APL-2024-00033

To be argued by:
MACKENZIE FILLOW
15 minutes requested

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,

(caption continued inside)

REPLY BRIEF FOR THE CITY COUNCIL OF THE CITY OF NEW YORK

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

Defendants-Intervenors-Appellants,

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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PRELIMINARY STATEMENT

The City Council determined that Local Law 11 of 2022 will enhance democratic accountability in the City of New York's government by allowing noncitizens with green cards and work authorizations to vote in local elections, thereby better aligning the voter pool with the people who both live and work in our city and thus have a stake in local governance. Plaintiffs identify no valid basis to nullify this exercise in local democracy.

On their State Constitution claim, plaintiffs bear the heavy burden of showing that the Constitution and Local Law 11 are impossible to reconcile, and they have not come close. Instead, plaintiffs double down on the Appellate Division's threshold error, treating article IX—the part of the Constitution governing local home rule and conferring local control over local elections—as an afterthought.

When article IX is confronted rather than ignored, and when its express rule of construction in favor of effective local self-governance is honored rather than cast aside, there is no doubt that the Constitution can reasonably be read to allow the City to expand

the voter pool for local elections. Plaintiffs never really argue otherwise. Their notion that the Constitution also permits another reading is not nearly enough to satisfy their heavy burden.

On their Municipal Home Rule Law claim, plaintiffs have not shown that Local Law 11 changes the "method" of electing an officer, requiring a referendum. An increase to the pool of eligible voters does not change the "method" of electing local officers, as this Court recently confirmed in defining the term "method" in a similar election context. City officers will still be elected by the same method: secret ballot that varies with the type of election.

On their Election Law claim, plaintiffs' failure to cross-appeal, where the Appellate Division vacated the judgment's declaration that Local Law 11 violated the Election Law, is jurisdictionally fatal. In any event, the Election Law is no barrier to the local law. To be sure, the Election Law, in contrast to the State Constitution, provides that only citizens may vote—a rule that holds sway in federal and state elections. But the Election Law also gives localities leeway to adjust its default rules within constitutional bounds in local elections, where home rule authority is at its apex.

Thus, the Election Law expressly provides that it yields to "any other law," including this one, unless otherwise specified. This Court should reject plaintiffs' invitation to find ambiguity where there is none.

ARGUMENT

POINT I

PLAINTIFFS HAVE NOT SHOWN IT IS IMPOSSIBLE TO RECONCILE LOCAL LAW 11 WITH THE CONSTITUTION

Plaintiffs studiously ignore the legal standard that governs challenges under the State Constitution. This Court presumes that duly enacted laws are constitutional, and takes every reasonable step to reconcile them with the Constitution. *Stefanik v. Hochul*, 42 N.Y.3d __, 2024 N.Y. Slip Op. 04236, at *7 (Aug. 20, 2024); *White v. Cuomo*, 38 N.Y.3d 209, 216 (2022). Plaintiffs bear the heavy burden of proving that such reconciliation is "impossible." *Stefanik*, 2024 N.Y. Slip Op. 04236 at *7. Where there is doubt on that score, the law must be upheld. *Id*. at *16-17.

Plaintiffs don't even claim to have met this demanding standard. On the contrary, plaintiffs' brief essentially concedes that our interpretation of the State Constitution is an available one,

even if they maintain it is not the best interpretation (*see, e.g.*, Brief of Plaintiffs-Respondents ("Resp. Br.") 19). That concession by itself shows there is reasonable doubt about what the Constitution permits, and nothing more is required to reject plaintiffs' constitutional challenge.

A. Plaintiffs barely address article IX, the relevant part of the Constitution.

The governing constitutional text confirms what plaintiffs' brief effectively concedes. Article IX of the State Constitution, not article II, is the starting point for understanding the City's authority here, since that article sets forth the "rights powers, privileges and immunities" of local governments. As explained in our opening brief (Brief for Appellant City Council ("App. Br.") 11-14), the City has broad powers to experiment when it comes to the election of local officers. *See, e.g.*, *Resnick v. Ulster County*, 44 N.Y.2d 279, 286 (1978) (cities have "great autonomy in experimenting" with election practices). Plaintiffs don't dispute this, nor could they. In fact, plaintiffs spend only a fraction of their

brief even addressing article IX, instead focusing mainly on article II (Resp. Br. 7-17, 23-28).

When plaintiffs do address article IX, they advance a more limited reading than ours (Resp. Br. 17-22), which may very well be a permissible reading. But it is not the *only* permissible reading. And where two interpretations of article IX are available, plaintiffs run up against not only the "impossibility" standard that applies to constitutional construction generally (*see supra* at 3-4), but also the specific rule of construction embedded in article IX itself: local governments' "rights, powers, privileges and immunities," including those concerning the organization of local government under section 1, "shall be liberally construed" consistent with the article's core purpose of promoting "[e]ffective local self-government." Art. IX, §§ 1, 3(c).

The home-rule article's autonomy-promoting purpose—and thus its rule of liberal construction—are squarely implicated here, where the City Council has acted to address an acute local representation problem (*see* App. Br. 5-7). Against this backdrop,

plaintiffs don't even seriously claim their interpretation is the only reasonable way to read article IX.

