
**STATE OF NEW YORK
SUPREME COURT – COUNTY OF RICHMOND**

Index No. 85007/2022

Assigned Judge: Hon. Ralph J. Porzio

VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, JOSEPH BORELLI, 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-

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

Defendants.

**STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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Pursuant to CPLR 3212 and Uniform Rule 202.8-g, Plaintiffs submit this Statement of Material Facts in support of Plaintiffs' Motion for Summary Judgment.¹

PLAINTIFFS' STATEMENT OF MATERIAL FACTS

The Non-Citizen Voting Law

1. On December 9, 2021, the New York City Council, the legislative body for the City of New York, passed a bill, referred to as 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." See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.

2. The bill was sent to then-Mayor Bill de Blasio the same day. See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.

3. Mayor de Blasio publicly questioned the legality of the bill, stating that the City's "Law Department is very clear on this. It's (not) legal for this to be decided at the city level. I really believe this has to be decided at the state level." Alexandra Hutzler, *New York City Bill to Allow Noncitizens to Vote Has Support From Incoming Mayor Eric Adams*, Newsweek,

¹ This Statement of Material Facts includes citations to the following documents: The Affirmation of Michael Hawrylchak ("Hawrylchak Aff."), dated May 9, 2022, and exhibits annexed thereto; the Affidavit of Vito J. Fossella ("Fossella Aff."), dated May 9, 2022; the Affidavit of Nicholas A. Langworthy ("Langworthy Aff."), dated May 9, 2022; the Affidavit of Joseph Borelli ("Borelli Aff."), dated May 9, 2022; the Affidavit of Michael Reilly ("Reilly Aff."), dated May 9, 2022; the Affidavit of Michael Tannousis ("Tannousis Aff."), dated May 9, 2022; the Affidavit of Robert Holden ("Holden Aff."), dated May 9, 2022; the Affidavit of Gerard Kassir ("Kassar Aff."), dated May 9, 2022; the Affidavit of Phillip Yan Hing Wong ("Wong Aff."), dated May 9, 2022; and the Affidavit of Elliott Echols ("Echols Aff."), dated May 6, 2022.

Nov. 23, 2021, <https://bit.ly/3KU9zv3> (alteration in original). Despite “big legal questions” about its validity, Mayor de Blasio declined to veto the bill out of “respect [for] the City Council.” Natalie Colarassi, *De Blasio Has ‘Mixed Feelings’ Over Allowing 800k Non-Citizens to Vote in NYC Elections*, Newsweek, (Dec. 12, 2021), <https://bit.ly/3KHswB1>.

4. Mayor de Blasio neither signed nor vetoed the bill before leaving office at the end of the year. See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.

5. Bill de Blasio was replaced as Mayor by Eric Adams on January 1, 2022. See <https://www1.nyc.gov/office-of-the-mayor/news/000-22/eric-l-adams-sworn-as-110th-mayor-new-york-city>.

6. The incoming Mayor Adams returned the bill unsigned on January 10, 2022. See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>

7. As the bill was neither approved nor returned with objections within thirty days, it 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. See *Hawrylchak Aff., Exs. A, B*.

8. This law creates a new class of persons called “municipal voters,” defined as non-citizens who are either lawful permanent residents or persons authorized to work in the United States, “who meet[] all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship.” N.Y.C. Charter § 1057-aa(a); *Hawrylchak Aff., Ex. B*.

9. Under the law, “eligible municipal voters shall have the right to vote in municipal elections and shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections.” N.Y.C. Charter § 1057-bb(a); Hawrylchak Aff., Ex. B.

10. The New York City Board of Elections is tasked with “adopt[ing] all necessary rules and carry[ing] out all necessary staff training to carry out the provisions of this chapter.” N.Y.C. Charter § 1057-cc; Hawrylchak Aff., Ex. B.

