APL No. 2024-00033

Court of Appeals
State of New York

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

Plaintiffs-Respondents,

—against—

CITY COUNCIL OF THE CITY OF NEW YORK,

Defendant-Appellant,

(*For Continuation of Caption See Inside Cover*)

BRIEF OF AMICI CURIAE
THE NEW YORK IMMIGRATION COALITION AND UNITED NEIGHBORHOOD HOUSES IN SUPPORT OF DEFENDANT-APPELLANTS AND DEFENDANT-INTERVENOR-APPELLANTS

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Dated: November 1, 2024

—and—

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

Defendants-Intervenors-Appellants,

—and—

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

Defendants.

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INTEREST OF AMICI CURIAE

Amici Curiae, the New York Immigration Coalition ("NYIC") and United Neighborhood Houses ("UNH"), are membership-based non-profit organizations that serve New York City residents. The NYIC is an umbrella policy and advocacy organization that represents more than 200 immigrant and refugee rights groups throughout New York. UNH is a policy and social change organization representing neighborhood settlement houses that reach 800,000 New Yorkers from all walks of life. Collectively, Amici's member organizations provide direct services to more than one million New Yorkers.

Amici are members of the Our City, Our Vote Coalition, which successfully campaigned for the expansion of the entitlement to vote in New York City Council elections to certain non-citizen residents through Local Law 11 of 2022 (the "Municipal Voting Law"). Accordingly, Amici have a significant interest in this appeal. *See* Amici's Motion in Support of Amicus Brief.

This brief draws on the experiences of Amici's member organizations and Coalition partners. It reflects the input of thirty-two members of the Coalition. *See* Amici's Motion in Support of Amicus Brief.

PRELIMINARY STATEMENT

Voting is at the heart of civic engagement. Participating in the electoral process allows voters to weigh in on the issues that matter to them, promoting a greater sense of personal agency and social belonging. In turn, communities are strengthened and made more equitable when their representatives reflect the diverse interests of their constituents. These reciprocal benefits that accrue to voters and their communities are amplified, not diminished, when a larger segment of the community is empowered to vote. The expansion of the franchise is not a zero-sum game.

The Municipal Voting Law reflects this philosophy. Passed by the New York City Council on December 9, 2021, this law enfranchised lawful permanent residents and those authorized to work in the United States with respect to municipal elections, subject to a 30-day New York City residency requirement and the other qualifications for registering to vote under the Election Law. *Fossella v. Adams*, 225 A.D.3d 98, 104 (2d Dept. 2024).

The New York City Council's decision to expand the municipal franchise is entirely consistent with the voting rights protections contained in the New York State Constitution (the "Constitution"). N.Y. Const. art. II, § 1. The Constitution prevents the state or local governments from enacting laws that deprive qualified voters of the right to vote. N.Y. Const. art. II, § 1. It does not, however, prevent local

governments from enacting laws that expand the pool of qualified voters in local elections. In holding that Article II, § 1 and Article IX prevent local governments from enfranchising non-citizens, the Appellate Division majority misconstrued the plain language of the Constitution by turning the constitutional *right* to vote into an *exclusive entitlement* to vote.

The people of New York City, through their elected representatives, made a historic decision to expand the municipal franchise. Amici urge this Court to reverse the decision below on constitutionality and return the power to decide this issue to the people.

ARGUMENT

I. NON-CITIZEN VOTING STRENGTHENS NEW YORK CITY COMMUNITIES

New York City has thrived because of, not in spite of, its immigrant population. Immigrants comprise about 44% of the city's workforce, *see* Office of the New York State Comptroller, *New York City's Uneven Recovery: Foreign-Born in the Workforce* 1 (2024), and about 50% of the city's households. Mayor's Office of Immigrant Affairs, *2023 Annual Report on New York City's Immigrant Population and Initiatives of the Office* 15 (2024). As noted by historian Tyler Anbinder, immigration has "turbocharg[ed] the New York economy." Martha Guerrero, *The Right to New York City: Immigrant and Unhoused Communities Navigate a Shelter System Under Attack*, The Immigration and Ethnic History

Society Online (Dec. 18, 2023); *see also* Tyler Anbinder, City of Dreams: The 400-Year Epic History of Immigrant New York 566-67 (2016) ("The local economy would have been devastated when nearly a million native-born New Yorkers moved out of the city in the 1970s had not almost as many immigrants arrived to take their place . . . In 2008, immigrants accounted for 32% of all economic activity in the city.").

