced in his sonorous voice that "the cause which we come here to promote is sacred." He envisioned the "wide, wide world" watching them as they promoted no less than the "freedom, progress, elevation, and perfect enfranchisement of the entire colored people." On the following mornings or evenings the convention would begin with prayers by the Reverend Garnet or others, and strikingly, with song, including "John Brown's Body," "Blow Ye the Trumpet, Blow," and on the final day, Julia Ward Howe's recently composed "Battle Hymn of the Republic." How moving it must have been to hear full-throated renditions of such paeans to the emancipationist vision of the war and of the old Exodus story. At least one woman, Edmonia Highgate of Syracuse, addressed the convention, introduced by Douglass. The minutes do not record her speech, except to say that Highgate urged the men to steadfastness in the cause until the "glorious day of jubilee shall come." Most poignant of all, at the afternoon session of the second day, Garnet took the lead in unfurling across the platform the battle flag of the First Louisiana Colored Troops, a unit that had achieved fame for its bravery at the battle of Port Hudson in July 1863.[3]

Delivered on the final day of the convention, Douglass's speech was both celebration and warning. Since the Republicans did not want him out on the stump campaigning, he delivered his own political accounting to his fellow African Americans on this election eve. He addressed the question of history itself, bounding forward it seemed, to illuminate new barriers and obstacles to progress. In eloquence tinged with anger and anxiety, Douglass appealed to his own people, but especially to the generic "you" of white Northerners about to go to the polls. Nations could "learn righteousness" from supreme crises, he argued, and this was a moment when "mourning mingles everywhere with the national shout of victory." Douglass asserted that the opportunity to crush slavery, throw back racism, and reinvent the American republic around principles of racial equality "may not come again in a century."[4]

Everything was at stake in defeating the Democrats and finishing the war. Douglass provided a litany of the horrors that would result if the Democrats, allied with Confederates, managed a negotiated peace settlement, resulting in the reestablishment of "the white man's country," and the obliteration of "all the lessons taught by these four years of fire and sword." Douglass portrayed the Democrats as the enemies of mankind, and of history itself. They were the "fiendish . . . hellhounds" ready to pounce on

black people and their allies at their first grasp of power. They had cleverly cultivated the political landscape with what the next century would call Orwellian language. Avoiding the words *slavery* or *slaves* or *slaveholders*, Douglass maintained, Democratic doublespeak sought the "perpetuation" of slavery in their platform under the guise of such "verbiage" as *private rights* or the *basis of Federal Union* or *the Constitution.*[5]

Douglass took up the meaning of friends and enemies, claiming to be as worried about the Republicans' hostility to black voting rights as to the Democrats' darkest aims. "It is . . . not the malignity of enemies alone we have to fear," he announced, "but the deflection from the straight line of principle by those who are known throughout the world as our special friends." Douglass worried about possible peace plans that might get consummated before slavery legally ended. As though directly addressing Congress and a reelected President Lincoln, he employed a moving refrain four times in a single paragraph calling for the Thirteenth Amendment: "We implore you to abolish slavery," he sang out over and over. Only then, he believed, would slavery's destruction and the "national welfare" achieve "everlasting foundations."[6]

Then Douglass signaled what would be for him a primary argument throughout the postwar era—he demanded in the classic terms of political liberalism the franchise as the greatest of all rights. Arguing from natural-rights moral doctrine, Douglass contended that in a republic all elements of liberty—"personal freedom; the right to testify in courts of law; the right to own, buy and sell real estate; the right to sue and be sued"—depended for protection on suffrage. The vote, said Douglass, was the "keystone to the arch of human liberty." But he also accurately anticipated that the black male vote would bring great practical value to Republicans in the postwar era. The only guarantee about a postemancipation order in the South, he said, was the "sullen hatred towards the National Government" and the freedmen on the part of ex-Confederates. Theirs would be a "sacred animosity" toward their conquerors, black and white. "We may conquer Southern armies," proclaimed Douglass, "but it is another thing to conquer Southern hate." The only weapon available was the votes of 4 million new "friends."[7] With these astute strokes of war propaganda and moral philosophy, Douglass awaited the election results.

The convention delegates in Syracuse had good reason for anxiety over the presidential election of 1864. They had keenly observed events for months,

as the Thirteenth Amendment abolishing slavery, supported by Lincoln, had passed in the Senate but failed of the two-thirds majority in the House of Representatives. With the war in terrible military stalemate in Virginia and Georgia, Lincoln and his administration fell into turmoil over its own emancipation policy. "Peace Democrats" relentlessly attacked Lincoln and emancipation as the obstacles to ending the bloodshed. His reelection in danger, the president authorized an ill-advised, informal peace mission to meet with Confederate representatives. But the effort backfired on Lincoln. He allowed the nettlesome Horace Greeley to go to Niagara Falls, Canada, in July and meet with what turned out to be bogus Confederate representatives. Lincoln crafted a brief letter addressed infamously "To Whom It May Concern," declaring that "any proposition" for peace would be received from Confederates as long as it included reunion of the states and the "abandonment of slavery." The Niagara letter was a public-relations disaster. Confederate sympathizers in the North (known to their foes as Copperheads) and the Democratic Party newspapers seized on this news and pilloried Lincoln as the bloodthirsty war maker standing in the way of peace in order to free slaves. The *Cincinnati Enquirer* declared Lincoln's clandestine actions "a finality, which . . . will preclude any conference for a settlement. Every soldier . . . that is killed, will lose his life not for the Union, the Stars and Stripes, but for the Negro."[8] From here, the Democratic campaign of 1864 descended into ever-more-savage racism, driving many Republicans into obfuscation on the emancipation amendment.

From where Douglass and other black leaders sat, the Republicans only added fuel to the Democrats' racist fires. No less than Secretary of State William Seward and Secretary of the Interior John Usher suddenly denied that emancipation would be a condition of reunion if Lincoln was reelected. They asserted, confusingly, that abolition would be left "to the arbitrament of the courts of law." Douglass called out Seward by name and quoted him at length in the Syracuse speech. The secretary's "studied words" at this crucial time could only mean that the federal government was about to "not only . . . make peace with the Rebels, but to make peace with slavery." Like a prophet in despair, Douglass felt betrayed, thrown back into 1861–62 and onto his apocalyptic imagination. The "surest . . . ground of hope" now, he said, was in the "madness" of the Confederates to continue their war until "destitute . . . and . . . divested of their slaves."[9] This was hardly the prescription for the "abolition war" in which he had placed confidence in 1863. But betting on his enemy's actions had become an old habit.

Most dismaying of all was the Democrats' racist rampage in using the

label of "miscegenation" on Lincoln and the Republicans. The very term was first employed in early 1864 in a pamphlet, *Miscegenation: The Theory of the Blending of the Races*, written by two reporters, David Croly and George Wakeman (although published anonymously), at the Democratic *New York World*. The pernicious pamphlet purported to be crafted by Republicans touting the values of interbreeding blacks and whites to improve both. Most people detected the hoax, but the idea exploded as a political weapon more lethal than any impending constitutional amendment. Congressmen picked up the term and used it to attack Republican measures such as early efforts to establish the Freedmen's Bureau. Demonstrating white men's fears about racial purity as well as gender disorder, the tactic also exposed the depth of white supremacy abolitionists confronted.[10]

Democrats labeled Lincoln "Abraham Africanus I" and the "original ourangoutang," suggesting he had African ancestors. Democratic campaign handbills, lithographs, and songs about race mixing as the "Republican solution" for the war flooded the North. "All the painful woes that wreck our lovely land," moaned one ditty, "Are due the Abolitionists, the Miscegenation Band." A widely distributed print from the *New York World* showed the scurrilous caricature of "The Miscegenation Ball," a fake dance held at the "Central Lincoln Club" for "colored belles" and white Republican men pining with "love sick glances" for the "octoroons."[11] Frightening and disheartening to African Americans, this kind of race-baiting politics knew no bounds; at the polls, however, it did not work with enough white voters, especially after Union military successes in Georgia, the Shenandoah Valley, and Mobile Bay turned the tide in Lincoln's favor.

In this extraordinary wartime election, in which nineteen states allowed soldiers to vote at the front, the incumbent president carried the popular vote by 2,206,938 to McClellan's 1,803,787. In the electoral college Lincoln won 212–21. Despite fears that a good deal of the Union army might still be loyal to one of its former generals, Lincoln carried a stunning 78 percent of the soldier vote. Those thousands of men in blue who stood at ballot boxes in Virginia, Georgia, Tennessee, or Mississippi knew they were casting their vote for emancipation as well as saving the Union. Few black soldiers could vote in their states, but that did not stop their own officers at the front from letting them express themselves. Christian Fleetwood, a free black man from Baltimore and twenty-four-year-old noncommissioned sergeant major in the Fourth US Colored Troops, left this simple line in his diary: "Nov. 8, 1864—polled the regiment. 300 majority for Lincoln." Fleetwood, who could not yet vote in Maryland, earned the Congressional

Medal of Honor for extraordinary heroism at the Battle of Chaffin's Farm, near Petersburg, Virginia, September 29, 1864.[12]

On Election Day, November 8, Douglass voted in Rochester. A local citizen later reminisced about working at the poll and tallying the famous orator's ballot for Lincoln. That night the two men were walking back into downtown Rochester to follow the nationwide returns at the telegraph office. Four drunken white men blocked the street and challenged Douglass by shouting, "Nigger." According to this witness, "Douglass stepped right out in front of them" and with fists raised challenged them in return. "Come on I am ready to settle this thing with you right here and now." The drunken cowards "slunk out of the way and into the darkness," wrote the former poll worker. He asked Douglass if he was hurt, to which the former editor replied, "Oh, no, I am not hurt in the least; the boys were probably not pleased with the news they had heard and wanted to give vent to their disappointment." That night, asserted this witness, Douglass owned a "physical victory as well as a great political triumph."[13] The tortured election season of fear and racism had ended in relief and reasons to believe the war had made a profound turn toward Union and abolitionist victory.

On the Sunday after the election a celebration took place at Spring Street AME in Rochester. Douglass took to the pulpit to praise the reelection of Lincoln and to announce that he was about to embark on a special journey to Baltimore, his first-ever public return to the city where he had escaped from slavery. In the comfort of this hometown congregation, he drew on metaphors from Genesis and Noah's Ark. The "waters of the flood were retiring," he rejoiced, and he saw a "sign that the billows of slavery are rolling back to leave the land blooming again." In the ancient story, Noah had sent a dove flying out the window of the ark to determine if the waters of the great flood had receded; the bird returned the first time with an "olive leaf" in its bill. The second time the dove did not return, and Noah "removed the covering of the ark and looked, and behold, the face of the ground was dry." We cannot know for certain how Douglass prepared for such speeches or sermons, but that he consulted the first book of his Old Testament to grapple with the meaning of the Republican victory and the new prospects for emancipation is profoundly telling. He was not merely trying to connect with his black church audience; he reached, as he had so many times before, for ancient wisdom and metaphor, for a sense of sacred transformation amid the profane violence of war and the sordid practices of politics. He mixed the prophetic voices of the Hebrew prophets with his own. Some-

EXHIBIT 3

Debates and proceedings in the New-York State Convention, for the revision of the Constitution [1846] (excerpt)

Debates and proceedings in the New-York state convention, for the revision of the constitution / By S. Croswell and R. Sutton, reporters for the Argus.

New York (State).

Albany : Printed at the office of the Albany Argus, 1846.

https://hdl.handle.net/2027/miun.ahm5078.0001.001

DEBATES

AND

PROCEEDINGS

IN THE

NEW-YORK (STATE) CONVENTION, 1846

FOR THE

REVISION OF THE CONSTITUTION.

BY. S. CROSWELL AND R. SUTTON,
Reporters for the Argus.

PRINTED AT THE OFFICE OF THE ALBANY ARGUS
.....
1846.

NATURALIZATION LAWS.

Mr. WORDEN offered the following:

Resolved, That the committee on the elective franchise, inquire into the expediency of providing in the constitution for the exercise of the right of suffrage, so that in no instance shall the exercise of that right depend on the naturalization laws of congress.

Mr. WORDEN said, as his friend from Erie had been so unfortunate as to be misunderstood, he begged leave to say a word in regard to the resolution he had first offered, that he (Mr. W.) might not be misunderstood As the constitution now stood, the right of suffrage was conferred on citizens, but the constitution did not say whether persons should be citizens of this state or of the United States. There was no provision in our constitution or law by which persons could become or be made citizens of this state, as contradistinguished from citizens of the United States. We had virtually by our statutes given a construction to the word citizens, as used in our constitution, and we had held—or such was the law—that no person, not a natural born citizen, could become a citizen of this state, except through the action of the federal Congress. He desired to present the question whether it would not be wise in us to establish a rule in that respect, totally independent of the action of Congress.—As the matter now stood, Congress might enlarge or restrict the period of residence necessary to citizenship, and in this way affect the interests of this State, or what might be supposed to be its interests, and might legislate against the express will of the people of this state. As to naturalization, it was early decided, under the federal constitution, that each state had the power to pass naturalization laws for itself. At an early day the circuit court of the U. S. for Pennsylvania, made that decision. Subsequently, there were dicta to the contrary in the Supreme Court of the United States. But more recently, an able and learned judge of this court, now deceased, had classed this power to pass naturalization laws as among those powers which each state might exercise in connection with the federal congress. He thought the subject was one worthy of examination, and he desired nothing more. And he only said this that his object might not be misunderstood in presenting the resolution. He thought it expedient that we should have a fixed rule of suffrage, as applicable to that class of persons called aliens—and that their right to vote should in no case depend on the action of the federal congress.