11. These provisions include creating a parallel non-citizen voter registration form, § 1057-ee(a); maintaining a unified voter registration list that distinguishes between citizen and non-citizen voters, N.Y.C. Charter § 1057-dd(a); creating parallel non-citizen ballots and absentee ballots, N.Y.C. Charter §§ 1057-dd(b), 1057-hh(d); and allowing citizens and non-citizens to vote at the same polling places, N.Y.C. Charter § 1057-dd(a). Hawrylchak Aff., Ex. B.

12. In addition to voting in elections, the Non-Citizen Voting Law allows registered non-citizen voters to enroll in political parties, N.Y.C. Charter § 1057-ff; and to sign and witness petitions for municipal offices and referenda, N.Y.C. Charter § 1057-uu. Hawrylchak Aff., Ex. B.

The Lawsuit

13. On January 10, 2022, Plaintiffs filed their Complaint in this action, alleging that the Non-Citizen Voting Law is invalid under both the New York State Constitution and under statutory provisions of the Election Law and the Municipal Home Rule Law, and seeking declaratory and injunctive relief. Hawrylchak Aff., Ex. E.

14. On February 25, 2022, Defendants Eric Adams and the City Council of the City of New York filed their Answer. Hawrylchak Aff., Ex. F.

15. On April 11, 2022, Defendant Board of Elections in the City of New York filed its Answer. Hawrylchak Aff., Ex. G.

16. Also on April 11, 2022, several individual non-citizen residents of New York City filed a motion to intervene as defendants with a proposed answer. NYSCEF No. 36; Hawrylchak Aff., Ex. H.

17. On April 13, 2022, the Court granted the motion to intervene, which was unopposed. NYSCEF No. 51.

The Plaintiffs

18. Plaintiff Vito J. Fossella is the current Staten Island Borough President. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Fossella Aff. ¶¶ 3, 5.

19. Plaintiff Nicholas A. Langworthy is the current Chairman of the New York Republican State Committee. He is directly involved in the party's election-related efforts, including with respect to New York City municipal elections. Langworthy Aff. ¶¶ 2, 7.

20. Plaintiff Joseph Borelli is a current Member of the New York City Council from Staten Island representing the 51st District and is currently serving as the Minority Leader. As a Member of the City Council, he voted against the Non-Citizen Voting Law. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Borelli Aff. ¶¶ 3, 5.

21. Plaintiff Michael Reilly is a State Assemblymember representing the 62nd District, which includes part of Staten Island. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Reilly Aff. ¶¶ 3, 4.

22. Plaintiff Michael Tannousis is a State Assemblymember representing the 64th District, which includes parts of Staten Island and Brooklyn. He is a citizen of the United States,

a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Tannousis Aff. ¶¶ 3, 4.

23. Plaintiff Robert Holden is a current Member of the New York City Council from Queens representing the 30th District. As a Member of the City Council, he voted against the Non-Citizen Voting Law. He is a citizen of the United States, a resident of Queens County, a registered voter in Queens County and the City of New York, and an enrolled Democrat. Holden Aff. ¶¶ 3, 5.

24. Plaintiff Gerard Kassar is the current Chairman of the Conservative Party of New York State, a New York State political committee, as defined by New York State Election Law § 2-102. He is directly involved in the party's election-related efforts, including with respect to New York City municipal elections. He is a citizen of the United States, a resident of Kings County, and a registered voter in Kings County and the City of New York. Kassar Aff. ¶¶ 3, 4, 6, 11.

25. Plaintiff Phillip Yan Hing Wong is a naturalized citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York. Wong Aff. ¶ 3.

26. Plaintiff New York Republican State Committee is a New York State political committee, as defined by New York State Election Law § 2-102. Langworthy Aff. ¶ 4.

27. Plaintiff Republican National Committee is the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14). Echols Aff. ¶ 3

Impact on Voters

28. Plaintiffs Vito J. Fossella, Joseph Borelli, Michael Reilly, Michael Tannousis, Robert Holden, Gerard Kassar, and Phillip Yan Hing Wong have regularly voted in New York

City municipal elections and intend to continue doing so in the future. Fossella Aff. ¶ 6; Borelli Aff. ¶ 6; Reilly Aff. ¶ 5; Tannousis Aff. ¶ 5; Holden Aff. ¶ 6; Kassar Aff. ¶ 12; Wong Aff. ¶ 4.