In recognition of the significant contributions of New York City's immigrant population, the Municipal Voting Law granted lawful permanent residents and those authorized to work in the United States a voice in public decision-making. *Fossella*, 225 A.D.3d at 104. However, these newly enfranchised voters are not the only ones who stand to benefit from the Municipal Voting Law. The legislation also benefits the greater New York City population. Local non-citizen voting can increase overall electoral participation, resulting in higher voter turnout rates among citizens. It can also help achieve effective resource allocation to address specific community needs. Accordingly, and contrary to the Plaintiffs-Respondents' assertion (*see* Plaintiffs-Respondents Br. 26), voting is not "zero-sum."

A. Local Non-Citizen Voting Can Increase the Electoral Participation of Citizens

Low voter turnout rates have been a subject of concern in the United States and in other democracies. New York City in particular has struggled with declining voter turnout rates in recent decades. *See* Office of the New York City Comptroller,

Barriers to the Ballot: Voting Reform in New York City 3 (2016). The Municipal Voting Law fosters a culture of civic engagement that can increase political participation, not just among the newly enfranchised non-citizen residents, but also across the broader New York City population.

A recent study on the impact of non-citizen voting policies demonstrates that such policies can lead to higher voter turnout rates among citizens. Elif N. Kayran & Anna-Lena Nadler, *Non-Citizen Voting Rights and Political Participation of Citizens: Evidence from Switzerland*, 14 Eur. Pol. Sci. Rev. 206, 206 (2022). Looking to 2022 Swiss household panel data and local level data, the study found that districts that allowed local non-citizen voting had higher voting rates among native Swiss citizens than districts that did not permit local non-citizen voting. *Id.* at 214. Voting rates among naturalized Swiss citizens were also higher in these districts, and notably, the study found a reduction in the gap between the voting rates of native Swiss citizens and naturalized Swiss citizens in such districts. *Id.* at 214-15, 221.

This increase in voter turnout rates among naturalized citizens in districts that allow non-citizen voting may be explained in part by the fact that children generally model their civic and political participation after that of their parents. Melissa Humphries, Chandra Muller & Kathryn S. Schiller, *The Political Socialization of Adolescent Children of Immigrants*, 94 Soc. Sci. Q. 1261, 1265 (2013). A

California-based study found that children from immigrant families were over 1.4 times as likely to be politically engaged when their parents were politically engaged according to almost all metrics of political engagement, including voting rates. Veronica Terriquez & Hyeyoung Kwon, *Intergenerational Family Relations, Civic Organisations, and the Political Socialisation of Second-Generation Immigrant Youth*, 42 J. Ethnic & Migration Stud. 425, 435 (2015). This supports the finding that children "are more likely to be civically and politically active if their parents are involved themselves." Humphries *et al.*, *supra*, at 1265.

These studies demonstrate that non-citizen voting can foster a culture of civic engagement that can increase political participation among native and naturalized citizens. These findings are especially significant to New York City, where immigrants are represented in almost 50% of the city's households. *See 2023 Annual Report*, *supra*, at 15 (demonstrating that 49.42% of New York City households are made up of immigrant, undocumented, or mixed-status families). Accordingly, by enfranchising lawful permanent residents and other similarly situated non-citizens, the Municipal Voting Law carries the potential to increase political participation by all New York City residents, including citizens.

B. Non-Citizen Electoral Participation Helps Achieve Effective Local Resource Allocation for the Greater New York City Population

As argued in a recent article on the influence of non-citizen enfranchisement on local resource allocation, and illustrated by the rich history of non-citizen voting

in New York City school board elections, non-citizen voting enables local governments to optimize resource allocation to directly address the needs of the diverse communities they serve. The effective targeting of resources can in turn yield significant benefits for the greater New York City population.

