

# Court of Appeals of the State of New York

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

and

HINA NAVEED, ABRAHAM PALOS, CARLOS VARGAS GALINDO,  
EMILI PRADO, EVA SANTOS VELOZ, MELISSA JOHN, ANGEL  
SALAZAR, and JAN EZRA UNDAG,  
*Defendants-Intervenors-Appellants,*

v.

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

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Appeal from the Supreme Court of the State of New York Appellate  
Division: Second Department, No. 2022-05794

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## **BRIEF OF AMICUS CURIAE DĒMOS IN SUPPORT OF APPELLANTS AND INTERVENORS-APPELLANTS**

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*(For Continuation of Caption See Inside Cover)*

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*\*Pro Hac Vice application pending.*

Dated: November 12, 2024

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## **STATUS OF RELATED LITIGATION**

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.13(a), Amici Curiae state that they are not aware of any related litigation as of the date of filing this brief.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Rule 500.1(f) of the Rules of Practice of the Court of Appeals of the State of New York, Dēmos states as follows: Dēmos is a not-for-profit corporation with offices in New York and the District of Columbia. It has no shareholders, parent corporations, or subsidiaries. It is not owned or controlled by any other entity. Nor does it own or control any other entity. Its purpose is to advocate for a just, inclusive, multiracial democracy and economy.

**TABLE OF CONTENTS**

STATUS OF RELATED LITIGATION.....i

CORPORATE DISCLOSURE STATEMENT.....ii

TABLE OF AUTHORITIES.....iv

Statement of Interest ..... 1

Introduction and Summary of Argument ..... 2

Argument..... 5

    I. The legislative histories of Article IX of the New York State Constitution and the New York State Municipal Home Rule Law affirm New York City’s authority to enact Local Law 11..... 5

        A. The legislative purpose of Article IX of the New York State Constitution was to ensure municipalities retained broad authority to decide who would elect their local officers to ensure responsive local governance. .... 6

        B. The legislative history of the New York State Municipal Home Rule Law further affirms that Article IX grants broad authority to municipalities to govern local elections. .... 14

    II. New York City enacted Local Law 11 to build a city government that is more representative of and accountable to its diverse community..... 19

Conclusion ..... 24

Certificate of Compliance ..... 25

## TABLE OF AUTHORITIES

### Cases

<i>Adler v Deegan</i> , 251 NY 467 (1929). .....	25, 26
<i>Ainslie v Lounsbery</i> , 86 NY2d 857 (3d Dept 1949) <i>lv denied</i> , 89 NY2d 240 (3d Dept 1949). .....	25, 26
<i>Bareham v City of Rochester</i> , 246 NY 140 (1927). .....	31, 32
<i>Robertson v Zimmermann</i> , 268 NY 52 (1935). .....	25, 26

### Statutes

Election Law § 8-100. ....	33
Municipal Home Rule Law § 11(f). ....	33

### Other Authorities

Brad Lander, <i>Facts, Not Fear: How Welcoming Immigrants Benefits New York City</i> , New York City Comptroller (Jan. 4, 2024), <a href="https://comptroller.nyc.gov/reports/facts-not-fear-how-welcoming-immigrants-benefits-new-york-city/">https://comptroller.nyc.gov/reports/facts-not-fear-how-welcoming- immigrants-benefits-new-york-city/</a> .....	20, 34
<i>Estimates of Undocumented and Eligible-to-Naturalize Populations by Sub-State Area</i> , Center for Migration Studies, <a href="http://data.cmsny.org/puma.html">http://data.cmsny.org/puma.html</a> . ....	38
<i>Immigrants in New York</i> , American Immigration Council, <a href="https://map.americanimmigrationcouncil.org/locations/new-york/?_gl=1*m7c0pd*_ga*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.*_ga_W0MSMD2GPV*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA">https://map.americanimmigrationcouncil.org/locations/new- york/?_gl=1*m7c0pd*_ga*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.*_ga_ W0MSMD2GPV*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA</a> .....	36