Mr. W.'s resolution was adopted.

Mr. CHATFIELD here remarked, that two or three members had submitted resolutions of instruction, with the view of presenting their own opinions, and drawing out those of others, on matters connected with the new Constitution. He suggested that some one of these resolutions be now taken up, if the movers of them were now prepared to discuss them. He would call for that offered by the member from Seneca (Mr. BASCOM)—as to the propriety of discontinuing tribunals of exclusive equity jurisdiction.

Mr. BASCOM said he had not intended to call up his resolution to-day. It was offered merely to have it lay on the table—to be taken up when the Convention might not have other business before them—with a view to discussion. If the gentleman from Otsego desired to call it up, Mr. B. had no objection. He did not move it himself.

Mr. KIRKLAND thought it rather premature to discuss so great a change as this proposed, now Besides, this matter was before the judiciary committee, and they would be ready to report no doubt within a reasonable time—and perhaps no benefit could arise from a discussion, before.

Mr. PATTERSON said he should judge from indications that the grist was pretty much ground out for to-day. He suggested that we adjourn. If any more resolutions were to be offered, or any business to be done, let us have it. Perhaps we might as well test the question—he moved an adjournment.

The Convention adj. to 11 o'clock to-morrow morning.

TUESDAY, JUNE 16.

Prayer by the Rev. Mr. BRITTON.

COMMITTEE ON RETURNS.

The PRESIDENT announced the following as the committee of five directed to be appointed yesterday, on the returns of clerks of courts and surrogates:—Messrs. J. J. TAYLOR, HAWLEY, ST. JOHN, CANDEE and O'CONOR.

Mr. RHOADES presented returns from the clerk of the supreme court in the city of Albany for the first six months of the year 1845, which were referred to the committee of five.

JUDICIARY SYSTEM.

Mr. SHEPARD said he had a proposition for a judiciary system, which he wished to have referred to the committee on the judiciary. It did not contain all the details he had heretofore contemplated, inasmuch as some of them had been anticipated by other propositions which had been presented—it was therefore incomplete, but as an outline he wished it referred. He read it as follows, and it was referred as desired:—

Resolved, That the judiciary committee consider the propriety of the following propositions:—

1. The division of the state into eight judicial circuits.

2. The establishment of three common law courts, of general and concurrent jurisdiction, to consist of not more than eight judges each, who shall be required to hold their terms according to the demands of business, and with reference to its most speedy dispatch

3 The arrangement of the circuits so that no judge shall hold court two consecutive terms for the same circuit

4. The establishment of practice courts, to be held by the said judges, for the adjudication of all questions of practice, in the first instance, that may arise in their respective courts

5 The hearing of certioraris and appeals from the justices' courts before one of the judges of one of the said common law courts, to be designated—which hearing, and the decision thereon, shall be final

6. The hearing of certioraris to other officers, pro-

EXHIBIT 4

Hanes Walton, Jr., *The African American Electorate: A Statistical History* [2012] (excerpt)

THE AFRICAN AMERICAN ELECTORATE

A STATISTICAL HISTORY, VOL. 2

HANES WALTON, JR., SHERMAN C. PUCKETT, AND DONALD R. DESKINS, JR.

In order to gather the necessary empirical data, we turn to the United States censuses conducted during the Antebellum Era.

First, we must take into account the limitations in the census data during this era. No gender breakdown by race was presented in the census data until 1820. Hence, there is no such data usable to isolate African American voters for the census years of 1790, 1800, and 1810. However, beginning with the 1820 census, the number and percentages of voting age Free-Men-of-Color in counties of every state that allowed them to vote is given. Next, we obtained the votes and percentages of the vote in counties of these states for each political party in every presidential election from 1828 through 1860. This county-level presidential voting data and Free-Men-of-Color population data have been combined for the first time ever and placed in Appendix A of this volume.

Secondly, with this county-level census data and the county-level presidential voting data, we can, for the first time, use the statistical technique of correlation to see if there is an association of the Free-Men-of-Color voters with any of the political parties that the historical literature illuminated. Typically, historians and political scientists correlate the total African American county-level population with the county-level presidential vote. Such an approach tends to overstate the relationship between the two variables because the total population includes women, children, and infirm individuals who did not or could not vote. For our analysis, we eliminated that problem by taking only African American males and using only the states where they had the legal right to vote to determine if a significant statistical correlation occurred.

Our analysis shows that such a relationship occurred almost continuously in two states, Massachusetts and New York, for presidential elections during the Antebellum Era. Table 6.4 shows the strengths of those state-level correlations in a longitudinal manner. Although the correlations are low, this is to be expected simply because of the numbers; the electorate percentages of Free-Men-of-Color voters are small. However, the correlations are statistically significant. For example, Table 6.4 shows that at the 95% confidence level nearly 30% of each percentage increase of the vote in New York for Jackson in the presidential election of 1832 was associated with the presence of Free-Men-of-Color. Another example, in Table 6.5, shows that 42% of each percentage increage of the opposition vote in Pennsylvania against Jackson in the same election was associated with the presence of Free-Men-of-Color. The statistically significant correlations

Table 6.4 Correlations of Voting Behavior Percentages: Voting Age African Americans and Votes for U.S. Presidential Candidates in Massachusetts and New York, 1828–1860

State	Year	Number of Counties	Candidate	Political Party	Correlation	Significance Level
Massachusetts	1828	13	J.Q. Adams	National Republican	–0.7761	0.01
	1828	13	Others		0.6911	0.01
	1832	14	Clay	National Republican	0.5332	0.05
	1844	14	Birney	Liberty	–0.6565	0.05
	1844	14	Clay	Whig	0.5540	0.05
	1844	14	Others		0.7062	0.01
	1848	14	Others		0.8448	0.01
	1848	14	Taylor	Whig	0.5821	0.05
New York	1832	55	Clay	National Republican	–0.2938	0.05
	1832	55	Jackson	Democratic Republican	0.2938	0.05
	1844	56	Birney	Liberty	–0.5449	0.01
	1848	56	Cass	Democratic	0.3169	0.05
	1848	56	Taylor	Whig	0.4328	0.01
	1848	56	Van Buren	Free Soil	–0.4780	0.01
	1852	59	Hale	Free Soil	–0.4856	0.01
	1852	59	Pierce	Democratic	0.3719	0.01
	1856	59	Buchanan	Democratic	0.4398	0.01
	1856	59	Fillmore	American Know Nothing	0.5166	0.01
	1856	59	Fremont	Republican	–0.5778	0.01
	1860	60	Breckinridge	S. Democratic	0.4891	0.01
	1860	60	Lincoln	Republican	–0.4894	0.01

Sources: ICPSR Study No. 1, *United States Historical Election Returns, 1824–1968*, 2nd ICPSR ed. [Computer File], http://dx.doi.org:10.3886/ICPSR00001 (Ann Abor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; Jerome M. Clubb, William H. Flanigan, and Nancy H. Zingale, ICPSR Study No. 8611, *Electoral Data for Counties in the United States: Presidential and Congressional Races, 1840–1972* [Computer File], http://dx.doi.org:10.3886/ICPSR08611 (Ann Arbor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; and Geospatial and Statistical Data Center, *Historical Census Browser,* http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html (Charlottesville: University of Virginia), retrieved April 13, 2008. See Appendices 6.A.1–6.A.9.

suggest that the historical literature is quite meaningful. These data tell us that at least in these two states Free-Men-of-Color voters were almost always either active or influential in these presidential elections.

Table 6.5 reveals that in the states of Pennsylvania, North Carolina, and Rhode Island Free-Men-of-Color voters were intermittently active in presidential elections. As we have mentioned, North Carolina and Pennsylvania African Americans lost the right to vote in 1835 and 1838, respectively. Thus, these limited voting data occurred in part because of legal realities. In Rhode Island, Free-Men-of-Color voters were denied their suffrage rights in 1822 but gained them back in 1842, so legal reasons also existed there.

Finally, after establishing that a significant statistical correlation existed between free blacks and certain presidential parties, we performed some partial correlational analyses where we controlled for competing party variables. We found that significant partial correlations existed for some years in Pennsylvania, New York, New Hampshire, and North Carolina. Table 6.6 indicates the presidential election years in which the partial correlations occurred and gives us the strength of those partial correlations. And while these partials occurred across time, they did so in only a selected number of years. Moreover, these partial correlations tell us that the relationships between the free black voters and these presidential parties held even when everything else was controlled for.

Hence, out of our empirical analyses, we obtain the insight and suggestion that the data help to corroborate the findings and insights in the historical literature. African Americans in national elections voted for those candidates and parties that their political context and culture allowed them to identify and affiliate with, as well as for those who spoke to their interests about suffrage rights, slavery, and equal rights.

Table 6.5 Correlations of Voting Behavior Percentages: Voting Age African Americans and Votes for U.S. Presidential Candidates in North Carolina, Pennsylvania, and Rhode Island, 1828–1860

State	Year	Number of Counties	Candidate	Political Party	Correlation	Significance Level
North Carolina	1828	62	Others		0.5374	0.01
Pennsylvania	1828	47	Jackson	Democratic Republican	–0.4254	0.01
	1828	47	J.Q. Adams	National Republican	0.4254	0.01
	1832	49	Jackson	Democratic Republican	–0.4934	0.01
	1832	49	Wirt	Anti-Masonic	0.4934	0.01
Rhode Island	1852	5	Hale	Free Soil	–0.8833	0.05

Sources: ICPSR Study No. 1, *United States Historical Election Returns, 1824–1968*, 2nd ICPSR ed. [Computer File], http://dx.doi.org:10.3886/ICPSR00001 (Ann Abor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; Jerome M. Clubb, William H. Flanigan, and Nancy H. Zingale, ICPSR Study No. 8611, *Electoral Data for Counties in the United States: Presidential and Congressional Races, 1840–1972* [Computer File], http://dx.doi.org:10.3886/ICPSR08611 (Ann Arbor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; and Geospatial and Statistical Data Center, *Historical Census Browser*, http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html (Charlottesville: University of Virginia), retrieved April 13, 2008. See Appendices 6.A.1–6.A.9.

Table 6.6 Partial Correlations of Voting Behavior Percentages: Voting Age African Americans and Votes for U.S. Presidential Candidates, 1828–1860

State	Year	Number of Counties	Candidate	Political Party	Correlation	Significance Level
New Hampshire	1848	8	Cass	Democratic	–0.8928	0.017
	1848	8	Taylor	Whig	–0.8928	0.017
	1848	8	Van Buren	Free Soil	–0.8918	0.017
New York	1832	55	Clay	National Republican	–0.2938	0.029
	1836	55	Harrison	Whig	0.3067	0.024
	1836	55	Van Buren	Democrat	0.3067	0.024
North Carolina	1828	62	Others		0.5297	0.000
Pennsylvania	1828	47	Jackson	Democratic Republican	–0.4254	0.003

Sources: ICPSR Study No. 1, *United States Historical Election Returns, 1824–1968*, 2nd ICPSR ed. [Computer File], http://dx.doi.org:10.3886/ICPSR00001 (Ann Abor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; Jerome M. Clubb, William H. Flanigan, and Nancy H. Zingale, ICPSR Study No. 8611, *Electoral Data for Counties in the United States: Presidential and Congressional Races, 1840–1972* [Computer File], http://dx.doi.org:10.3886/ICPSR08611 (Ann Arbor, MI: Inter-university Consortium for Political and Social Research), retrieved June 2002; and Geospatial and Statistical Data Center, *Historical Census Browser*, http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html (Charlottesville: University of Virginia), retrieved April 13, 2008. See Appendices 6.A.1–6.A.9.

EXHIBIT 5

Proceedings and Debates of the Constitutional Convention of the State of New York Held in 1867 and 1868 (excerpt)

PROCEEDINGS AND DEBATES

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF NEW YORK,

HELD IN 1867 AND 1868,

IN THE

CITY OF ALBANY.

REPORTED BY EDWARD F. UNDERHILL,
OFFICIAL STENOGRAPHER.

VOLUME I.

FROM PAGE 1 TO 800, WITH INDEX.