A recent article inspired in part by the Municipal Voting Law posits that, since non-citizens pay taxes and use public resources, non-citizen voting can improve a local government's ability to allocate public resources efficiently. Brian K. Strow & Claudia Strow, *How Does Allowing Noncitizens to Vote Affect Local Government?* 3, 6 (Ctr. for Growth & Opportunity at Utah State U., Working Paper, 2023). The authors approach the provision of public resources through the lens of two public finance models: Lindahl pricing, which is premised on the notion that individuals should be taxed in accordance with the marginal benefit they receive from public goods, and the Tiebout model, which suggests that competition across local governments can lead to the optimal allocation of public goods. *Id.* at 2. They conclude that non-citizen voting would optimize the allocation of public resources because it would provide local governments with more direct feedback about the preferences of the community members paying for those public resources. *Id.* at 3, 6.

The theory that non-citizen enfranchisement "increases economic efficiency, fairness, and societal utility by lowering information costs," *id.* at 6, finds support in

the nearly 35-year history of non-citizen voting in New York City school board elections. From 1969 to 2002, non-citizen parents of children attending a New York City school were eligible to vote in district school board elections, subject to certain age and residency requirements. N.Y. Educ. Law § 2590-c(3) (McKinney 1999); *see also* Ronald Hayduk, *Political Rights in the Age of Migration: Lessons from the United States*, 16 J. Int'l Migration & Integration 99, 115 (2015).[1] Non-citizen participation in school governance resulted in successful education reforms in some of the most overcrowded and under-resourced school districts in New York City. Hayduk, *supra*, at 116. The benefits of these reforms were enjoyed not only by non-citizen residents, but also by the wider district community. *Id*.

For example, in the 1980s, the schools in Washington Heights-based District 6 were the most overcrowded in the city and its students' reading scores were significantly lower than the citywide average. *See* Robert W. Snyder, *Crossing Broadway: Washington Heights and the Promise of New York City* 148 (2015); s*ee also* Tara Kini, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 Calif. L. Rev. 271, 311-12 (2005). Washington Heights was predominantly Dominican, *see* Hayduk, *supra*, at 116, and more than 80% of the

[1] The shift from centralized school policy decision-making to a more decentralized system of school governance was motivated by concerns about the lack of community participation in educational policy development and the need for a school system that responded to the diverse needs of different communities. *See* Barry D. Hovis, *New York City School Decentralization*, 3 U. Mich. J. L. Reform 228, 228 (1969).

children attending elementary and intermediate schools in District 6 were Dominican. *See* Ronald Hayduk & Kathleen Coll, *Urban Citizenship: Campaigns to Restore Immigrant Voting Rights in the US*, 40 New Pol. Sci. 336, 345 (2018).

Dominican community organizations mobilized non-citizen residents as voters to advocate for bilingual education programs and the construction of additional schools in the district. *See* Connor Smith *et al*., *Noncitizen Voting: The Evolving Case of New York City*, Zolberg Institute Working Paper Series, 12-13 (Jan. 6, 2024). A 1986 voter registration drive brought out 10,000 new parent voters, most of whom were Dominican non-citizen residents. *See* Hayduk & Coll, *supra*, at 345. These efforts led to increased Dominican representation on school boards and ultimately resulted in a 1989 commitment from Mayor Koch to give $300 million to District 6 to build eight new schools. *See* Kini, *supra*, at 311; *see also* Hayduk, *supra*, at 116.

The effects of the 1986 School Board Elections in Washington Heights—and similar case studies elsewhere in the United States—have been documented by immigration scholar Ronald Hayduk:

> As a result of this mobilization, the city devoted more funds to improve and build new schools in Washington Heights. In the end, it was not only Dominicans that benefited. All community residents—including older stock Irish, Italian, Jewish, Puerto Rican, and Black families who still lived there—benefited from improved education opportunities.
>
> Moreover, it was not just residents in Washington Heights who benefited: similarly, voter mobilization efforts yielded school budgets

> that grew in other districts in New York City, producing improvements in student and family outcomes.
>
> Importantly, these examples were not isolated to districts in New York City; similar positive results are also evident in other cities where immigrants have voted (and still do), such as in Chicago and in Maryland.