Michael Morand, <i>1917 NAACP Silent Protest Parade, Fifth Avenue, New York City</i> , Beinecke Rare Book & Manuscript Library (July 26, 2020), <a href="https://beinecke.library.yale.edu/1917NAACPSilentProtestParade#:~:">https://beinecke.library.yale.edu/1917NAACPSilentProtestParade#:~:</a> .....	18
<i>Report and Recommendations concerning Constitutional Home Rule</i> , New York State Bar Association Committee on the New York State Constitution (April 2, 2016). ....	27
<i>Unlocking Potential: Empowering New York City’s Immigrant Entrepreneurs</i> , New York City Department of Small Business Services, <a href="https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi_report.pdf">https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi_report.pdf</a> . ....	36
<i>Woman Suffrage: New York is the Battleground 1900-1920</i> , Museum of the City of New York, <a href="https://www.mcny.org/exhibition/woman-suffrage">https://www.mcny.org/exhibition/woman-suffrage</a> (last visited September 19, 2024). ....	17
<b>Constitutional Provisions</b>	
1821 New York Constitution, article IV. ....	23
1846 New York Constitution, article X. ....	23, 24
1894 New York Constitution, article X. ....	23
1938 New York Constitution, article IX. ....	23, 25, 27
New York Constitution, article IX, § 1 ....	28
<b>Pleadings</b>	
Defendants-Intervenors-Appellants’ Brief, <i>Fossella et al. v. Adams et al.</i> , APL-2024-00033, Docket No. 2022-05794 (2024). ....	18, 19
Transcript of Hearing on Governmental Operations, Sept. 20, 2021 (Joint R. App.) .....	passim
Transcript of New York City Council Meeting, Dec. 9, 2021, (Joint R. App.).....	37

**Legislative History**

City of New York Office of the Mayor Mem, Bill Jacket, L 1963, ch. 843.  
..... 30, 31, 33

Governor Nelson A. Rockefeller Pub Papers at 825 (February 25, 1962).  
..... 28

Inter-Law School Committee Report on the Problem of Simplification of  
the Constitution, 1958 NY Legis Doc No. 57..... passim

Mem of Office for Local Government concerning S. I. 3530, Pr. 4653 and  
A. I. 5153, Pr. 5950, 1962 NY Legis Ann. .... 29

*Report of the Debates and proceedings in the New York State  
Convention, for the revision of the Constitution held at the Capitol in  
the City of Albany on the 28th Day of August 1821, New York State  
Library Digital Collections (1821). .... 23, 24*

Temporary Commission on the Revision and Simplification of the  
Constitution: First Steps Toward a Modern Constitution, 1959 NY  
Legis Doc No. 58..... 22, 26, 27



## **Statement of Interest**

Dēmos is a nonprofit, nonpartisan public policy organization that works with state-based and grassroots partners to build a just, inclusive, multiracial democracy and economy. The organization's core Democracy, Economic Justice, and Movement Building programs leverage more than two decades of experience advancing policy solutions, research, legal advocacy, and narrative strategies to build power with and for Black and brown communities. In support of these principles, Dēmos has engaged in a range of advocacy efforts to ensure that the United States fosters a robust and inclusive democracy, including by litigating voting rights cases. In line with Dēmos's mission, in 2021 Dēmos staff testified in support of Local Law 11 at a New York City Council hearing on Governmental Operations. Dēmos brings expertise in voting rights law and a strong interest in ensuring the correct interpretation of the New York State Constitution and the New York State Election Law in assessing the validity of Local Law 11.

## Introduction and Summary of Argument

Those who have been most excluded from democratic processes are often at the forefront of the battle to ensure a government that is truly of, by, and for the people. For over a century, New York City (“the City”) has embodied this struggle. After all, it was in Union Square that the Women’s Suffrage Movement held the pivotal 1910 rally that helped galvanize the state to enshrine women’s right to vote in the state constitution.<sup>1</sup> It was down Fifth Avenue that the NAACP organized the 1917 Silent Parade protesting racial violence, segregation, and disenfranchisement throughout the nation.<sup>2</sup> It was also this legacy that the City carried forward in 2022 when it passed Local Law 11 to locally enfranchise New Yorkers who have work authorization or lawful permanent resident status. After extensive advocacy by immigrant communities and advocacy organizations, New York City politically empowered more than 800,000 more of its residents.

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<sup>1</sup> *Woman Suffrage: New York is the Battleground 1900-1920*, Museum of the City of New York, <https://www.mcny.org/exhibition/woman-suffrage> (last visited September 19, 2024).

<sup>2</sup> Michael Morand, *1917 NAACP Silent Protest Parade, Fifth Avenue, New York City*, Beinecke Rare Book & Manuscript Library (July 26, 2020), <https://beinecke.library.yale.edu/1917NAACPSilentProtestParade#:~:text=Conceived%20by%20James%20Weldon%20Johnson,condemning%20racist%20violence%20and%20racial> (last visited September 19, 2024).