29. According to statements in the legislative record by proponents of the Non-Citizen Voting Law, it would allow “900,000 New Yorkers with legal status the ability to vote.” Hawrylchak Aff., Ex. G, at 2.

30. The Executive Director of the Board of Elections estimated that the law could result in as much as “a 20 percent increase in the number of voters.” Hawrylchak Aff., Ex. H, at 67–69.

31. By dramatically increasing the pool of eligible voters, the Non-Citizen Voting Law will dilute the votes of citizens in future municipal elections. Fossella Aff. ¶ 7; Borelli Aff. ¶ 7; Reilly Aff. ¶ 6; Tannousis Aff. ¶ 6; Holden Aff. ¶ 7; Kassar Aff. ¶ 13; Wong Aff. ¶ 5.

Impact on Candidates

32. The Non-Citizen Voting Law, which purports to allow certain non-citizens to vote in New York City municipal elections, would dramatically change the electoral composition of the City of New York and its electoral subdivisions. This will require current officeholders, including Plaintiffs Vito J. Fossella, Joseph Borelli, and Robert Holden, to change the way they campaign for reelection and may materially affect their likelihood of electoral victory. Fossella Aff. ¶ 4. Borelli Aff. ¶ 4; Holden Aff. ¶ 4.

Impact on Parties

33. The New York Republican State Committee and the Conservative Party of New York State manage their respective parties’ business at the state level, including supporting candidates for public office at all levels in New York State elections, coordinating fundraising and election strategy, and developing and promoting their respective state platforms. Langworthy Aff. ¶ 5; Kassar Aff. ¶ 6.

34. The New York Republican State Committee and the Conservative Party of New York State engage in various activities to help elect Republicans and Conservatives in New York, including to municipal office in New York City. Langworthy Aff. ¶ 6; Kassar Aff. ¶ 5.

35. The Republican National Committee manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. Echols Aff. ¶ 4.

36. The Republican National Committee engages in various activities to help elect Republicans in New York, including to municipal office in New York City. One of these activities is providing support to the New York Republican State Committee in its efforts to elect Republicans up and down the ballot in New York. Echols Aff. ¶ 5.

37. The Non-Citizen Voting Law, which purports to allow certain non-citizens to vote in New York City municipal elections, would dramatically change the electoral composition of New York City for municipal elections. Langworthy Aff. ¶ 8; Kassar Aff. ¶ 7; Echols Aff. ¶ 6.

38. The Non-Citizen Voting Law will require the New York Republican State Committee, the Conservative Party of New York State, and the Republican National Committee to make changes to virtually all of their activities with respect to New York City municipal elections, including fundraising, election strategy, candidate development and selection, the content and targeting of election advertising, and voter turnout efforts. These changes would likely include, for example, creating more non-English-language advertising to target non-citizen communities and recruiting volunteers from non-citizen communities for canvassing and voter turnout efforts. Langworthy Aff. ¶ 9; Kassar Aff. ¶ 8; Echols Aff. ¶ 7.

39. The Non-Citizen Voting Law's expansion of the electorate to include non-citizens necessarily increases the burden on the New York Republican State Committee, the Conservative

Party of New York State, and the Republican National Committee in supporting their candidates participating in New York City municipal elections by forcing them to appropriate additional resources due to the expanded voter pool. Langworthy Aff. ¶ 10; Kassar ¶ 9; Echols Aff. ¶ 8.

40. The Non-Citizen Voting Law may materially affect the likelihood of electoral victory by Republican and Conservative candidates in New York City municipal elections. Langworthy Aff. ¶ 11; Kassar Aff. ¶ 10; Echols Aff. ¶ 9.

DATED: May 9, 2022

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