Hayduk, *supra*, at 116.

The history of non-citizen voting in New York City school board elections demonstrates that non-citizen enfranchisement can provide local governments with valuable feedback on the needs of their communities, the effects of local policies, and ultimately, the effective allocation of local resources.[2] Notably, no court has ever found that this practice interfered with the constitutional right of every citizen to vote in school board elections.

II. THE MUNICIPAL VOTING LAW DOES NOT VIOLATE THE NEW YORK STATE CONSTITUTION

The Appellate Division majority erred in holding that the Municipal Voting Law violates Article II, § 1 and Article IX of the Constitution. The Constitution enshrines the right of a qualified citizen to vote in local elections, but it does not set out an exclusive entitlement to vote. Accordingly, the New York City Council was entitled to adopt a local law extending the franchise to qualified non-citizen residents for the purposes of municipal elections.

[2] The termination of non-citizen voting in school board elections was not motivated by concerns about non-citizen voting. In 2003, community school boards were disbanded altogether and school governance was transferred to the Mayor's office. *See* Smith et al., *supra*, at 13.

A. The Appellate Division Majority Erred By Ignoring the Plain Language of the Constitution.

The paramount rule of constitutional interpretation requires courts to apply the plain language of the text. The Appellate Division majority overlooked the plain language of Article II, § 1 and Article IX and instead based its constitutional analysis on a misapplication of the maxim *expressio unius est exclusion alterius*.

It is well-established that the paramount rule of statutory interpretation is to give effect to the plain language of the text. *King v. Cuomo*, 81 N.Y.2d 247, 253 (N.Y. 1993). This rule carries particular importance "in the interpretation of a written Constitution, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State,'" *id.* (quoting *Settle v. Van Evrea*, 49 N.Y. 280, 281 (N.Y. 1872)), because it is "presumed that [the] framers understood the force of the language used." *Matter of Harkenrider v. Hochul*, 38 N.Y.3d 494, 511 (N.Y. 2022) (quoting *People v. Rathbone*, 145 N.Y. 434, 438 (N.Y. 1895)).

Rather than looking to the plain language of the constitutional text, the Appellate Division majority based its constitutional analysis on the *expressio unius* maxim, a rule of statutory interpretation that provides that "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded." *Fossella*, 225 A.D.3d at 115 (quoting *Colon v. Martin*, 35 N.Y.3d 75, 78 (N.Y. 2020)). The Appellate Division majority justified its reliance

on this maxim by noting that the "same rules apply to the construction of a Constitution as to that of statute law." *Fossella*, 225 A.D.3d at 115 (citing *Matter of Wendell v. Lavin*, 246 N.Y. 115, 123 (N.Y. 1927)).

However, as this Court recognized in *Wendell*, legislative intent cannot "modify the express provisions of the Constitution." *Wendell*, 246 N.Y. at 120. The *expressio unius* maxim "is not . . . an ironbound rule of law excluding in all cases from the operation of a statute those things which are not enumerated therein." N.Y. Stat. Law § 240 (McKinney 2024). It is "merely an aid in statutory construction where the wording is ambiguous" and "must yield to clear legislative intent." *Dening v. Cooke*, 295 N.Y.S. 724, 725 (N.Y. Sup. Ct. 1937). Absent ambiguity, the starting point for constitutional interpretation is always the plain language of the text.

The Appellate Division majority did not make any finding of ambiguity in the text of the Constitution prior to resorting to the *expressio unius* maxim, as required. This was clear error. Indeed, if the language is ambiguous, that would only bolster the Appellants' position, as ambiguous language cannot support a finding of a constitutional violation "beyond a reasonable doubt." (*See* Defendant-Appellant City Council of the City of New York Br. 11). An examination of the plain language of the Constitution would have made clear that—or, at the very least, raised a reasonable doubt that—the Constitution does not prevent local enfranchisement.

B. Article II, § 1 Does Not Create an Exclusive Entitlement To Vote.

The Appellate Division majority erred in holding that the phrasing of the Article II, § 1 right to vote necessitates an irrefutable inference that the legislature intended to exclude non-citizens from the electorate. The majority ignored the plain language of the text, conflated the constitutional right to vote with an exclusive entitlement to vote, and failed to give adequate weight to the legislative history of the suffrage provision, all of which contributed to its conclusion that Article II, § 1 prevents local enfranchisement.