ALBANY:
WEED, PARSONS AND COMPANY,
PRINTERS TO THE CONVENTION.
1868.

may be disallowed. The other advantage of the proposition I submit is this: That it is simpler in form, it embraces all the subjects on which the Legislature are to act; for you will find as in the report of the committee that they are also to pass laws depriving anybody who shall make any bet or wager, of the right of voting. As I have said I have an unusual advantage in presenting this proposition, because I know when it is carefully scrutinized it will meet the approbation of the majority of this committee, in preference to the other proposition, for where I use the phrase "promise or agree to give or receive directly or indirectly," I think it is a much better form, to cover the whole subject than that which is in the proposition of the amendment, "receive or expect to receive," because it must be out of an agreement directly or indirectly made that the base transaction grows of buying or selling votes. It covers both cases equally, of those who pay or offer to pay, and those who receive or offer to receive. This proposition, made by the Legislature of 1853, was canvassed with the greatest care, and there were more minds occupied upon it, and that took part in maturing it, of the legal profession, than might be supposed, on mere notice of the result of their deliberations. The proposition was introduced by the late Mr. Taber of Albany, who used all his ability in perfecting the language which should cover every possibility of fraud. Afterward it passed the Senate, and received all the votes of the gentlemen present in the Senate, with the exception of three. That is the reason, I think, that this proposition will be found better and more desirable by the gentleman than his own.

The question was then put on the motion of Mr. Conger, to reconsider, and it was declared lost.

Mr. FOLGER — I wish to offer an amendment which may perhaps be premature, but which will be necessary if the report of the Committee on the Organization of the Legislature, is adopted. It is to strike out that provision which requires a residence in the district from which the officer is to be elected, and also the provision requiring a four months' residence in the county. According to the report of the Committee on the Organization of the Legislature, that is the smallest district from which an officer is to be elected; and single assembly districts are by that to be abolished. I offer this amendment so as to make this article correspond with what appears to be the temper of the Convention in reference to that report.

The SECRETARY proceeded to read the amendment of Mr. Folger, as follows:

Strike out the words in section one of Mr. Dwight's amendment: "But such citizen shall have been for thirty days next preceding the election a resident of the district from which the officer is to be chosen for whom he offers his vote."

Mr. RATHBUN — I am opposed to that amendment for one reason, which I will state. If I understand the amendment, it removes entirely all necessity of a personal residence in the district for any time. Unless the district system is altered, persons may colonize a weak district from a strong one in one single day, so as to change a majority in the smaller district, and still leave the other to be carried by the same majority. It opens the door for colonization, unless the report of the Committee on the Organization of the Legislature shall fix the location of districts by county lines. Unless that prevail, then we have the colonization system complete and perfect, from one district in the county to another, and in cities still worse.

Mr. BARNARD — I would suggest to the gentleman from Ontario [Mr. Folger] that there are other districts beside assembly districts, and although we may have the proposition of the Committee on the Organization of the Legislature, so as to have county lines represent the districts, yet when it comes to the cities — the city of Brooklyn for instance — we have an election for city officers, held on the same day as for State officers; we have an election for mayor in the city, who may be voted for, unless an amendment is made, by all the citizens of Kings County who may come in within a few days into the city of Brooklyn. Then we have aldermen to be elected, and we might have this colonization from one ward to another, unless the provision is left as it stood originally.

Mr. FULLER — I desire to offer an amendment as follows:

In section 1, line 2, after the word "citizen" insert the words, "of the United States."

As the amendment stands now, accepted by the gentleman from Ontario [Mr. Folger], these words are stricken out. The reason of the amendment, as stated at the time, was that a doubt had been raised as to whether a colored man was a citizen of the United States; and, if I understood it, it was in deference to this doubt that this amendment was made. The gentleman stated that it was held in the Dred Scott decision that a colored man was not a citizen of the United States, and also that Governor Marcy refused to give a passport to a colored man, upon the ground that he was not a citizen of the United States; and it was in deference to these decisions, as I understand it, that this amendment was moved to strike out the words "of the United States." I am not in favor of making any such concession — it is a virtual concession — in deference to those decisions, that a colored man is not a citizen of the United States; or in other words, it assumes that there may be a well founded doubt, as to whether a colored man is a citizen of the United States. I am unwilling to admit or concede, directly or indirectly that there is any such doubt. The Dred Scott decision never was an authority higher than an *obiter dictum*; such as it was it has already gone to the "tomb of the Capulets" never to be resuscitated; it is nothing to the credit of Governor Marcy, that he refused a passport to a colored man, on the ground that he was not a citizen of the United States; and if alive, he would not do it again. I am, Sir, in favor of extending the elective franchise to the colored man, but I am unwilling that while I extend it to him with one hand, I should be found taking back with the other a full recognition of his citizenship. I plant myself upon the ground that he is a citizen of the United States—there I propose to stand, and that ground I do not propose to yield. If you strike out these words for the reason

assigned, we shall have it alleged hereafter that this Convention has decided by its action that a colored man is not a full citizen of the United States, but only a sort of half citizen, such as was described by the gentleman from Rockland [Mr Conger] the other evening. There is another reason why these words should be restored; the words "citizen of the United States" are well understood This word "citizen" is a word of very large import; it is one which has not been judicially defined in the Constitution of this State, and if the amendment is left to stand, it may have to be judicially defined. The amendment of the gentleman from Onondaga [Mr. Andrews] accepted by the gentleman from Ontario [Mr. Folger] assumes that if we use the word "citizen" instead of "citizen of the United States," a colored man may vote, although not a full citizen of the United States. If that is so, then why may not another man vote who is not a full citizen of the United States. And where will this end? I think, sir, we had better preserve the language as it was in this respect, and I think the amendment is not called for. In the next place, the amendment of the gentleman from Onondaga [Mr. Andrews] is a concession I am unwilling to make, in deference to the authors of the Dred Scott decision or any other decision of that kind.

Mr. FOLGER — The gentleman founds his argument upon an error. The phrase "citizens of the United States" is not in the present Constitution, and this statement eliminates all there is in his position. Then, it seems to me, down falls his argument. If the gentleman will turn to the Constitution, he will see that the phrase "citizens of the United States" is not there at all, and never was, from 1777 down to the Constitution of 1821, and the Constitution of 1846, refering to the men of color, expressly speaks of them as "citizens of this State." And also it says: "And no man, unless he shall have been three years a citizen of this State." So the amendment of the gentleman from Onondaga [Mr. Andrews] was not introducing a new rule, but only restoring the words the fathers handed down to us, and by which I prefer to abide, rather than to launch upon the sea of uncertainty and require a judicial construction on any new phrase we may use. It is very bold and manly, without doubt, to despise the precedent of the Dred Scott decision, and the precedent fixed by Governor Marcy and the precedents fixed in the history of the country. It is very bold to say that there are no doubts; that we cast all doubts to the winds; that we are not to give way in our feeling for the negro and our desire to take care of him, to any such fanciful, unfounded doubt. But if there is a doubt, is it not the part of wise and prudent men to guard against it; and while pursuing the object we desire, to remove from our path all pitfalls into which we may perchance slide? That there is a doubt, the gentleman from Monroe [Mr. Fuller] cannot deny. There is an express decision upon the judicial records of the country, to the effect that the colored man is not a citizen of the United States. There is an express decision upon the records of the executive department of the United States, that the colored man is not a citizen of the United States. Then where is the wisdom of running our heads full against this wall, however weak it may be, for although the wall may topple over, our scalps may chance to be abraded. I think we give up nothing when we adhere to the language of the Constitution of 1846, which had no such phrase as the gentleman from Monroe [Mr. Fuller] claims to restore, but which crept into the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] because he perceived it was used so extensively in the report of the Standing Committee on the Right of Suffrage. If it be true—I do not say it is or is not—but it may by possibility be true, that the colored man is not a citizen of the United States. And then if we put that phrase into our Constitution and say that because he is a citizen of the United States, he shall be a voter here — while we have come together with that subject in our minds among others, and with the desire to give the colored citizens of this State the right to vote, we are using language which may defeat the exercise of that right. I say, it is the part of wisdom to eliminate all such doubts from our Constitution and plant ourselves on certainties, which we surely do plant ourselves upon when we adhere to the language which has been settled for twenty years.

The question was then put upon the amendment of Mr. Fuller, and it was declared to be lost.

Mr. VAN CAMPEN — I offer the following amendment to Mr. C. C. Dwight's amendment:

To strike out the word "four" and insert in lieu thereof "two," so that it shall read "two months' residence in the county" instead of "four months' residence in the county."

The object of moving this amendment is, that I desire not to throw any unnecessary obstacle in the way of those who have a clear State residence of one year. I cannot perceive that by retaining four months we gain anything, except a certain purpose to hinder what is termed immigration from one district to another. It seems to me that every facility ought to be afforded to the voters who have a clear State residence, and whose interests are clearly identified with the State. Therefore, I think all the purposes of preventing those frauds, which are sometimes perpetrated by moving from one section of the State to another, would be clearly provided for by two months' residence as well as four. I like generally the article as it reads, but I think this would be an improvement upon it.

Mr. KERNAN—I am in favor of that amendment. As I understand it, it reduces the county residence from four months to two months. I am in favor of it because I am opposed to anything of that nature. I do not see the function which a four months' residence in the county is to perform in this constitutional arrangement. The voter must have been in the State for a year, and it seems to be the settled purpose of the committee who reported this provision, that he must reside thirty days in the official district from which the officer is to be chosen for whom he offers his vote. Under this arrangement, I do not see any benefit of any such limitation of four months' residence in the county, as there must be a residence in the official district from which the officer is to be chosen.

EXHIBIT 6

Robert Allen Carter, *New York State Constitution: Sources of Legislative Intent* [2d Ed, 2001] (excerpt)

NEW YORK STATE CONSTITUTION:

Sources of Legislative Intent

Second Edition

Robert Allan Carter

Fred B. Rothman Publications
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ARTICLE II. SUFFRAGE

Section 1. [Qualifications of voters]

Every[1] citizen[2] shall be entitled to vote[1] at every election[3] for all officers[2] elected[3] by the people[2] and upon all questions submitted to the vote of the people[4] provided that such citizen is[3] eighteen[5] years of age[2] or over and shall have been a resident[3] of this state[1], and of the county, city or village for[3] thirty days[5] next[3] preceding an election.[1]

[1] Constitutional Convention of 1777. No source of legislative intent found.

[2] Constitutional Convention of 1821. See the report of the Committee on the Right of Suffrage, transmitted by Mr. N. Sanford in *Report of the Proceedings and Debates*, pp. 178–80.

[3] Approved by the people in 1966 (1965 Senate Intro. 4537, Print 5519; 1966 Senate Intro. 2061, Print 2122). Very little evidence of legislative intent. Senator Anderson's introductory memorandum in the 1966 *New York State Legislative Annual*, pp. 130–31, only describes the bill, with no justification or discussion. In its 1966 report, the Joint Legislative Committee to Make a Study of the Election Law and Related Statutes, Leg. Doc. No. 30, urged the bill's passage because of the "great advancement in communications and the rapidly shifting population" (p. 13).

[4] Approved by the people in 1874. Proposed by the Constitutional Convention of 1872. See the Commission's *Amendments Proposed to the Constitution of the State of New York,* Sen. Doc. 1873 No. 70, p. 26. Based on a proposal of the 1867 Constitutional Convention, whose proposed constitution was rejected by the people. See the explanation of its sponsor, Sanford E. Church, and brief debate, on pp. 548–49 of Vol. I of the Convention's *Report of the Proceedings and Debates.*

[5] Approved by the people in 1995 (1994 Assem. 12221; 1995 Assem. 4958). See introductory memorandum of Assemblyman Tokasz in the 1995 *New York State Legislative Annual*, p. 597.

Section 2. [Absentee voting]

The legislature may, by general law, provide a manner in which, and the time and place at which, qualified voters who, on the occurrence of any election, may be absent from the[1] county of their residence or, if residents of the city of New York, from the city,[2] and qualified voters who, on the occurrence of any election, may be unable to appear personally at the polling

place because of illness or physical disability,[3] may vote and for the return and canvass of their votes.[1]

[1] Approved by the people in 1919 (1918 Assem. Intro. 213, Print 1073; 1919 Assem. Intro. 159, Print 160). No statement of legislative intent found, but see the following *New York Times* articles: "For Absentee Voting," Oct. 5, 1919, sec. IV, p. 7; "Voters to Pass on Four Amendments," Oct. 14, 1919, p. 19; and "Four Amendments," Oct. 15, 1919, p. 16. Note that minor changes were made to the 1919 amendment by subsequent amendments. The word "may" was moved from "who . . . , on the occurrence" to its present position by the 1955 amendment below. "General" was deleted from the phrase "any election" by an amendment approved by the people in 1947 (1946 Senate Intro. 172, Print 172; 1947 Assem. Intro. 496, Print 498). The rest of the 1947 amendment has been superseded by subsequent amendments. The 1963 amendment below deleted "unavoidably" before "absent from the."