The legislative histories of Article IX of the New York State Constitution and the New York State Municipal Home Rule Law make clear that New York City exercised its rightful authority in passing Local Law 11. The legislative record corroborates the arguments in Defendants-Intervenors-Appellants' brief, namely that whereas Article II, Section 1 of the New York State Constitution establishes the parameters for *state* elections, Article IX governs *local municipal* elections.<sup>3</sup> The circumstances surrounding the passage of present-day Article IX specifically demonstrate that it was enacted to strengthen and expand the power of localities to decide who may vote for local officers, after the judiciary had chipped away at municipal power in previous decades. Local Law 11 was thus a constitutional exercise of municipal power under Article IX.

This intent to preserve municipal power over local elections is further underscored by the legislative history of the New York State Municipal Home Rule Law, the implementing statute of present-day Article IX. Specifically, its drafters sought to ensure that local

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<sup>3</sup> Defendants-Intervenors-Appellants' Brief, *Fossella et al. v. Adams et al.*, APL-2024-00033, Docket No. 2022-05794 1, 23-57 (2024) citing *Bareham v. City of Rochester*, 246 NY 140, 149 (1927).

municipalities such as New York City retained the power to enact local legislation that could supersede provisions of the New York State Election Law regarding the election of local officers, including the ability to determine the voter qualifications in local elections. This supports the Second Department’s ruling that New York State Election Law does not preempt Local Law 11 and also affirms that municipalities retain broad electoral powers under Article IX.<sup>4</sup>

Not only is Local Law 11 a lawful exercise of municipal power, it is a judicious one. The New York City Council passed Local Law 11 to be more representative of and accountable to the people of its city, nearly 40% of whom are immigrants.<sup>5</sup> Local Law 11, enacted at the height of the COVID-19 pandemic, reflects City Council’s recognition of the myriad social, cultural, and economic contributions of immigrants to the City.

*Amicus Curiae* submits this brief to address two of the three holdings of the Second Department. We respectfully urge this Court to overturn the Second Department’s holding that Local Law 11 violates the

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<sup>4</sup> *Id.*

<sup>5</sup> Brad Lander, *Facts, Not Fear: How Welcoming Immigrants Benefits New York City*, New York City Comptroller (Jan. 4, 2024), <https://comptroller.nyc.gov/reports/facts-not-fear-how-welcoming-immigrants-benefits-new-york-city/> (last accessed Nov. 7, 2024).

New York State Constitution and uphold its conclusion that Local Law 11 is not preempted by the New York State Election Law.

### Argument

**I. The legislative histories of Article IX of the New York State Constitution and the New York State Municipal Home Rule Law affirm New York City’s authority to enact Local Law 11.**

New York City has clear constitutional and statutory authority to expand the vote for local government. We adopt the arguments of Defendants-Intervenors-Appellants that the plain language of the state constitution and the relevant statutes authorize Local Law 11. Moreover, the legislative histories of Article IX and its enacting statute, the New York State Municipal Home Law, evince a legislative intent to preserve the power of local municipalities to govern their own elections, including the authority to determine who can elect local officers.

Specifically, the legislative record makes clear that whereas Article II, Section 1 of the New York State Constitution establishes voter qualifications solely for *state* elections, Article IX governs voter qualifications for *local municipal* elections. The framers of present-day

Article IX sought to empower municipalities with the authority to determine who could elect their local officers.

The legislative history of the New York State Municipal Home Rule Law, as the implementing statute of the 1963 Article IX amendments, further reflects that present day Article IX was enacted to ensure that local municipalities retained broad authority to decide who would elect their local officers. The legislative record specifically demonstrates that its drafters sought to ensure that local municipalities retained the power to enact local legislation that could supersede the New York State Election Law.

- A. The legislative purpose of Article IX of the New York State Constitution was to ensure municipalities retained broad authority to decide who would elect their local officers to ensure responsive local governance.**

The legislative history of Article IX confirms that its framers sought to ensure that local municipalities could effectively self-govern, including the ability to determine voter qualifications in local elections. Notably, present-day Article IX was adopted in 1963 in response to growing calls

to bolster municipal powers that had been gradually diminished by the state's judiciary over several decades.<sup>6</sup>

Indeed, long before present-day Article IX was enacted, local governments in New York had been deemed “creatures of the State Legislature.”<sup>7</sup> Their powers were defined by restrictions that prevented the state from interfering with their affairs.<sup>8</sup> There were three broad areas of power specifically reserved for local governments and protected from state interference: the ability of named town officers and “all other officers” to be elected by the people of a given locality; the ability of localities to determine their “governmental structure including their governing bodies, officers, distribution of powers, and manner of exercising delegated power;” and the power to provide services and regulate the property and affairs within their bounds.<sup>9</sup> It was thus a

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<sup>6</sup> *See, e.g.*, Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 89-98; Temporary Commission on the Revision and Simplification of the Constitution: First Steps Toward a Modern Constitution, 1959 NY Legis Doc No. 58 at 15-16.