Article II, § 1 of the Constitution provides:

> 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. N.Y. Const. art. II, § 1.

The plain language of Article II, § 1 provides constitutional protection for a qualified citizen's right to vote in elections. It prevents the state or local governments from interfering with this right by adding qualifications that are not reflected in the constitutional text. However, Article II, § 1 does not create an exclusive entitlement to vote, and accordingly, it does not prevent local governments from enfranchising others, such as non-citizens, for the purposes of local elections.

The unambiguous language of Article II, § 1 controls the interpretive exercise. *See Cuomo*, 81 N.Y.2d at 253. The introductory language, "Every citizen shall be

entitled," is inclusive. This can be contrasted with the exclusionary language in other state constitutions, such as the suffrage provision in the Florida State Constitution, which reads: "Only a citizen of the United States . . . shall be an elector of the county where registered." Fl. Const. art. VI, § 2. If the framers of the New York State Constitution intended to provide an exclusive entitlement to vote to those described in Article II, § 1, they would have used language that reflected this intent.

Furthermore, other provisions in the Constitution employ exclusionary language, suggesting that the drafters' choice to use inclusionary language in Article II, § 1 was intentional. *See, e.g.*, N.Y. Const. art. II, § 3 ("The legislature shall enact laws excluding from the right of suffrage . . . ."); N.Y. Const. art. III, § 7 ("No person shall serve as a member of the legislature unless he or she is a citizen of the United States . . . ."). As the Supreme Court has held, where a legislature "includes particular language in one section of a statute but omits it in another . . . it is generally presumed that [the legislature] acts intentionally and purposely in the disparate inclusion or exclusion." *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)).

The Appellate Division majority nonetheless held that only citizens may vote because Article II, § 1 references "citizens," and thus, an irrefutable inference should apply that non-citizens were intended to be excluded from the electorate. *Fossella*, 225 A.D.3d at 115. It is only by reading out the phrase "every citizen," and reading

in the phrase "only citizens," that the Appellate Division majority was able to interpret Article II, § 1 in this manner. As the Appellate Division majority itself recognized, "courts should not 'amend [the language] by inserting words that are not there' or 'read into [the language] a provision which the drafters did not see fit to enact.'" *Fossella*, 225 A.D.3d at 117 (alterations in original) (quoting *Matter of Chemical Specialties Mfrs. Assn. v. Jorling*, 85 N.Y.2d 382, 394 (N.Y. 1995)). However, this is precisely what the Appellate Division majority did: it turned a protection for citizens into a prohibition against non-citizens.

The basic error in the Appellate Division majority's interpretation is apparent when looking to other rights provisions in the Constitution. Consider, for example, the Constitution's freedom of speech provision, which provides that "[e]very citizen may freely speak, write, and publish his or her sentiments on all subjects . . . ." N.Y. Const. art. I, § 8. The Appellate Division majority's reasoning would prohibit the statutory extension of freedom of speech to non-citizens, since the reference to "every citizen" would require an irrefutable inference that *only* citizens were intended to have this right. This interpretation runs contrary to the plain language of Article I, § 8 and is clearly untenable in a free and democratic society.

Furthermore, the Appellate Division majority's reasoning reveals an underlying confusion between the constitutionally protected *right* to vote and an *exclusive entitlement* to vote. The constitutional protections afforded under Article

II are certainly exclusive to those who meet the qualifications set out in Article II, § 1, such that a non-citizen, non-resident, or person under the age of eighteen cannot challenge their exclusion from the electorate on the basis of Article II. However, Article II, § 1 does not restrict the entitlement to vote to those who have a constitutionally protected right to vote. In other words, Article II, § 1 does not prevent governments from expanding the franchise to those who do not meet the qualifications for constitutional protection.