[2] Approved by the people in 1963 (Assem. Intro. 1221, Print 4918; 1963 Senate Intro. 582, Print 582). The introductory memorandum of Senator Mitchell appears in the 1963 *New York State Legislative Annual*, p. 216. See also the recommendation of Governor Rockefeller (*Public Papers of Nelson A. Rockefeller*, 1963, p. 38), and the 1962 report of the Joint Legislative Committee to Make a Study of the Election Law and Related Statutes, Leg. Doc. 1962 No. 25, pp. 37–38.

[3] Approved by the people in 1955 (1954 Senate Intro. 2627, Print 2793; 1955 Senate Intro. 120, Print 120). See majority and minority reports of the Joint Legislative Committee to Make a Study of the Election Law and Related Statutes, Leg. Doc. 1954 No. 43, p. 18 (also in the *New York State Legislative Annual*, 1955, p. 189).

Section 3. [Persons excluded from the right of suffrage]

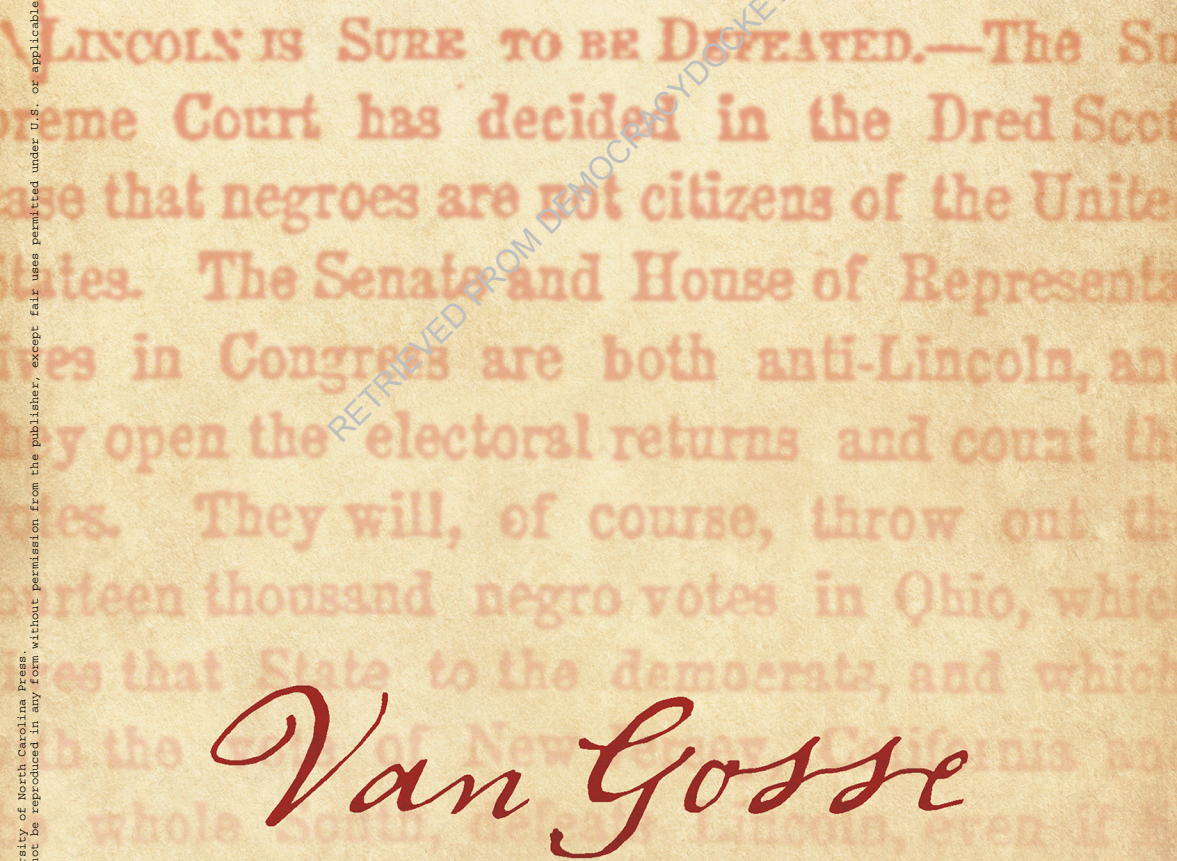
No person who shall receive,[1] accept,[2] or offer to receive, or pay, offer or promise to pay, contribute, offer, or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or[1] who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election,[3] shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor made or become directly or indirectly interested in any bet or wager depending upon the result of such election. The legislature

EXHIBIT 7

Van Gosse, *The First Reconstruction: Black Politics in America from the Revolution to the Civil War* [2021] (excerpt)

The First RECONSTRUCTION

Black Politics in America
from the Revolution to the Civil War



Van Gosse

The First Reconstruction

Black Politics in America from the Revolution to the Civil War

VAN GOSSE

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Jacket illustration: Text excerpt, "Lincoln Is Sure to Be Defeated," *The New York Herald*, November 6, 1860. Courtesy of Chronicling America, a joint project by the National Endowment for the Humanities and the Library of Congress.

This book is dedicated to the black people who have sought since the Revolution to save American democracy—"the land that never has been yet." Their tenacity astounds.

And to my beloved warrior, Deborah.

Contents

Chapter 10

Consult the Genius of Expediency

Approaching Power, 1847–1860

> It is the colored aristocracy of this metropolis, dealers in shell-fish and whitewash . . . that has saved the whig party. . . . But for this vote of the highly respectable colored citizens of the city and State, the whigs would have been routed. . . . Downing and the colored voters have decided the day, and Downing and the colored voters ought to celebrate the triumph. . . . Oysters and whitewash hold the balance of power, and . . . the colored aristocracy—whigs to the backbone—have decided the election. Downing is master of the field.
>
> —James Gordon Bennett in the *New York Herald*, November 10, 1849

> Men and Brethren:—An unexpected blow has been levelled against us. WASHINGTON HUNT, Governor of our State, in his recent annual message, has descended from the high position he occupies. . . . We view his expressions and recommendations as an outrage to our feelings, an insult to the growing liberal sentiment of the people of this state, to which sentiment sustained by the votes of colored citizens, he owes his election.
>
> —"To the Colored Citizens of the State of New York," January 1852

> We regard the Republican party, all things considered, as more likely than any other to effect this desirable end [equal suffrage], and advise the eleven thousand colored voters of this State to concentrate their strength upon the Republican ticket. . . . We do not for a moment endorse all the tenets of that party; we are Radical Abolitionists, and shall ever remain so; but we regard [Gerrit Smith's] nomination [for Governor] . . . as calculated to give aid and comfort to the enemy, by electing the Democratic candidate.
>
> —William J. Watkins, addressing the State Suffrage Association, September 1858

From late 1846 to November 1860, the Empire State's black politics tracked the old parties' breakdown, leading to the consolidation of New York's Republicans in 1855. Alongside Free Democrats, Know-Nothings, most Whigs, and some Barnburner Democrats, black men coalesced into this new party, which welcomed all while remaining fundamentally Whiggish, acknowledging William Seward's preeminence and under Thurlow Weed's practical direction.

In 1847, New York's Whigs were ascendant. They had returned to power in 1846, and the Wilmot Proviso, while disastrous for national party cohesion, benefited northern antislavery Whigs like the Sewardites, who enjoyed how it discombobulated Democrats. From 1847 to 1850, the Whigs won nearly all statewide offices. Even the new Free Soil Party's 1848 nomination of Martin Van Buren on a platform opposing slavery's extension aided Weed's men, since it forced the Democrat Lewis Cass into a humiliating third-place finish in the Empire State. The Whig Zachary Taylor carried the state with 48 percent, helped by Weed declaring, "We have assurances . . . that Gen. TAYLOR, though a Southern man, is of the school of WASHINGTON, JEFFERSON, MADISON and MARSHALL, regarding Slavery as an evil, and opposed to its extension." They also took thirty-two of thirty-four congressional seats and large majorities in the legislature, sending Seward to the Senate in 1849.[1]

Soon discord visited the Whigs too, however. Seward's rival, Millard Fillmore, unexpectedly assumed the presidency in July 1850 after Taylor's death, and backed the Compromise of 1850, which would ultimately wreck his party. In retrospect, Whig unity was crippled the moment Seward gave his famous "Higher Law" speech in the Senate on March 11, 1850, turning New York's Whigs into the state's "the most vehement anti-extension party." From then on, the question became, how would the Sewardites engineer a realignment while maintaining themselves as a potential majority party? After 1850, a profusion of tickets filled ballots: three different Democratic factions (Barnburners, who only briefly joined the Free Soilers; "Soft Shells" willing to fuse with them; "Hard Shells" or Hunkers, who were not), Whigs, Free Democrats, Liberty men, soon slates of Know-Nothings and temperance men. The Know-Nothing American Party's rise in 1852–54, powered mainly by Whigs seeking to avoid the slavery question, merely delayed realignment. Throughout, Weed steered his apparatus through a long effort "to bring conscience politics into the traditional party system." Finally, in 1855, a half-new, half-old party came together around Seward's charisma and Weed's acumen, and open to black men.[2]

Most narratives of northern black life after 1850 focus on the desperation prompted by the Fugitive Slave Act, which abolished habeas corpus for free persons of color. However, while some upstate communities saw substantial emigration to Canada, black leaders evinced little despair: anger, disgust, uncertainty even, but no turning back. Their upward trajectory had two phases. The years 1847–54 constituted the crossover point when black Yorkers proved their ability to maneuver between the parties, largely because they finally gained sufficient votes with which to bargain. They responded vigorously to the Free Soil movement in 1848, and in 1849 delivered a bloc vote in New York City which both Whigs and Democrats admitted gave three out of

four statewide and most city offices to the Whigs, allowing them to hold onto the state Senate, and tie the Assembly. The city's black leaders repeated this feat in 1850 by helping elect the Whig Washington Hunt governor by the narrowest margin in state history. When Hunt betrayed them by publicly supporting colonization, black leaders blasted him with such force that he recanted. These moves were initiated by the city's Committee of Thirteen, seasoned politicos allied with the upstate cadre based in Albany and Troy; both groups had deep ties to the Seward Whigs. From an electoral perspective, this leadership displayed great strategic flexibility. New York's chaotic partisanship gave them three options: the antislavery wing of the Whigs, elevated by Seward's prestige; the Free Soil (later Free Democratic) Party, originally tainted by the Barnburner Democrats' racism but congenial to black men after their departure; finally, Gerrit Smith's Liberty Party, which began nominating black men for local, state, and even national office.[3]

Before turning to this narrative, however, we will consider three distinctive features of antebellum New York's black politics: a leadership cohort ranging from political insiders to flamboyant agitators; a sophisticated patronage apparatus connecting them to white elites; a steadily growing base of voters.

Douglass and Other "Representative Men"

One cannot speak of black politics in New York after 1846 without addressing Frederick Douglass's outsized role. His 1847 move to Rochester shifted the axis of black leadership to the country's interior, even while he remained an outsider playing to national and international audiences. That Douglass chose Rochester was telling. He went into the original command post of "political abolitionism" to stake a claim, even if it took him several years to dispense with Garrisonian antielectoralism. Western New York was the home ground for antislavery Whiggery and the Liberty Party's remaining stronghold; thanks to the great Canal, the Burned-Over District was also the epicenter of the North's radical bourgeoisie (as outlined in chapter 9), where Douglass could expect more support than anywhere outside Old England.

The year 1847 was propitious for a new man. For a decade, black Yorkers had fought to regain their suffrage rights, and the November 1846 defeat exceeded their worst expectations. Douglass entered ground cleared for him by that loss. His outsize presence and transatlantic connections reenergized the state's political milieu. He restored to New York its national voice via the *North Star,* later *Frederick Douglass' Paper,* which became a principal medium of communication for abolitionists of all varieties. And for the next thirteen years, Douglass's perpetual ambivalence, as a halfway-Garrisonian until 1851,

and after that a wanderer between the parties (Free Democratic, Liberty, Radical Abolitionist, Republican), made his paper a clearinghouse for black men's intramural debates.