<sup>7</sup> Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 71.

<sup>8</sup> *Id.* at 71-72.

<sup>9</sup> *Id.* at 72.

well-established “ancient requirement” for local officers to be elected by the people of a locality, including sheriffs, clerks of counties, the register and clerk of the City of New York, and district attorneys.<sup>10</sup>

Throughout the nineteenth and twentieth centuries, New York enshrined these local protections in Article IV, then Article X, and finally Article IX of its constitution.<sup>11</sup> At each turn, the Constitution’s framers resisted proposals that would have granted the state executive or legislative branches broad authority to choose municipal leaders.<sup>12</sup> Notably, during the 1821 Constitutional Convention, a suggestion to create a centralized state body with the power to appoint local officers was rejected because of concerns that this method of appointment would result in local leaders who would be unresponsive to the people.<sup>13</sup>

Convention member James Kent articulated this sentiment:

The local officers of the county must generally be selected at home, and this must either be by the people, or by some power to be created within the county. There is, upon the whole, less

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<sup>10</sup> *Id.* at 81.

<sup>11</sup> *See, e.g.*, 1821 New York Constitution, article IV; 1846 New York Constitution, article X; 1894 New York Constitution, article X; 1938 New York Constitution, article IX; Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 80-83.

<sup>12</sup> *See, e.g.*, *Report of the Debates and proceedings in the New York State Convention, for the revision of the Constitution held at the Capitol in the City of Albany on the 28th Day of August 1821*, New York State Library Digital Collections at 160, 164 (1821).

<sup>13</sup> *Id.*



danger of abuse in that mode than in any that can be devised. It is, probably, the only way in which we may expect to collect the fair and honest sense of the people of each county, without disguise or imposition.<sup>14</sup>

Similarly, members of the 1846 Constitutional Convention introduced the following provision into Article X, Section 2 of the state constitution to “ba[r] the selection of local officials by the State Executive or Legislature”:<sup>15</sup>

All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people or appointed, as the legislature may direct.<sup>16</sup>

The clause was later incorporated into Article IX, Section 8 of the 1938 New York State Constitution.<sup>17</sup>

Despite these and other constitutional protections afforded to local governments, over time, the judiciary slowly chipped away at municipal

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<sup>14</sup> *Id.* at 164.

<sup>15</sup> Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 81.

<sup>16</sup> 1846 New York Constitution, article X, § 2.

<sup>17</sup> 1938 New York Constitution, article IX, § 8; *see also* Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 81 (indicating that Article X, § 2 of the 1846 New York Constitution was later incorporated as Article IX, § 8 of the 1938 New York Constitution).

powers.<sup>18</sup> More specifically, the judiciary produced a litany of decisions allowing for significant state control over highly local affairs.<sup>19</sup> To the dismay of local leaders, the courts upheld state legislation impacting everything from sewers in Buffalo, to regulations concerning plumbers in Binghamton, and even fire prevention, light, air, and sanitation standards of buildings in New York City.<sup>20</sup>

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<sup>18</sup> See, e.g., *Adler v Deegan*, 251 NY 467, 470-78 (1929) (holding that the state legislature could pass the Multiple Dwelling Law which required minimum standards for fire prevention, light, air, and sanitation in New York City because the legislation concerned the health of the people of the State at large and thus was a valid exercise of state legislative power); *Robertson v Zimmermann*, 268 NY 52, 56-65 (1935) (holding that the state legislature could pass a law which created the Buffalo Sewer Authority with authority over the sewer system of Buffalo because the legislation concerned the health of the people of the state at large, including communities outside of Buffalo and thus was a valid exercise of state legislative power); *Ainslie v Lounsbury*, 86 NY2d 857, 858 (3d Dept 1949) *lv denied*, 89 NY2d 240 (3d Dept 1949) (upholding a state law regulating plumbers in Binghamton because the law concerned the public health and was thus a valid exercise of state legislative power); see also Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 89-98.

<sup>19</sup> See, e.g., *Adler*, 251 NY at 470-78 (holding that the state legislature could pass the Multiple Dwelling Law which required minimum standards for fire prevention, light, air, and sanitation in New York City because the legislation concerned the health of the people of the State at large and thus was a valid exercise of state legislative power); *Robertson*, 268 NY at 56-65 (holding that the state legislature could pass a law which created the Buffalo Sewer Authority with authority over the sewer system of Buffalo because the legislation concerned the health of the people of the state at large, including communities outside of Buffalo and thus was a valid exercise of state legislative power); *Ainslie*, 86 NY2d at 858 (upholding a state law regulating plumbers in Binghamton because the law concerned the public health and was thus a valid exercise of state legislative power); see also Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 89-98.