The Plaintiffs-Respondents make the same erroneous conflation between a constitutionally protected right and an exclusive entitlement in their submissions to this Court. In support of the argument that Article II, § 1 sets out an exclusive entitlement to vote, they cite to *Hopper v. Britt*, 203 N.Y. 144 (N.Y. 1911), in which this Court stated that "[t]he qualifications of voters are prescribed by section 1 of article 2 of the Constitution, and those qualifications are exclusive." (Plaintiffs-Respondents Br. 9, citing *Hopper*, 203 N.Y. at 150). However, the *Hopper* court did not opine that *voting* is exclusive to those described in Article II, § 1, but rather that the *qualifications* set out in that section are exclusive, such that governments may not disenfranchise qualified electors on the basis of new qualifications. This is confirmed by the *Hopper* Court's holding that the legislature's power to prescribe the method of conducting elections "cannot be so exercised as to disfranchise constitutionally qualified electors" and that "any system of election that

unnecessarily prevents the elector from voting . . . violates the Constitution." *Hopper*, 203 N.Y. at 150 (emphasis added). Accordingly, *Hopper* reaffirms that Article II, § 1 is concerned with voter protection, not voter limitation, and supports the Appellants' position.

Furthermore, even if Article II, § 1 were found to be ambiguous, the legislative history of the suffrage provision suggests that it was designed to protect against disenfranchisement, and not to prevent enfranchisement. This Court canvassed the early legislative history of Article II, § 1 in *Johnson v. New York*, 274 N.Y. 411 (N.Y. 1937) and held that "[n]o one can read the history of . . . changes in the early Constitution without realizing that the object of the change in the law made by [the State Constitution of 1821 and the State Constitution of 1826] was to remove the disqualifications which attached to the person of the voter." *Id.* at 418.[3] Similarly, in *Blaikie v. Power*, 13 N.Y.2d 134 (N.Y. 1963), this Court held that Article II, § 1 was designed to "protect otherwise qualified voters from electoral discrimination." *Id.* at 140. The aim of Article II, § 1 was "solely to remove the disqualifications" associated with, *Id.*, and thereby expand the category of people entitled to, this important constitutional protection. There is no record of any intent to protect an electorate comprised solely of those outlined in Article II, § 1.

[3] These changes included the removal of qualifications such as paying property taxes or performing military or public labor duties. *Johnson*, 274 N.Y. at 418.

It was only by circumventing the plain language of Article II, § 1 with the *expressio unius* maxim, construing the constitutional right to vote as an exclusive entitlement to vote, and ignoring the legislative history of the suffrage provision that the Appellate Division majority was able to conclude that "only citizens" are entitled to vote. But each of these factors supports the contrary conclusion: that Article II, § 1 protects, and does not limit, the franchise.

C. Non-Citizen Residents Are "People" as Defined in Article IX of the Constitution.

The Appellate Division majority further erred in holding that the definition of the "people" that constitute a local electorate pursuant to Article IX is exclusive to those with an Article II, § 1 right to vote. In arriving at this conclusion, the Appellate Division majority circumvented the plain language of the definition of "people" and failed to give sufficient weight to the Constitution's specific interpretive directive in Article IX, § 3c, both of which support an inclusive reading of the term "people."

Article IX sets out the rights, powers, privileges and immunities of local governments, including the right to a legislative body elected by "the people thereof" and the power to adopt local laws. N.Y. Const. art. IX, § 1. Article IX, § 3d provides that the term "people" "shall mean or include" those with a right to vote under Article II, § 1. *Id.* art. IX, § 3d. The Appellate Division majority held that Article IX incorporated by reference the qualifications in Article II, § 1, including citizenship, such that only citizens are entitled to vote in elections for local governments.

Fossella, 225 A.D.3d at 119. However, the plain language of Article IX provides that the electorate of a local government must include, but is not restricted to, those with a constitutional right to vote under Article II, § 1.