Institutional and factional politics aside, the other factor is that this particular man was a star, in the modern sense. Rarely has any American equaled his international repute and celebrity-drawing power. Democrats gnashed their teeth at "that insolent and pestilent 'colored' demagogue," yet nothing could be done to him; he was safe in abolitionism's base and utterly unafraid, having given and received violence of all kinds. Strange things happened as a consequence of fame. Not only was "Fred. Douglass" evoked repeatedly as an avatar or demon in Congress, the uses made of his name sometimes descended to farce. How else to interpret Rochester's anti-Seward "Silver Gray" Whigs voting to nominate their neighbor Douglass for the State Assembly in 1851, only to receive his lordly dismissal?[4]

Douglass never sought to dominate New York State's black politics. Its political class was too established for such a coup. Consider those already sketched here: Thomas and George Downing, Samuel E. Cornish, James McCune Smith, Henry Highland Garnet, Stephen Myers, and finally, Douglass's great rival, the Reverend Samuel Ringgold Ward, the first person of African descent nominated for national office. The similarities and differences between Douglass, Ward, and Myers capture the range of the Empire State's leadership. Not only were all three editors, adepts at the patronage game required to maintain a newspaper, they were all partisans, albeit with very different approaches. The sophisticated polemics between Ward and Douglass over electoral politics in summer 1848, versus Myers's focus on doing rather than speaking, illuminates this set of players.[5]

As earlier with Garnet, the Liberty Party projected its biracialism via Ward. Born enslaved on the Eastern Shore in 1817, he attended Manhattan's African Free School, and pursued the ministry. Also like Garnet, he was a legendary orator; Seward reportedly declared "he never heard true eloquence until he heard Samuel R. Ward speak." In the mid-1840s, he achieved repute as a Liberty Party "big gun" who took a hard line against accommodation with Whigs or Free Soilers. At the August 1848 convention in Buffalo that founded the Free Soil Party, he astonished the vast crowd, according to Douglass.[6]

The focus here, however, is Ward's disagreement with Douglass, who, in 1848 and later, opted for what was then called "expediency." Ward's long, erudite "Address to the Four Thousand Colored Voters of the State of New York" in the September 1, 1848 *North Star* proposed a strategy of electoral purity, to demonstrate power by again spoiling, as the Liberty Party had done in 1844. He insisted they could "hold the balance of political power in the Em-

pire State," since only "five thousand votes" had separated Polk and Clay. Ward's main target was "the artful and designing demagogues" who urged black men to vote for Van Buren, despite the Free Soilers' platform omitting any support for their "Equal and Inalienable Rights," and the state Free Soil Party's nominating well-known Democratic Negrophobes. Like Gerrit Smith, Ward damned black voters for "their criminal readiness to vote . . . according to the dictation . . . of those who are our most ruthless oppressors." The 1846 "rejection of the Equal Suffrage clause in the present Constitution" came naturally because "colored men" had shown they "either did not care about political equality, or if they possessed it, they would barter it away for the smallest price."[7]

In the same issue, Douglass demolished Ward with short, sharp explanations for why black men should back the Free Soilers. Certainly, the Buffalo Free Soil platform "does not include the Equal and Inalienable Rights of all men," but "the times create their own watch-words; and the watch-word of one generation may not always be appropriate to another. We would as willingly fight the battle of liberty and equality under the banner of 'Free Soil and Free Men,' as that of the Declaration of American Independence." Fighting over phrases was a distraction, what Douglass cared about was "what that party proposed to do, rather than the doctrines they proposed to teach," and if the party's program "involved no departure from moral principle . . . we should not hesitate to give our aid and vote to such a party." Douglass then hit Ward precisely on his illogic: "The address condemns the 'Free Soil Party,' because some of its leading men—such as Senator [John A.] Dix—entertain wrong views and prejudices against the colored people. . . . The views of Senator Dix, if we understand them, are quite similar to those of Senator Morris, of Ohio, who was Mr. Ward's [the Liberty Party's] candidate for the Vice-Presidency up to 1844." Douglass proposed a practical approach to such whites, asking, "Should we refuse to co-operate with them in securing a great good, because they may possess these prejudices? Certainly not. One of the most successful modes of removing prejudice, is to act with such men just so far as we can without a compromise of fundamental truths." He proved his point by painting a vivid picture of Ward's personal triumph at Buffalo: "The presence of such a man as Mr. Ward as a delegate . . . was one of the most powerful blows ever dealt upon the thick skull of American prejudice against colored persons. Thousands had an opportunity afforded them on that occasion of learning, for the first time in their lives, something of the manly energy of the black man's mind. We saw thousands listening to his eloquent words with astonishment, mingled with admiration, and all probably went home with a higher and more truthful estimate of our race than they ever entertained before."

Douglass's command of logic suggests why white men avoided facing him in debate. He easily disposed of Ward's "last objection . . . against voting for the Free Soil nominees," which was "the action of the Barnburner Democrats of this State with respect to the Right of Suffrage" in 1846. One can imagine Douglass's Cheshire grin: "To give this argument any force, it must be shown that the Free Soil party stand just now on this question where the Barnburners then stood, otherwise the logic is just about as good as this: Gerrit Smith, in 1830, was in favor of sending black men out of this country to Africa; therefore, black men cannot vote for Gerrit Smith, in 1848, without an abandonment of self-respect."

Finally, he hinted Ward was an unwitting dupe: "We know him too well to suspect him of any desire to play into the hands of the Cass and Taylor parties; but we know just as well that such will be the inevitable and almost only effect of his position. Indeed, such has already been the effect," quoting Weed's *Albany Journal* on Ward's return to his base in Cortlandville, where he declared "his hostility to the nomination of Martin Van Buren, and his determination to take the stump, and advise his abolition friends not to give the Ex-President their votes. . . . The meeting had a good effect. A few Whigs who had remained undecided whether to support General Taylor, came away from the meeting fully satisfied" that Van Buren had no claim "to the support of Northern men on the score of his anti-slavery opinions!" and they could "now give 'Old Zack' their hearty support." Then came Douglass's own disclaimer, absolving himself: "We shall vote for neither of the candidates. With our views of the pro-slavery character of the American Constitution . . . we could as soon run our hands into a fiery furnace, as into the American ballot-box, if thereby a man was to be elected who would swear to support that accursed bond of Union." Of course, others would ask, "If these be your views, are you not inconsistent in advising men to vote for Mr. Van Buren? We may be, but we think not. . . . We say to the multitude who are rushing to the ballot-box, see to it that you do not add to the sin of voting at all, the great sin of slave-rule, slavery-extension, and the perpetuity of slavery in the District of Columbia." Van Buren owed the former slave some thanks, since just as Samuel Cornish had damned Clay in 1838, ten years later, another black editor now gave a seal of approval.

Rites of Patronage

The second feature of this period underscores these leaders' partisan connections. Patronage is a highly variable concept, premodern in its origins. Some patronage of black people took place entirely between whites, as in Weed writing Horace Greeley in 1846, "If you don't know Frederick Douglass you

Pennington, would not tolerate such an assault. They took the company, the conductor, and the driver to court, and in spring 1855 won major damages, $225 plus costs. The company, fearing further lawsuits, desegregated its lines, and by the Civil War the other Manhattan lines had followed suit.[42]

Jennings is sometimes cast as Rosa Parks's forerunner, but that misses the subtext of what she said to the conductor, what New York's Whig newspapers said about her, and what black people around the nation heard. The key dialogue, savored by all, was Jennings putting the conductor in his place. She told him he was "a good for nothing impudent fellow," demanding to know where he was from, to which he replied, "I was born in Ireland." Her response suggested confidence in her class standing, "that he was none the worse or better for that, provided he behaved himself and did not insult genteel persons." This self-assurance was not misplaced, since she won the case outright, as an educated, Christian gentlewoman regardless of complexion. Greeley's *Tribune* commented that the decision confirmed the rights of "respectable colored people" versus "German or Irish women, with a quarter of mutton or a load of codfish," a pointed sally given the ubiquitous slander that black people smelled so horribly no white person could endure them. The case reverberated nationally, as Pennington and McCune Smith founded a Legal Rights Association and published a "NOTICE" in *Frederick Douglass' Paper*, announcing to black Americans "1. That all our public carrier-conveyances are now open to them on equal terms. 2. No policeman will now, as formerly, assist in assaulting you. 3. If any driver or conductor molests you, by laying the weight of his finger upon your person, have him arrested, or call upon Dr. Smith . . . Mr. T. L. Jennings . . . or myself . . . and we will enter your complaint at the Mayor's office. 4. You can take the conveyances at any of the Ferries or stopping places. Ask no questions, but get in and have your five cents ready to pay. Don't let them frighten you with words; the law is right, and so is the public sentiment." Pennington subsequently sent men to court arrest on other lines and bring suit, generating an angry denunciation by the Sixth Avenue line's secretary to Mayor Fernando Wood.[43]

Republican Convergence, 1855–1860

Beginning in early 1855, most of the Empire State's antislavery forces converged in the new Republican organization. The long-held hope for a "Northern party" capable of winning power was realized, and with it, full participation by the state's black men. Although equal suffrage was not achieved until the Fifteenth Amendment's passage in 1870, the years leading to Lincoln's victory document the maturation of New York's black politics, a realization of the political capital invested since 1837.

Across the North, the Republican Party emerged from the "Anti-Nebraska" coalitions formed for the 1854 elections. Each state party differed in the relative influence of Whigs, Know-Nothings, Free Democrats, and old Liberty men, and how many Democrats broke ranks to join their historic enemies. The various groupings calling themselves "Republican" unified at a June 1856 convention in Philadelphia to nominate a ticket of California's senator John C. Frémont and New Jersey's senator William Dayton. All of these organizations looked to New York because of its outsize weight in national politics, and Seward's prominence in the Senate. Since entering that chamber in 1850, he had become a principal figure defining the debate between American slavery and American freedom, while remaining a Whig powerbroker. In New York, the new party's coalescing was relatively simple: it was essentially Whig, as outside of Manhattan and Brooklyn "their entire party apparatus had moved into it virtually unchanged," including nearly all Whig papers and officeholders. Shorn of conservatives like Fillmore and Washington Hunt, joined by Free Democrats, ex–Liberty men, and some Barnburners, this was the party that entered the fray against slavery—and sometimes for black political rights.[44]

Phyllis Field's 1982 *The Politics of Race in New York* is still the definitive account of the black suffrage campaign's interaction with party politics, although recent attention has focused on Gerrit Smith's Radical Abolitionist Party (RAP), also founded in 1855, with some significant black participation. The RAP was the Liberty Party under a new name, and a useful goad to the Republicans, but focusing on this small group misses a more profound development: the public and private alliance between the state's black political class and the Republican machine commanded by Thurlow Weed, a relationship much deeper than black participation in the Whig, Liberty, and Free Soil Parties. As an openly antislavery party able to win state elections, the Republicans were genuinely new, and in power their legislators repeatedly voted as a bloc in favor of equal rights. In response, New York's black Republicans generated a statewide effort, the New York State Suffrage Association, "designed as a Negro political party for the state," with Douglass as its formal head, and the team of Stephen Myers and William J. Watkins as its operational center, with Watkins privately employed by Weed to gin up white abolitionists and black men to cast Republican ballots.[45]

The Republicans' ideological and geographic bases outline how 1855–60 differed from what came before. From 1847 to 1854, the Whigs, even with overwhelming legislative majorities, ignored black suffrage petitions. The 1846 referendum had exposed the absence of an internal consensus for black suffrage, and even Whigs like Weed, who claimed their devotion to "Emancipation," saw no point in losing again. Following the Whigs' dissolution, a

new consensus emerged. Opposition to the Slave Power's octopus-like control over national politics made black men's rights a litmus test for the ideals of northern republicanism. Closer to home, anxiety over corruption of the body politic by foreigners pervaded political discourse via the rise of the Know-Nothings. Incoherent on other issues, these ex-Whigs proposed barring foreigners from office, a voter registry to curtail illegal voting by aliens, literacy tests, and greatly increasing the period of naturalization. Within this charged frame, Field explains, black suffrage stood for the first-class citizenship reserved to native-born Protestants, a way to defy the South while repudiating Tammany Hall Democrats.[46]

What did this new consensus mean in practice? Legislation to eliminate the constitution's $250 freehold requirement was introduced in the Senate and Assembly every year from 1855 to 1860, and passed three times by large majorities in both. If the amending process had not been "extremely difficult, requiring approval by a majority of elected members of both houses of the legislature, publication of the proposed change three months before the next general election of state senators (chosen biennially), the consent of a majority of the legislators chosen in *that* election, and finally ratification by at least half of the eligible electorate," it could easily have been legislated, since the Republican caucus in Albany, elected mainly from central and western New York, was well to the left of the party's electorate. Downstate Republicans, whom the party needed to win statewide, were unconvinced by appeals to republican principle. They liked black men as fellow voters no more in 1860 than they had in 1846. This tension translated into a bewildering inconstancy, since Republican leaders could not afford to alienate either their abolitionist or conservative wings.[47]

The Beachhead, 1855–1856

The impetus for a renewed suffrage campaign was the collapse of stable two-party competition after 1853; in Field's summary, "Until 1860 fragmentation of the electorate remained the rule." Had the Democrats remained united, they would have kept winning, as in 1852–53, but their internal divisions were too deep, and for several years they ran competing tickets as "Hards" and "Softs." At the peak of disorder, the 1855 Assembly included five party groupings—sixty-seven Whigs, elected in that party's last gasp; fourteen Hard Democrats and an equal number of Softs, plus four Democrats not explicitly aligned with either faction; twenty-one Americans (Know-Nothings); and seven Free Democrats.[48]