<sup>20</sup> See, e.g., *Adler*, 251 NY at 470-78 (holding that the state legislature could pass the Multiple Dwelling Law which required minimum standards for fire prevention, light, air, and sanitation in New York City because the legislation concerned the health of the people of the State at large and thus was a valid exercise of state legislative power); *Robertson*, 268 NY at 56-65 (holding that the state legislature could pass a law which created the Buffalo Sewer Authority with authority over the sewer system of Buffalo because the legislation concerned the health of the

This diminishment became so severe that critics began to coin the term “judicial home rule.”<sup>21</sup> Notably, in an address to the 1957 Constitutional Convention Commission, New York City Mayor Robert F. Wagner remarked: “Constitutional home rule provisions have been so whittled away that practically nothing remains of them but the neglected and ignored printed word.”<sup>22</sup>

To address this attack on municipal home rule, in 1958, the Special Legislative Committee on the Revision and Simplification of the Constitution (“Special Legislative Committee”) was tasked not only with simplifying the state constitution, but also with guiding the legislature in amending Article IX to enshrine and expand local powers.<sup>23</sup> Noting the abovementioned history, members of the Special Legislative Committee

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people of the state at large, including communities outside of Buffalo and thus was a valid exercise of state legislative power); *Ainslie*, 86 NY2d 858 (upholding a state law regulating plumbers in Binghamton because the law concerned the public health and was thus a valid exercise of state legislative power).

<sup>21</sup> See Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 72.

<sup>22</sup> Temporary Commission on the Revision and Simplification of the Constitution: First Steps Toward a Modern Constitution, 1959 NY Legis Doc No. 58 at 15.

<sup>23</sup> See, e.g., Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 89-98; Temporary Commission on the Revision and Simplification of the Constitution: First Steps Toward a Modern Constitution, 1959 NY Legis. Doc. No. 58 at 15-16; *Report and Recommendations concerning Constitutional Home Rule*, New York State Bar Association Committee on the New York State Constitution at 3, 7 (April 2, 2016).

paid particular attention to Article IX, Section 8 of the 1938 Constitution, which again read in part:

All other officers, whose election or appointment is not provided for by this constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people or appointed, as the legislature may direct.<sup>24</sup>

The Special Legislative Committee noted that the provision was “too important to be tucked away” within the eighth section of a constitutional article and lamented that the home rule provisions more broadly had failed to “yiel[d] a broad and clear area of local self-government.”<sup>25</sup> As a result, the committee recommended the inclusion of the language in a separate paragraph within an amended Article IX.<sup>26</sup> The drafters ultimately took note. Evincing the intent of the framers to strengthen the power of municipalities to ensure that officers would be elected by the people of a given locality, present day Article IX includes, in a stand-alone provision, language that is even more expansive:

All officers of every local government whose election or appointment is not provided for by this constitution shall be

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<sup>24</sup> 1938 New York Constitution, article IX, § 8; *see also* Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 81-83.

<sup>25</sup> Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 83, 97.

<sup>26</sup> *Id.* at 83.

elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.<sup>27</sup>

Further echoing the intent to ensure that local municipalities retained broad authority to decide who would elect their local officers, Governor Rockefeller in his public papers concerning the Article IX amendments asserted that the new provisions were created to “vest[] in the local governments of the State and their *inhabitants*, including the right to elect local legislative bodies, adopt local laws, elect and appoint all local officials.”<sup>28</sup> The Memorandum of the Office of Local Government concerning the 1963 Article IX amendments similarly conveyed that the constitutional changes would ensure local governments retained the power to “elect or appoint local officers” and “have an elective legislative body and power to adopt local laws.”<sup>29</sup>

The legislative record thus corroborates the arguments of Defendants-Intervenors-Appellants, namely that whereas Article II, Section 1 of the New York State Constitution solely governs *state*

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<sup>27</sup> New York Constitution, article IX, § 1.

<sup>28</sup> Governor Nelson A. Rockefeller Pub Papers at 825 (February 25, 1962) (*emphasis added*).