The phrase "shall mean or include" as used in Article IX expressly conveys that the definition is meant to be inclusive. *See Bank of Am., N.A. v. Kessler*, 39 N.Y.3d 317, 324-5 (N.Y. 2023) ("The word 'include' suggests that more can be added . . . ."); *see also Red Hook Cold Storage Co. v. Department of Labor*, 295 N.Y. 1, 8 (N.Y. 1945). The rights provided in Article IX, § 1 cannot be construed as exclusive to those with an Article II, § 1 right to vote unless the words "or include" are read out of Article IX, § 3d entirely, and as this Court has recognized, it must be presumed that the framers "understood the force of the language used" and framed the Constitution "deliberately and with care." *Harkenrider*, 38 N.Y.3d at 511; *Cuomo*, 81 N.Y.2d at 253. Where the framers intended to restrict the meaning of certain terms to the definitions provided in the Constitution, they used language that reflected this intent. For example, Article V, § 7c states that "the term 'public officer' shall mean" one of the positions set out in the extensive and detailed list that follows. N.Y. Const. art. V, § 7c.

Furthermore, Article IX contains an interpretive directive that lends further support for an inclusive reading of the term "people" and, as part of the constitutional text, supersedes any other rules of statutory interpretation: "Rights, powers,

privileges and immunities granted to local governments by this article shall be liberally construed." N.Y. Const. art. IX, § 3c. As this Court has recognized, the 1963 amendments that introduced Article IX were "intended to expand and secure the powers enjoyed by local governments," *Wambat Realty Corp. v. State of New York*, 41 N.Y.2d 490, 496 (N.Y. 1977), and recognize that "essentially local problems should be dealt with locally." *Matter of Kelley v. McGee*, 57 N.Y.2d 522, 535 (N.Y. 1982). Accordingly, if there is any doubt or ambiguity as to whether the definition of "people" in Article IX, § 3d restricts the ability of the New York City Council to expand the municipal franchise, that ambiguity must be resolved in favor of the City Council. The power to adopt local laws under Article IX must be liberally construed to allow municipal governments to deal with local problems—such as the lack of representation for non-citizen residents—locally.

In holding that the definition of "people" is exclusive to those with a constitutional right to vote under Article II, § 1, the Appellate Division majority relied on a 1960 decision about a tax statute. *Matter of United States Steel Corp. v. Gerosa*, 7 N.Y.2d 454 (N.Y. 1960). In *Gerosa*, this Court interpreted the phrase "shall mean or include" as evidencing an intent to restrict the application of the provision to the listed categories, and to exclude any unlisted categories. *Id.* at 459. However, *Gerosa* is distinguishable. *First, Gerosa* involved the interpretation of a tax statute, and as explained above, the plain language of the text carries special

weight when interpreting a constitution. *Cuomo*, 81 N.Y.2d at 253. *Second*, the *Gerosa* court cited only to *Jackson v. Citizens Casualty Co.*, 277 N.Y. 385 (N.Y. 1938) in support of its conclusion, which did not deal with the interpretation of "shall mean or include" but rather held that the "specific mention of those to whom [the provision applies] implies the exclusion of others." *Jackson*, 277 N.Y. at 390. This is simply a rewording of the *expressio unius* maxim, which, as discussed in Section II.A, *supra*, cannot supplant the plain language of the constitutional provision. *Finally*, unlike Article IX of the Constitution, the tax statute in *Gerosa* did not contain an interpretive directive requiring a liberal construction of the city's taxation powers. *Gerosa*, 7 N.Y.2d at 459.

The plain language of the definition of "people" and the interpretive directive in Article IX do not support—or, at minimum, raise a reasonable doubt regarding—the Appellate Division majority's conclusion that "people" refers exclusively to those with an Article II, § 1 right to vote. Both the plain language and the interpretive directive point to an inclusive definition that allows local governments to enfranchise non-citizen residents for the purposes of local elections.

CONCLUSION

For the reasons set forth above, Amici respectfully urge this Court to reverse the decision below and rule that the New York State Constitution does not prohibit non-citizen voting in local elections. This will ensure that the issue of non-citizen

voting is determined by the democratically elected representatives of the people of New York, and it will allow New York City residents to enjoy the benefits of increased civic engagement secured through the Municipal Voting Law.

Respectfully Submitted,

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Dated: November 1, 2024

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limitation of Rule 500.13(c) of the New York Court of Appeals Rules of Practice because this document contains 5,200 words, excluding the parts of the document exempted by Rule 500.13(c)(3) of the New York Court of Appeals Rules of Practice.

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