It was this Assembly, full of soon-to-be Republicans elected as Whigs, that first passed suffrage. At its January 1855 opening, a petition arrived from black

executive. . . . The private secretary, separating the resolutions from the bills . . . by inadvertence, laid the former aside," where it had "laid unobserved ever since." Pinning blame on a lowly "deputy clerk of the senate," it conceded only that "republican officials" were guilty of "an unconscious neglect of duty."[62]

These claims excited glee from Democrats inside and outside the state, who accused Governor King of "gross neglect of a plain official duty" with "few parallels in the history of the State. Whether it was culpable and unpardonable carelessness . . . or a dislike to be brought to the level of the negro, will be long the subject of some doubt." The *New York Herald*, leading Democratic paper in the nation, exhibited its schadenfreude at the "Seward-Weed clique" realizing that the "measures of the last Legislature in behalf of negro suffrage . . . were going a little too far for the good of the party," so they were "coolly suffocated. . . . The Governor, or . . . Weed and his staff" decided "it is not judicious to give niggers an equal right to vote with white men." A Buffalo paper noted Republicans would now "escape the odium of submitting to the people what could not fail to be a most unpopular measure," and it might be just "a trick, as many people shrewdly suspect."[63]

Since Myers had stopped publishing his weekly, *Frederick Douglass' Paper* was the state's only black editorial voice. At first, Douglass expressed a mix of disappointment, disbelief, and uncertainty as to Republicans' responsibility, calling the "blunder" evidence of "disgraceful inactivity" and stipulating that "the passage of the Amendment last winter amounts to nothing. . . . So important a measure ought to have been attended to, and it would not have been suffered to die for want of the necessary preliminaries, if its pseudo friends had been sincere." Even if a "lamentable and culpable defection," if Republicans "in the ascendant, shall fail to expunge the Property Qualification clause . . . then they, amid all their professions of sympathy for the slave, are as 'a sounding brass, and a tinkling cymbal,'" hypocrites just as Democrats alleged: "We have spoken thus plainly, because plainness of speech is demanded by the exigency in which the negligence or something worse of our Republican Governor or Secretary of State, and the cool silence of our Republican journals have involved us." Two weeks later, Douglass published the *Evening Journal*'s official explanation, commenting that "some things were *not* forgotten by the parties alluded to in the statement, of minor importance in comparison with this. If the *Journal* and other Republican organs wish to make amends for their acknowledged neglect, let them break the significant silence they have so long maintained on this question. . . . This, we hope, they will *not* forget. This, they must not suffer to be 'stuffed away in the *pigeon holes*' of forgetfulness," a sarcastic reference to the secretary's desk.[64]

In 1858, black Yorkers occupied a momentarily privileged position, which internal disagreement only strengthened; no one could take for granted their "eleven thousand votes." Morgan's final margin over the Democrat Amasa Parker was 27,440 out of 555,073 votes, with the American Party candidate gaining 61,137, and large-scale defections by men of color would have placed the Republican at risk. Instead, Smith received a mere 5,470 votes, exactly 1 percent. Few abolitionists went for his forlorn hope after Seward's "Irrepressible Conflict" speech, which Smith conceded "did more than all things else to damage my prospects. It passed for an Abolition speech." The year 1858 was the last time abolitionists attempted to spoil an election, which had never appealed to most black voters, who preferred a party that could exercise actual power.[74]

Adding insult, one Louisana editor again got into the gutter about "Gerrit," the "chief among the niggers' friends," who had "given away scores of thousands of acres to the colored images of their Maker, dreaming fondly that his black brethren would settle upon the estates, thrive and raise up little darkies to worship Smith and vote the straight Abolition ticket," followed by minstrelish images of "the legs of some big runaway nigger thrust under his mahogany," and the "lazy nigger preachers [who] make a hotel of his mansion at Peterboro." Smith's betrayal by New York's black electors, the "nigger landholders" who "sold his bounty and spent the money in brass rings, red waistcoats, onions and whisky," was satisfying: the "sable ingrates refuse *en masse* to go for him! . . . Not a solitary nigger ballot can he get!" This southerner got one thing right: "the New-York darkies don't want to 'fro away' their votes." Like the Know-Nothings who had jumped to the Republicans, they too wished to "unite all the elements of opposition to the 'slave-driving Democracy.'"[75]

The Battle Joined, 1859–1860

The two years prior to Lincoln's election were chaotic but triumphal for New York's Republicans, black and white. The state was deeply identified with antislavery through Douglass and Seward, the South's twin bêtes noires, and both were linked to the October 1859 raid on Harpers Ferry. Papers found with John Brown exposed Douglass as his collaborator and he barely escaped southern justice. When "federal officers" arrived in Rochester, Lieutenant Governor Robert Campbell visited Douglass to warn him that Governor Morgan was obliged to honor an extradition request from Virginia. Douglass crossed the Canadian border forthwith, exciting the rage of Brown's executioner, Virginia governor Henry Wise. Seward, regarded by southerners as the raid's intellectual author, was attacked in lethal terms, with the *Richmond*

New York State, a good portion of it is to be sold at auction"; also *Boston Daily Bee*, March 3, 1846, "'Gerrit Smith of Peterboro', offers to sell his immense landed property at auction, in the months of June, July, and August next. The lands lie in 45 of the 59 counties of New York, and comprise about 750,000 acres. The auction will be held at fifteen different places, on as many different days"; *Massachusetts Ploughman and New England Journal of Agriculture* (Boston), September 12, 1846.

101. See Gerrit Smith to Charles B. Ray, Theodore Wright, and McCune Smith, September 10, 1846, in GSP, box 41, indicating he hoped news of the project "might have a somewhat good effect on the Convention now sitting in Albany"; an October 3, 1846 letter to these men, also in GSP, box 41, approved "the businesslike way in which you distribute the deeds," noting he had sent 576 to New York City with 288 remaining.

Chapter Ten

1. *AEJ*, August 10, 1848; also Corey M. Brooks, *Liberty Power: Antislavery Third Parties and the Transformation of American Politics* (Chicago: University of Chicago Press, 2016), 173. In 1847, Hamilton Fish won a special election for lieutenant governor with 52.63 percent over a Democrat and the longtime Liberty candidate, Charles O. Shepard, who received a surprising 4.16 percent; in 1848, Fish won the governorship with 47.56 percent against the Free Soiler John A. Dix (26.7 percent), and a Hunker (25.39 percent); in 1850, Washington Hunt defeated the Democrat Horatio Seymour with 49.64 percent to Seymour's 49.57 percent (the Liberty candidate received 3,416 or 0.079 percent).

2. Frederick J. Blue, *The Free Soilers: Third Party Politics, 1848–54* (Urbana: University of Illinois, 1973), 180; Hendrik Booraem V, *The Formation of the Republican Party in New York: Politics and Conscience in the Antebellum North* (New York: New York University Press, 1983), 77.

3. Leslie Alexander is hardly alone in asserting that "the Fugitive Slave Act of 1850 was just the first in a series of devastating setbacks that plagued Black New Yorkers during the decade before the Civil War," but this analysis is tenable only if one steps around the electoral arena; see Leslie M. Alexander, *African or American? Black Identity and Political Activism in New York City, 1784–1861* (Urbana: University of Illinois Press, 2008), 122.

4. *IC*, February 15, 1851, quoting *Albany Argus*; *FDP*, October 30, 1851, reprinting *Buffalo Commercial Advertiser*, including Douglass's letter asserting he had "always held . . . opinions diametrically opposed to those held by that part of the Whig party which you are supposed to represent. . . . I do not believe that the slavery question is settled, and settled forever. I do not believe that slave-catching is either a christian duty, or an innocent amusement. I do not believe that he who breaks the arm of the kidnapper, or wrests the trembling captive from his grasp is 'a traitor.'" He was, therefore, "wholly unfit to receive the suffrages of gentlemen holding the opinion and favoring the policy of that wing of the Whig party, denominated 'the Silver Grays.'"

5. This period marked Garnet's temporary eclipse, feuding publicly with Douglass and ready to depart for warmer climes. Myers continued publishing his renamed *Northern Star and Colored Farmer*, but no issues survive past January 1843; see *NS*, January 5, 1849, on Ward's taking it over.

6. *NS*, June 27, 1850, for this ubiquitous reference, and Martin R. Delany quoting an awestruck white journalist for whom Ward as an "animated statue of black marble, of the old Egyptian sort, out of which our white civilization was hewn. Every degrading association dropped away from his color, and it was as rich in blackness as the velvet pall on the bier of an Emperor"; *NASS*, March 11, 1847, quoting a Whig editor that the Liberty Party sent "their *big gun*, S. R. Ward, to defend the party" at an upstate convention against the Garrisonians Charles Remond and William Wells Brown.

7. *NS*, September 1, 1848.

8. Weed to Greeley, June 19, 1846, in TWP; GS to WHS, February 18, 1847, including letter from Forward to Smith, dated February 9, and WHS to GS, March 20, 1847, in WHSP, reel 29.

9. *NS*, August 24, 1849; *IC*, January 4 and August 23, 1851; Austin Steward, *Twenty-Two Years a Slave and Forty Years a Freeman*, with an Introduction by Graham Russell Hodges (Syracuse, NY: Syracuse University Press, 2002), xxvii; *FDP*, January 29, April 8, May 20, August 16, 1852, thanking Seward for sending copies of speeches, and November 19, 1852, listing a $5 contribution.

10. *AEJ*, February 5, 1850; *Telegraph and Temperance Journal*, May 1, 1851, lists thirteen senators, and that "monies received from the Members of Assembly will appear in our next"; also May 17, 1852 and April 6 and March 10, 1853 ("Senator Seward is one of those who always pays up, he does not forget our little paper. He has our thanks"); *AEJ*, June 14, 1852.

11. *AEJ*, November 24, 1848; *Baltimore Sun*, November 23, 1848, reprinting *New York Express*; *Sandusky Register*, November 2, 1848; *Philadelphia North American*, November 23, 1848; *Alexandria Gazette*, January 2, 1849; *Commercial Advertiser* (New York), January 9, 1849; *Farmer's Cabinet* (Amherst, NY), January 11, 1849; *New London Democrat*, January 13, 1849; *NS*, January 19, 1849, a letter from William H. Topp explaining how their proposal to have Ward speak passed "by a strong vote"; *NS*, February 16, 1849, on a New Bedford meeting where Myers described how black urbanites were "surrounded by unjust laws and prejudiced public sentiment. Everywhere great obstacles oppose our improvement and elevation. Law, public sentiment and popular religion unite to crush the colored man.—We see it and feel it in our souls. We are determined to have a change. Ourselves only can bring about that change; ourselves must strike the blow"; *NS*, February 23, on a similar event in Pittsford, Massachusetts, and March 2, 1849, on the association denouncing Henry Bibb, and that "we recommend the Potash and Lumber Company to commence that business as early as possible"; *NE*, January 4, 1849, informing readers, "A building to hold seventy families will be finished by the 1st of January. The property has plenty of water power and grist and saw mills have been projected. . . . Messrs. Fillmore, Fish, Morgan, Spencer, and other prominent men of New York, have contributed to promote the object. Subscriptions will be received by Dr. McCune Smith, 105 West Broadway, New York"; *NS*, February 2, 1849, with more information on the $3,000 to be raised to support settlers "until the first crop can be raised," naming Ray, McCune Smith, "Rev. W. J. Logan of Syracuse" (Loguen), Ward, and Douglass as inspectors "to price the public property of the settlement after the public works are completed."

12. *NS*, February 16, March 2, March 16, and March 30, 1849 for Myers's detailed response, outlining the resources and opportunities in the town, on which Douglass

43. See two important New England voices, the *Boston Atlas*, February 24, 1855 ("The Third Avenue Railroad Company of Brooklyn, have been mulcted in $250 and the costs of prosecution, for putting a colored woman off their cars by force. The jury agreed upon $225, but the Court added 10 per cent") and the *Congregationalist*, March 2, 1855 ("Elizabeth Jennings, a respectable colored woman, a teacher in one of the public schools, and organist . . . was very nicely dressed, and she is, moreover, a tidy looking person, far preferable as a companion in a railroad car to any of the tobacco-chewing, rum-drinking white rowdies who throng these vehicles," further describing her as a "woman of spirit"); for Jennings to the conductor, see Ripley, *Black Abolitionist Papers*, 4:231; also Leslie M. Harris, *In the Shadow of Slavery: African Americans in New York City, 1626–1863* (Chicago: University of Chicago Press, 2004), 270; *Tribune* quoted in *Provincial Freeman*, March 10, 1855; *FDP*, May 11, 1855; Pennington's court action in *Provincial Freeman*, June 16, 1855, see also Alexander, *African or American?*, 128–29, on Pennington losing a subsequent suit, until a February 1858 state supreme court decision finally banned racial discrimination in public transportation.