<sup>29</sup> Mem. of Office for Local Government concerning S. I. 3530, Pr. 4653 and A. I. 5153, Pr. 5950, 1962 NY Leg Ann at 97-98.

elections, Article IX establishes the parameters for *local municipal* elections. New York City’s expansion of the electorate in local elections to include 800,000 more of its residents wholly aligns with the intent and purpose of Article IX — to preserve the “ancient requirement” for local officers to be elected by the people of a locality and guard against the superimposition of officers by the will of the state legislature or executive branch.<sup>30</sup> This Court should accordingly overturn the Second Department’s ruling that Local Law 11 violates the New York State Constitution.

**B. The legislative history of the New York State Municipal Home Rule Law further affirms that Article IX grants broad authority to municipalities to govern local elections.**

The legislative history of the New York State Municipal Home Rule Law further reflects that Article IX was enacted to ensure that municipalities retained broad authority to decide who would elect their local officers. The legislative record specifically reveals that the New York State Municipal Home Rule Law was enacted to fortify the local sphere of influence enshrined in Article IX, which granted municipalities

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<sup>30</sup> Inter-Law School Committee Report on the Problem of Simplification of the Constitution, 1958 NY Legis Doc No. 57 at 80-81.

broad authority over local elections, including the ability to set local voter qualifications.

Briefly, the Municipal Home Rule Law was adopted as the implementing statute of the 1963 amendments to Article IX of the New York State Constitution.<sup>31</sup> The law codified the powers vested in local municipalities under Article IX of the New York State Constitution and replaced a complicated web of provisions that had previously established local powers.<sup>32</sup>

Importantly, the statute's bill jacket included a memorandum written by the New York City mayoral office.<sup>33</sup> In the memorandum, the mayor's office urged then-Governor Nelson Rockefeller not to enact the version of the Municipal Home Rule Law that was then presented for his review.<sup>34</sup> Then-Mayor Robert F. Wagner specifically sought to strike from the proposed version of the bill Section 11(f), which prohibited local

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<sup>31</sup> See City of New York Office of the Mayor Mem, Bill Jacket, L 1963, ch 843 at 1-2.

<sup>32</sup> *Id.* (These previous laws included Articles 6 and 6a of the New York State County Law, Sections 51 and 51f of the New York State Town Law, the City Home Rule Law, and the Village Home Rule Law).

<sup>33</sup> City of New York Office of the Mayor Mem, Bill Jacket, L 1963, ch 843 at 9-27.

<sup>34</sup> *Id.* at 25.

governments from adopting laws that would supersede any state statute which “applies to, affects, or changes any provision of the election law.”<sup>35</sup>

The mayor’s memorandum highlighted that the limiting language found in proposed Section 11(f) was neither included in prior home rule conference drafts nor incorporated in the preceding City Home Rule Law.<sup>36</sup> Additionally, the mayor disapproved of the provision because it interfered with powers that the New York Court of Appeals had previously ruled were within the scope of municipal home rule authority, including the ability to enact policies that affected the election of local officers.<sup>37</sup> The mayor specifically cited *Bareham v. City of Rochester*, where the Court of Appeals was tasked with determining the validity of a law that had amended the Charter of the City of Rochester.<sup>38</sup> The law at issue in *Bareham* replaced the then-existing form of city government with a council city manager plan.<sup>39</sup> In doing so, challengers of the law argued that the City of Rochester had passed a law that was superseded by the New York State Election Law.<sup>40</sup> In upholding the local ordinance,

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<sup>35</sup> *Id.* at 18-19.

<sup>36</sup> *Id.* at 18.

<sup>37</sup> *Id.* at 18-19.

<sup>38</sup> *Id.*, citing *Bareham v City of Rochester*, 246 NY 140 (1927).

<sup>39</sup> *Bareham*, 246 NY at 143-44, 149.

<sup>40</sup> *Id.* at 149.



the Court of Appeals ruled in *Bareham* that local municipalities retained the power to enact local laws that could supersede provisions of the New York State Election Law in so far as they affected the election of their own local officers: “The municipality is empowered to modify an election law in so far as the law affects the property, government, or affairs of the municipality, i.e., in so far as it affects the election of local officers.”<sup>41</sup>

In accordance with *Bareham*, Mayor Wagner argued that the proposed Section 11(f) would infringe upon one of New York City’s critical municipal powers: “[T]he election of city officers is a matter embraced within the property, government or affairs of cities and that cities, in legislating locally as to such subjects, may under their home rule powers lawfully supersede special or local provision of the Election Law dealing with the election of city officers.”<sup>42</sup>

Mayor Wagner’s warning was ultimately heeded. After significant advocacy from the New York City mayoral office and civic groups such as the Citizens Union, Section 11(f) of the New York State Municipal Home Rule Law was amended to its present-day form, now reading:

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<sup>41</sup> *Id.*

<sup>42</sup> City of New York Office of the Mayor Mem, Bill Jacket, L 1963, ch 843 at 18-19.