44. Booraem, *Formation of the Republican Party*, 82. See Harry J. Carman and Reinhard H. Luthin, "The Seward-Fillmore Feud and the Crisis of 1850," *New York History* 24, no. 2 (April 1943): 163–84, describing the Sewardites achieving control in 1850, quoting a letter to Fillmore from Jerome Fuller that "unless these slavery issues are disposed of, the danger is that a sectional party will arise. Weed and Seward would like to convert the Whig party into one. We must stay the progress of abolitionism or we are gone" (175).

45. John Stauffer, *The Black Hearts of Men: Radical Abolitionists and the Transformation of Race* (Cambridge, MA: Harvard University Press, 2002), has an extended discussion of the RAP; Joel Schor, *Henry Highland Garnet: A Voice of Black Radicalism in the Nineteenth Century* (Westport, CT: Greenwood Press, 1977), 139.

46. Field, *Politics of Race*, 85–86, 97–103 (even with a five-to-one majority in 1849, Whigs rejected suffrage petitions on a voice vote).

47. Field, *Politics of Race*, 80–81 ("only one other made it to the balloting stage" in 1846–60), 112–13.

48. Field, 81.

49. Field, 90–91.

50. See *FDP*, July 20, 1855 for the "Call for a State Convention of the Colored People of the State of New York," in Philip S. Foner and George E. Walker, eds., *Proceedings of the Black State Conventions, 1840–1865*, vol. 1, *New York, Pennsylvania, Indiana, Michigan, Ohio* (Philadelphia: Temple University Press, 1979), 88; *FDP*, July 27 and September 24, 1855.

51. *Northern Star and Freemen's Advocate*, December 8, 1842; *FDP*, February 23, 1855.

52. *FDP*, December 14, 1855, noting the meeting unanimously agreed that "the Republican Ticket was entitled to their support"; *Census for the State of New-York for 1855*, 76; *FDP*, October 19, 1855, reporting on a September 30 meeting in Poughkeepsie which Myers addressed as "agent for the County."

53. Stephen Myers, *Circular to the Friends of Freedom, May 22, 1858* (Albany: 1858); Myers to John Jay II, December 17, 1858, in Ripley, *Black Abolitionist Papers*, 4:407–11; also *Cincinnati Commercial Tribune*, March 4, 1858, reprinting the *Times* on the "Underground Railroad in New York," which cited Myers's favorable report as its su-

perintendent, that in the month's first twenty-three days, there had been thirty-six "through passengers, besides the usual amount of way travel." He even survived an interracial sexual scandal, the charge he had seduced "a very fair appearing white girl of about twenty years," Mary Brennan, who also worked at the Delevan Hotel, setting her up in a house and offering her $200. She sued him as "the father of her babe—yet unborn"; see *Daily Missouri Republican*, June 2, 1855, reprinting *Albany Atlas*, referring to him as "a celebrated character in Albany . . . a great favorite with the anti-slavery leaders" and "as black as the ace of spades."

54. Versions in *Daily Evening Traveller* (Boston), February 6, 1858, *Daily Citizen and News* (Lowell, MA) February 8, 1858, *The States* (Washington, DC), February 9, 1858, *Massachusetts Spy* (Worcester) and *Philadelphia Inquirer*, February 10, 1858, *Charleston Mercury* and *Charleston Courier*, February 12, 1858, *New England Farmer* (Boston), February 13, 1858, *Portland Advertiser*, February 16, 1858, *Daily True Delta* (New Orleans), February 21, 1858, *Columbus Enquirer* (Georgia), February 25, 1858; see also Ripley, *Black Abolitionist Papers*, 4:407, for a note that from November 1857 to May 1858, Myers sent 188 fugitives to Canada; for Weed's coverage of the UGRR, see *AEJ*, September 4, 1854, reprinting *Owego Times*, how a fugitive "father with his child 2 ½ years old, passed through this village on Sunday last, for Canada," after threats to sell the child and mutilation by "a brutal overseer," adding that the "only guide through his weary night wandering was the north star—to the slave the Star of Bethlehem," also January 29, 1856, a long report by William Still, headed "Pursuit of Freedom under Difficulties—Underground Railroad News," full of dramatic stories, repr. from Mary Ann Shadd Cary's *Provincial Freeman*, January 19, and January 4, 1858, "The *Syracuse Standard* says that Rev. Mr. Loguen performed the marriage ceremony on the 31st. inst. for a couple of fugitives from Delaware . . . The party immediately started on a wedding tour by the Underground R. R. to Canada, where they expect to spend the honeymoon"; Frederick W. Seward, *Seward at Washington, as Senator and Secretary of State: A Memoir of His Life, and Selections from His Letters, 1846–1861* (New York: Derby and Miller, 1891), 258, for an 1855 letter where the senator noted, "The 'underground railroad' works wonderfully. Two passengers came here last night"; *FDP*, September 14, 1855, for "Cosmopolite" reporting on the state suffrage association meeting, February 11, 1859, for Watkins's speech in the assembly chamber, March 11, 1859, for Martin describing how "the legislative sharks" were "sporting with the helpless form of the disfranchised colored man," but noting Myers's efforts deserved "respect and commendation; for though I do not agree with him in political opinion, I think he is doing what no other man could do for us, and when we get our rights in this State, the efforts of Mr. Myers shall not be forgotten."

55. See Myers to Gerrit Smith, March 22, 1856, in Ripley, *Black Abolitionist Papers*, 4:326–27, "Sir I have been striving hard this winter with members of the senate and assembly to recommend an amendment to the constitution of this state so as to strike off the property qualification and let us vote on the same footing as the white mail citizens so as to have it once more handed down to the people I have got Senator Cuyler some weeks ago to get up a resolution in the Senat which is now under discusin and will com up again monday or tuesday I shall have one up in the assembly in a few days," adding he had also "gotten about sixty members pledged to go against" a bill to give $5,000 to the ACS; on Cuyler, see the National Park Service's Network to Freedom

mapping the UGRR, according to which the Cuylers "kept the most important Underground Railroad station on Lake Ontario's shore between Oswego and Rochester," from which they "sent freedom seekers to Canada on steamboats operated by a relative, Captain Horatio Nelson Throop" (and that Cuyler had been a Liberty man, and then a Free Soiler), see https://www.nps.gov/subjects/ugrr/ntf_member/ntf_member_details.htm?SPFID=4074857&SPFTerritory=NULL&SPFType=NULL&SPFKeywords=NULL; *New-York Tribue*, March 19, 1856.

56. *Jamestown Journal*, March 28, 1856; Booraem, *Formation of the Republican Party*, 220.

57. *FDP*, November 9, 1855; Stauffer, *Black Hearts of Men*, 20 (at the September 1855 state Liberty Party convention, Douglass had been nominated for secretary of state, with George B. Vashon for attorney general, see *FDP*, September 21, 1855); *Radical Abolitionist*, April 1856 (only four black men are identifiable), see the "Extra" of June 2, 1856, containing "Minutes of the National Nominating Convention," where Ohio's Peter H. Clark, William J. Watkins, and Douglass spoke, with Amos Beman named as Connecticut's National Committee representative; *Radical Abolitionist*, November 1856, quoting Douglass on why black people should support Frémont; the estimate of Smith's vote is in Ripley, *Black Abolitionist Papers*, 4:401n3.

58. See John Stauffer, ed., *The Works of James McCune Smith: Black Intellectual and Abolitionist* (New York: Oxford University Press, 2007), 154, quoting the latter as "Communipaw" in *FDP* on Brooklyn meetings. Early on, there was resistance; see *New-York Tribune*, July 30, 1856 on a "COLORED POLITICAL MEETING IN BROOKLYN" soon after the Republican convention, "for the purpose of organizing themselves into a Club," where a resolution hailing Frémont's nomination as "the embodiment of Northern sentiment" and "pledging, as far as we are permitted . . . to exercise the right of American citizens in the use of the ballot box, to remember him . . . in the coming election" caused objections and was "indefinitely postponed," followed by "a resolution declaring the meeting a 'Frémont League' . . . which caused great confusion, several speaking at the same time" so they adjourned; see *Illinois State Register*, August 22, 1856 and *Ohio Statesman*, August 29, 1856, quoting Douglass to prove Frémont was leagued with abolitionists, with the former adding, "Here we have the real negro himself, the black Douglass, throwing up his cap for the woolly horse; Massa John Charles is kinky enough for Fred Douglass," and *Mining Register, and Pottsville Emporium* (Pottsville, PA), August 23, 1856 counterposing two lists of leaders (one set backing Buchanan; another, including Seward, Greeley, Henry Ward Beecher, Stevens, and Douglass, backing Frémont) and *Daily Pennsylvanian*, September 19, 1856, "Let all who follow negro dictation and morals under the leadership of a negro editor mark well his reasons for this course," and *Columbian Register* (New Haven), November 1, 1856, reporting, "Fred. Douglass (black) made a speech on Saturday evening last, at a Frémont meeting in Milwaukee. Douglass is one of the most active soldiers in the Republican camp"; for Garnet, see *New-York Tribune*, September 24, 1856 and *Jeffersonian Democrat* (Monroe, WI), September 18, 1856, drawing on Bennett's *Herald*; W. J. Watkins to Weed, November 4, 1856, in TWP.

59. *AEJ*, December 19, 1856. Holding up exemplary men of color as superior to vulgar Democrats was a favorite trope for the *Journal*; see its 1858 comment when the ex-mayor of New York and Tammanyite Fernando Wood was "formally invited to a seat

on the floor of the Assembly" and "someone jocosely proffered a like compliment to FRED. DOUGLASS." When the Democratic *Argus* claimed the *Journal* was "hysterical" over "Negro Douglass" being refused, the Republican editor replied, "We certainly deem 'Negro Douglass' vastly Wood's mental and moral superior; but we would not, for that reason, tender him the empty honor of a seat within the bar of the Assembly Chamber. Unlike the Ex-Mayor, he has too much sense to relish any such silly ostentation"; *AEJ*, February 3, 1858.

60. *AEJ*, February 18, 1857.

61. Field, *Politics of Race*, 99; *Albany Argus*, March 27 and 31, 1857; *Evening Post*, March 20, 1857 ("Judge Taney admits the position that all persons who were citizens of the several states at the time the constitution was adopted became citizens of the United States. . . . This gives Downing an opportunity to floor the judge on the deadlock" by citing Massachusetts's enfranchisement of black men in 1780) and *AEJ*, March 25, 1857 ("This black man teaching law to the Democratic Chief Justice of the United States, shows him that the power of Congress to establish a uniform rule of naturalization, is to be exercised among aliens, and does not refer to and did not contemplate, native-born Americans," with more of Downing's examples).

62. *Tribune*, September 4, 1857; *Plattsburgh Republican*, September 5, 1857 from *Troy Budget* (this newspaper, founded by Azariah Flagg, a close ally of Van Buren, was the "party's leading organ in northeastern New York," see Lee Benson, *The Concept of Jacksonian Democracy: New York as a Test Case* [Princeton, NJ: Princeton University Press, 1961], 68); *AEJ* quoted in *Daily Union*, September 8, 1857.

63. *AEJ* quoted in *Daily Union*, September 8, 1857; *New York Herald*, September 6 and 7, 1857; *Daily Pioneer and Democrat* (St. Paul, MN), September 18, 1857, quoting *Buffalo Commercial Advertiser*.

64. *FDP*, September 4 and 18, 1857. Next to the latter, Douglass printed a white man named "B.," acknowledging "the disappointment and mortification you feel and express at the miserable blunder by which the suffrage question is delayed." Still, he was "inclined to accept the account of the matter as given in the *Journal*. No man who knows the Governor . . . will for a moment suspect him of countenancing any trick or evasions," and his secretary should not "be suspected of anything but a carelessness or forgetfulness." It was all somebody else's fault, "a clerk of the Senate" or the secretary of state, and even he had not "intentionally withheld them."

65. *New York Times*, September 30, 1857; *NASS*, January 9, 1858.

66. *Troy Times*, October 16, 1858: "Democrats are very busy in denouncing the colored men who intend to vote for Mr. Morgan on the score of ingratitude. If it is ungrateful for them to abandon Gerrit Smith because he gave them land, Irishmen should vote for him because he gave them food and money," a reference to Smith's ample contributions to Irish famine relief.

67. Quoted in *NE*, October 14, 1858. Gamaliel Bailey, editor of the *Era*, added that in the 1840s, "both the Parties were controlled by their Slaveholding wings." By their intransigence, the Liberty men "paved the way for the Free Soil movement of 1848, and the Republican Party of 1856, whose policy is precisely that which they urged with so much importunity." If New York's "Anti-Slavery voters" had any reason to think "the Republican Party occupies just the same position" as the Whigs, that perception would "multiply Mr. Smith's supporters by the score." This prospect was unlikely, however,

as most former Liberty men were now Republicans. Smith's supporters should recognize that "by uniting with the Republicans, they might prostrate the Administration Party in New York, give the finishing blow to Pro-Slavery Know Nothingism, and prepare the way for the inauguration in 1860 of the Free Power of the Country in the Capital of the Nation."