“Notwithstanding any provision of this chapter, the legislative body shall not be deemed authorized by this chapter to adopt a local law which supersedes a state statute, if such local law: . . . Applies to or affects any provision of paragraph (c) of subdivision one of section 8-100 of the election law. . . .”<sup>43</sup> Paragraph (c) of subdivision one of Section 8-100 of the election law is merely a provision which governs the time in which general elections are to be held in New York State.<sup>44</sup> In other words, as explained by the advocacy letter drafted by the Citizens Union, municipalities may enact local election laws that supersede state election laws so long as they do not concern the time of general elections.<sup>45</sup>

Thus, the drafters of the Municipal Home Rule Law intended to fortify Article IX’s broad grant of power to municipalities to govern local elections, including the power to determine voter qualifications. New York City’s enactment of Local Law 11 was well within the bounds of this power.

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<sup>43</sup> Municipal Home Rule Law § 11(f).

<sup>44</sup> Election Law § 8-100.

<sup>45</sup> *Id.*

## **II. New York City enacted Local Law 11 to build a city government that is more representative of and accountable to its diverse community.**

Exercising its rightful municipal authority, New York City enacted Local Law 11 to end taxation without representation for more than 800,000 people and to make local government more representative of and answerable to its residents. Comprising nearly 40% of the population,<sup>46</sup> immigrants are a significant and deeply embedded part of New York City. Alongside their U.S.-born neighbors, they live, work, and attend school in the City. They pay taxes to the City, run businesses in the City, and contribute to the City's vibrant social, cultural, and economic life in countless ways. Yet many of them, including lawful permanent residents and those with work authorization, have no say in who governs the City and whether any officials represent their interests in local policymaking.

The record accompanying the passage of Local Law 11 reveals that a major impetus for the law was to address the sobering reality that many of New York City's frontline workers — who daily sacrificed their health and lives during the COVID-19 pandemic to ensure the safety of their

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<sup>46</sup> Brad Lander, *Facts, Not Fear: How Welcoming Immigrants Benefits New York City*, New York City Comptroller (January 4, 2024), <https://comptroller.nyc.gov/reports/facts-not-fear-how-welcoming-immigrants-benefits-new-york-city/> (last accessed Nov. 7, 2024).

neighbors and guarantee the continued operation of the City — lacked any meaningful say in city affairs.<sup>47</sup> At the time, over half of the City’s frontline workers were immigrants; about one in five were noncitizens.<sup>48</sup> The critical role that immigrants played during the COVID-19 pandemic forced the City to grapple with how to give political voice to a community upon which it so heavily relies.<sup>49</sup>

As Local Law 11’s sponsor, former Councilman Ydanis Rodriguez explained, “This is not about a favor. This is about no taxation without representation.”<sup>50</sup> Immigrant New Yorkers make tremendous economic contributions by working, paying taxes, running businesses, and spending. In 2022, immigrant New Yorkers constituted 27.4% of the state’s labor force and \$153.2 billion dollars in spending power.<sup>51</sup> They

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<sup>47</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Councilmember Rodriguez (Joint R. App. 396).

<sup>48</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Councilmember Rodriguez (Joint R. App. 396).

<sup>49</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Murad Awadeh, New York Immigration Coalition (Joint R. App. 403-04); Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Fuliva Vargas-De Leon, LatinoJustice (Joint R. App. 406-07).

<sup>50</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, statement of Councilmember Rodriguez (Joint R. App. 393); *see also* Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Statement of Assemblywoman Catalina Cruz (Joint R. App. 419).

<sup>51</sup> *Immigrants in New York*, American Immigration Council, [https://map.americanimmigrationcouncil.org/locations/new-york/?\\_gl=1\\*m7c0pd\\*\\_ga\\*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.\\*\\_ga\\_W0MSMD2GPV\\*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA](https://map.americanimmigrationcouncil.org/locations/new-york/?_gl=1*m7c0pd*_ga*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.*_ga_W0MSMD2GPV*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA) (last accessed Nov. 7, 2024).

paid \$68.1 billion dollars in taxes, contributed \$18.6 billion to Social Security, and contributed \$5.3 billion to Medicare.<sup>52</sup> They also own almost half of all small businesses in the City.<sup>53</sup> These contributions significantly exceed the cost the City incurs in providing immigrants with public services.<sup>54</sup> At a hearing on Local Law 11, elected officials and advocates alike emphasized that those who would be enfranchised by Local Law 11 — 10% of the City’s total population — “pay taxes to the tune of \$10 billion each year but...have no influence as to how that money will be invested back into their communities.”<sup>55</sup>

In addition to their economic contributions, noncitizen city residents use, contribute taxpayer dollars toward, and administer essential government services like public transportation, sanitation, and

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<sup>52</sup> *Id.*

<sup>53</sup> *Unlocking Potential: Empowering New York City’s Immigrant Entrepreneurs*, New York City Department of Small Business Services, [https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi\\_report.pdf](https://www.nyc.gov/assets/sbs/downloads/pdf/about/reports/ibi_report.pdf) (last accessed Nov. 7, 2024).

<sup>54</sup> *Immigrants in New York*, American Immigration Council, [https://map.americanimmigrationcouncil.org/locations/new-york/?\\_gl=1\\*m7c0pd\\*\\_ga\\*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.\\*\\_ga\\_W0MSMD2GPV\\*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA](https://map.americanimmigrationcouncil.org/locations/new-york/?_gl=1*m7c0pd*_ga*MjAzMjU4OTgxLjE2OTg2ODQ5NDU.*_ga_W0MSMD2GPV*MTY5OTAzMzkyNy40LjAuMTY5OTAzMzk1Mi4wLjAuMA) (last accessed Nov. 7, 2024).

<sup>55</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Statement of Assemblywoman Catalina Cruz (Joint R. App. 419); *see also* Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Steven Espinoza (Joint R. App. 603).

healthcare.<sup>56</sup> They send their kids to public schools and participate in civic life.<sup>57</sup> But their inability to vote thus far has meant that elected officials have no incentive to consider their interests when making policy decisions.<sup>58</sup>

Many of those who would be enfranchised by Local Law 11 have been contributing to the City for decades without any meaningful representation in city government. As recognized during the Local Law 11 hearings, “just over half of New Yorkers with green cards or other legal status have lived here for over ten years.”<sup>59</sup> Moreover, data from the Center for Migration Studies show that in 2019, 41% of all who were eligible to naturalize in New York City had been living there for *20 years or more*.<sup>60</sup> As Murad Awadeh of the New York Immigration Coalition

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<sup>56</sup> See, e.g., Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Murad Awadeh, New York Immigration Coalition (Joint R. App. 403-04); Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Fuliva Vargas-De Leon, LatinoJustice (Joint R. App. 406-07); Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Statement of Assemblywoman Catalina Cruz (Joint R. App. 418-19); Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Public Advocate Jumaane Williams, Sept. 20, 2021 (Joint R. App. 422).

<sup>57</sup> See, e.g., Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Statement of Assemblywoman Catalina Cruz (Joint R. App. 418-19); Transcript of New York City Council Meeting, Dec. 9, 2021, Statement of Council Member Chin (Joint R. App. 782).

<sup>58</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Public Advocate Jumaane Williams, Sept. 20, 2021 (Joint R. App. 422).

<sup>59</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Murad Awadeh, New York Immigration Coalition (Joint R. App. 402).

<sup>60</sup> *Estimates of Undocumented and Eligible-to-Naturalize Populations by Sub-State Area*, Center for Migration Studies, <http://data.cmsny.org/puma.html> (last accessed August 6, 2024).

testified at hearing, “The people who would be enfranchised by this legislation may not have the piece of paper that says they are a U.S. citizen but they are absolutely New Yorkers.”<sup>61</sup>

Many immigrants testified at hearing about their deep ties to the City and their desire to vote. Leticia Reyes, a Mexican immigrant and mother of six who had lived in Brooklyn for more than 15 years, put it best:

Can you see us? We are coworkers, neighbors and friends. . . We are watching our children grow and many of us have lived in the city for a long time. We are here making our city grow more and more. We are working very hard because New York is our city, is our home. We live here with our families and for this reason we want to have the right to vote for our city leaders.<sup>62</sup>

Ultimately, Local Law 11 passed because the people of New York City decided it is time to locally empower many of the immigrants who contribute their money, their labor, their talents, and so much more to the City.

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<sup>61</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Murad Awadeh (Joint R. App. 403).

<sup>62</sup> Transcript of Hearing on Governmental Operations, Sept. 20, 2021, Testimony of Leticia Reyes (Joint R. App. 600-01).

## Conclusion

For the reasons set forth above, *amicus curiae* respectfully urges this Court to overturn the Second Department's holding that Local Law 11 violates the New York State Constitution and uphold its conclusion that Local Law 11 is not preempted by the New York State Election Law.

Respectfully submitted,

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