68. *Radical Abolitionist*, August 1858, "A Word to the Colored People," one of the few appeals. McCune Smith had written Smith in late summer indicating that Thomas Hamilton, who would shortly found the *Weekly Anglo-African*, wanted to start a campaign paper aimed at black voters, and needed $500 to begin, stressing that it "would do much good for the cause hereabouts and that it would gain many votes," to which the doctor added a caution, that "if I may venture a word of advice, do not write another letter on politics between now and 20th November," JMS to GS, August 23, 1858, GSP, box 34.

69. *Gerrit Smith Banner*, October 28 and 29, 1858; *Evening Post*, October 8, 1858.

70. *Gerrit Smith Banner*, November 1, 1858; *NE*, November 11, 1858, hailing the "GREAT REPUBLICAN TRIUMPH"; see also *AEJ*, January 5, 1859, for the official tally showing 54 percent of Smith's votes concentrated in eleven upstate counties: Allegany, Cattaraugus, Cortland, Jefferson, Oswego, Oneida, Onondaga, St. Lawrence, Wayne, Chautaqua and Madison—in the last, his home county, he received 636 votes or 12 percent of his statewide tally versus a mere fifty-eight in New York County and seventy-two in Kings, with their large numbers of black voters; *Evening Post*, October 26, 1858.

71. *NASS*, October 9, 1858; Garnet to Smith, September 16, 1858 in Ripley, *Black Abolitionist Papers*, 4:398; Watkins to Smith, September 27, 1858, in Ripley, *Black Abolitionist Papers*, 4:398–400 (Watkins was responding to the following in the *NASS*, October 2, 1858, "William J. Watkins, who has for several years occupied the place of associate editor of Frederick Douglass' Paper, is said to have dissolved his connection therewith. The reason for this step has not been authoritatively announced, but it is currently reported to have been a difference of opinion and feeling between Mr. Watkins and Mr. Douglass. *The Hour and the Man*, Gerrit Smith's new organ at Albany, says: 'We understand that Mr. Watkins, a colored man, lately divorced from Frederick Douglass' Paper, has been closeted in our city with the Prince of the State Regency, and has taken the stump to induce colored people to vote against Gerrit Smith and in favor of Morgan—beware of him!'"); *New-York Tribune*, October 7, 1858.

72. *New-York Tribune*, October 5, 1858, as "Gerrit Smith and the Colored Vote," repr. in the *AEJ*, October 7, 1858; *Anti-Slavery Bugle*, December 4, 1858; *AEJ*, January 15, 1859, "The Assembly Chamber was well filled last evening to hear Wm. J. Watkins speak on the Suffrage Question. He is a fluent speaker. His argument was logical, clear and convincing against the injustice of the property qualification, and his suggestions for action in reference to it sensible and practical. We observed a considerable number of the members of the Legislature, as well as citizens, among the audience. Mr. W. speaks on Monday evening at the Third-st. Church on Arbor Hill . . . at Schenectady on Tuesday, and at Hudson on Wednesday."

73. Quoted in *NASS*, October 9, 1858; *Gerrit Smith Banner*, November 1 (repr. the *Tribune*), and October 29, 1858.

74. *Radical Abolitionist*, December 1858.

75. *Louisiana Courier* repr. in *New-York Tribune*, November 17, 1858 as "SOUTHERN SYMPATHY FOR GERRIT SMITH."

76. Amy Hanmer-Croughton, "Anti-Slavery Days in Rochester," *The Rochester Historical Society, Publication Fund Series* (Rochester, NY: Published by the Society, 1936), 143–44; Seward, *Seward at Washington*, 440; Glyndon G. Van Deusen, *William Henry Seward* (New York: Oxford University Press, 1967), 215.

77. Field, *Politics of Race*, 137; John S. Minard, Esq., County Historian, *Allegany County and its People, A Centennial Memorial History of Allegany County, New York* (Alfred, NY: W. A. Fergusson, 1896), 651, on Maxson as a farmer's son and devout Baptist, ordained in 1853 and a professor of church polity and pastoral theology at Alfred University in the 1850s ("Mr. Maxson belonged to the old time 'Liberty' party in politics. . . . His Alfred home was ever a 'station' of the 'underground railroad' when that was in operation"); *AEJ*, February 20, 1860.

78. *FDP*, February 11, 1859.

79. *FDP*, March 4, 1859. One notes that Douglass published all these polemics against him, apparently unbothered.

80. *WAA*, September 24, 1859 and March 17, 1860.

81. Field, *Politics of Race*, 108–9; in 1856, fifteen of forty-seven; in 1857, fourteen of thirty-eight; in 1858, seventeen of fifty-seven; in 1859, twelve of twenty-nine; in 1860, thirteen of thirty-seven. Adding Kings County only accentuates the concentration of the state's Democratic vote. For trenchant analyses of why white plebeians were so deeply Democratic, see Anthony Gronowicz, *Race and Class in New York City before the Civil War* (Boston: Northeastern University Press, 1997), and, in particular, Wilder, *Covenant with Color*, 61, specifying Brooklyn's centrality in the transatlantic textile and sugar economies built on slave labor: "The ability to enslave African Americans was sustained because distinct interest groups came together under the banner of race. . . . The incorporation of the industrial working class into the Democratic party . . . offered the Irish and German population a party that defended their interests as workers and citizens, and redrew the lines of social division to include immigrants but exclude people of color"; *AEJ*, February 11, 1859.

82. *WAA*, March 24 and 31, 1860, also April 21, when Republican failure to file the resolutions required a revote, speedily accomplished; *WAA*, March 31, 1860. Hamilton claimed to be unimpressed by symbolism, but informed his readers that the black minister T. Doughty Miller had been invited to "open the session of the Assembly with prayer" (*WAA*, March 10, 1860).

83. Thurlow Weed Barnes, *Memoir of Thurlow Weed* (Boston: Houghton, Mifflin, 1884), 258, although clearly an editorial, but I cannot locate its original; on Irish women and black men, see *WAA*, January 28, 1860, describing an "Anti-O'Conor Meeting" after the leading Irish Democratic lawyer Charles O'Conor, representing a master in the famous *Lemmon v. The People* case, asserted that slavery was upheld by "essential justice and morality in all courts and places before men and nations," after which Garnet declared that in Ireland, the men "would have stoned him, and the daughters of the Emerald Isle would have whipped him within an inch of his life," and Jeremiah Powers baited O'Conor on his countrywomen's marital preferences; see also Freeman, *Free Negro in New York City*, 167, quoting an Assembly committee's report on tenements which found that "by ocular demonstration, it was ascertained that nearly all the

EXHIBIT B

Supreme Court of the State of New York
County of Richmond

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

Plaintiffs,

- against -

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

Defendants,

- and -

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

Defendant-Intervenors.

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NOTICE OF APPEAL

Index No. 85007/2022

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

Dated: New York, New York
July 22, 2022

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

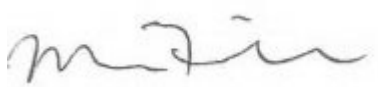

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EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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

Plaintiffs,

-against-

Index #: 85007/2022

DECISION & ORDER
Motions #004, 005, 006

ERIC ADAMS, in his official capacity as Mayor of New York City, BOARD OF ELECTIONS IN THE CITY OF NEW YORK, CITY COUNCIL OF THE CITY OF NEW YORK, HINA NAVEED, ABRAHAM PAULOS, CARLOS VARGAS GALINDO, EMILI PRADO, EVA SANTOS VELOZ, MELISSA JOHN, ANGEL SALAZAR, MUHAMMAD SHAHIDUALLAH, and JAN EZRA UNDAG,

Defendants.

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

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

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

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

FACTUAL AND PROCEDURAL HISTORY

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

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

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

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

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

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

SUMMARY JUDGMENT STANDARD OF REVIEW

It is well settled that a motion for summary judgment should be granted if "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR 3212(b). The proponent of a motion for summary judgment must make a prima facie showing by offering sufficient evidence to eliminate any material issues of fact from the case that as a matter of law the

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

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

Where an "issue is one of statutory interpretation, and there is no question of fact or factual interpretation, summary judgment is therefore appropriate as only questions of law are involved." *Hertz Corp. v. Corcoran,* 137 Misc. 2d 403, 404 [Sup. Ct. NY. Cty. 1987]; see also *Andre v. Pomeroy,* 35 NY2d 361, 364 [1974].

MOTION TO DISMISS STANDARD OF REVIEW

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

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

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

On a defendant's motion pursuant to CPLR §3211(a)(3) to dismiss a Complaint based upon an alleged lack of standing, "the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law." *Bank of New York Mellon v. Chamoula,* 170 AD3d 788, 790 [2d Dept. 2019] *quoting New York Cmty. Bank v. McClendon,* 138 AD3d 805, 806 [2d Dept. 2016].

ANALYSIS

STANDING

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

Voters

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

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

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

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

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

Municipal Officeholders and Political Parties

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

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

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

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

NEW YORK STATE CONSITUTION

Article II

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

> Every citizen shall be entitled to vote at every election for all officers elected by the people and upon all questions submitted to the vote of the people provided that such citizen is eighteen years of age or over and shall have been a resident of this state, and of the county, city, or village for thirty days next preceding an election.

Furthermore, "citizens" is again addressed under Article II, §5, which states:

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

"[T]he strongest indication of [a] statute's meaning is in its plain language." *People v. Badii*, 36 N.Y.3d 393, 399 [2021]. Defendants claim that Article II, §1 does not apply to municipal elections and even if it did, it does not require that voters be United States citizens. However, based upon a plain reading of the New York State Constitution, "every citizen," in this Court's opinion, means every citizen of the United States. "Where a statute describes the particular situations in which it is to apply and no qualifying exception is added, 'an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.'" *Matter of Jose R.*, 83 NY2d 388, 394 [1994]. Article II, §5 furthers this point, providing that "laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters." N.Y. Const. Art. II, § 5.

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

Article IX

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

> Every local government, except a county wholly included within a city, shall have a legislative body elective by the *people* thereof. Every local government shall have the power to adopt local laws as provided by this article. *Emphasis added.*

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

> "Local government." A county, city, town or village.

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

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

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

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

ELECTION LAW

Election Law 1-102 states:

> This chapter shall govern the conduct of all elections at which voters of the state of New York may cast a ballot for the purpose of electing an individual to any party position or nominating or electing an individual to any federal, state, county, city, town or village office, or deciding any ballot question submitted to all the voters of the state or the voters of any county or city, or deciding any ballot question submitted to the voters of any town or village at the time of a general election. *Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law. Emphasis added.*

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

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

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

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

> This chapter shall govern the conduct of all elections at which voters of the state of New York may cast a ballot for the purpose of electing an individual to any office or deciding any matter whereon a vote of its citizens is required or permitted. Where a specific provision of law exists in the *education* law, which is inconsistent with the provisions of this chapter, such provision shall apply.

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

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

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

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

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[1] New York State Bill jackets- L- 1976-Ch-0234, Letter from State Board of Elections dated May 27, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

[2] New York State Bill jackets- L- 1976-Ch-0234, Letter from the Association of the Bar of the City of New York dated May 27, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

[3] New York State Bill jackets- L- 1976-Ch-0234, Letter from the League of Women Voters of New York State dated May 20, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

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

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

MUNICIPAL HOME RULE LAW

New York State Constitution Article IX, §2(b) provides "...the legislature...shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only..." and New York State Constitution Article 9, Section 3(a)(3) provides, "except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to... matters other than property, affairs or governments to act with respect to local matters, and correspondingly, limit the authority of the State Legislature to intrude in local affairs by requiring it to act through general or special laws." *See Patrolmen's Benevolent Ass'n of City of New York Inc. v. City of New York,* 97 NY2d 378, 385-386 [2001].

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

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

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

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

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

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

The Court of Appeals in the *McCabe* matter has explained that in New York, public policy is made by elected representatives and referenda are a limited exception that must be grounded in a particular constitutional or statutory source. "Government by representation is still the rule. Direct action by people is the exception." *McCabe v. Voorhis,* 243 NY 401, 413 (1926). However, here, in enacting the Municipal Voting Law, the City Council have effectively changed the suffrage requirements first implanted in the New York Constitution and the Election Law. By discounting the citizen requirement and increasing the number of individuals in the electorate by permitting non-citizens to vote, the method by which all municipal elective officers are elected has been fundamentally changed, requiring a referendum. The failure to conduct a referendum in this matter further invalidates the Municipal Voting Law.

CONCLUSION

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

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

Based upon the foregoing, in summary, it is

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

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

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

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

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

This constitutes the Decision and Order of the Court.

Date: June 27, 2022

ENTER

Ralph J. Porzio

HON. RALPH J. PORZIO
J.S.C.

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