Article IX, section 1 provides that certain officers shall be elected "by the people" of the locality. Art. IX, §1(a) & (b). Article IX's list of definitions goes on to explain what several terms used in the article "mean or include." Among those terms is "the people"—those who elect local officers—which is defined to "mean or include" the "[p]ersons entitled to vote as provided in section 1 of article two of this constitution." *Id.* § 3(d)(3). And article II (which governs statewide elections) simply states that "[e]very citizen shall be entitled to vote," subject to certain age and residency requirements. *Id.* art. II, § 1.

As they did below, plaintiffs admit that "mean" and "include" can have "significantly different definitions" that are "to some degree incompatible" (Resp. Br. 19). The very case they cite confirms the uncertainty: "it hardly can be said that the words plainly and without ambiguity import" one meaning "to the exclusion of" another. *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 125 n.1 (1934). Thus, plaintiffs virtually concede that the restrictive

reading is not the only permissible one, as required for them to prevail here, where a liberal construction is required.

Indeed, plaintiffs readily acknowledge that "include" can be used to introduce a non-exhaustive set (Resp. Br. 19). While "mean" is more limiting, this Court has held that the word "include" is a term of enlargement that "contemplates the addition of something else." *Bank of America v. Kessler*, 39 N.Y.3d 317, 325 (2023); *see also Cahill v. Rosa*, 89 N.Y.2d 14, 21 (1996) (refusing to read "include" in limiting way); *Matter of Juarez v. NYS Office of Victim Servs.*, 36 N.Y.3d 485, 500 n.4 (2021) (Wilson, J., concurring) (noting that "include" in a definition is often meant to be expansive). The term "people" is plainly susceptible to an expansive construction, since it can be understood to identify a set of persons who must be included—citizens—without precluding the addition of others.[1]

Contrary to plaintiffs' contentions (page 20), *United States Steel Corp. v. Gerosa*, 7 N.Y.2d 454 (1960), does not require

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[1] This is especially so given that noncitizen voting is hardly a departure from American tradition. As one amicus put it, "Noncitizen voting is as American as apple pie and older than baseball." Appellate Division Amicus Brief of Professor Hayduk at 6.

otherwise. *Gerosa* was a statutory construction case addressing the City's taxation powers under a state statute. *Id.* at 458-60. Those powers are strictly construed, as taxation is not an area of local home-rule authority. *Id.* at 459; *see also County Secur., Inc. v. Seacord*, 278 N.Y. 34, 37 (1938). So doubts about the meaning of the statutory text in that case redounded in favor of the petitioner.

As we have explained, for two reasons, the opposite is true of the constitutional text at issue here. First, plaintiffs are required to prove that the Constitution and the local law are impossible to reconcile, as anyone mounting a constitutional challenge to a legislative enactment must. Second, they must also confront article IX's express dictate that its provisions be liberally construed to promote local democracy. And article IX's core principles of local autonomy and self-governance are squarely implicated in this case, as it involves a local law addressing voter eligibility in local elections. Whatever "mean or include" may signify in other contexts, reading "include" to afford local governments leeway to expand the local electorate is the only approach that honors the legal principles governing this constitutional challenge.

And plaintiffs are mistaken in accusing us of rendering the term "mean" in the phrase "mean or include" entirely superfluous (Resp. Br. 19). Our reading easily gives import to each word in the article. The word "mean" plainly applies, for example, to the term "special law," another of the defined terms in the series. As plaintiffs themselves assert, the word "mean" is particularly apt where a term and its definition are "interchangeable equivalents" (Resp. Br. 19). And "special law" is precisely such a concept, as it is defined as a law that "applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages." Art. IX, § 3(d)(4). The Council's reading introduces no surplusage.

Nor does our reading open "Pandora's box," as plaintiffs claim (Resp. Br. 21). We do not contend that article IX *requires* municipalities to expand the franchise, only that it *allows* them to . As is true of many laws, the article sets a floor but not a ceiling. And the idea that different localities may come to different conclusions as to how to best effectuate self-governance is hardly "unprecedented" (Resp. Br. 21). That's the point of municipal home

rule. When it comes to the affairs of the municipality, localities can decide for themselves how to do things. *See City of N.Y. v. Patrolmen's Ben. Ass'n*, 89 N.Y.2d 380, 287 (1996) (cities have "significant autonomy" on "local matters").

B. Article II, section 1 does not help plaintiffs, since it does not directly apply to the election of local officers.

Like the Appellate Division majority, plaintiffs misplace their focus on article II, section 1. As explained in our opening brief (at 23-29), that provision does not directly apply to elections of local officers. To be sure, the provision is referenced in article IX, but that

reference must be understood through the lens of article IX's autonomy-promoting rule of construction (*see supra* at 5-6).[2]

Looking for a way around that rule of construction, plaintiffs insist that article II, section 1 applies directly to local elections. Such an interpretation was always wrong, as we explain below, but it makes no sense at all in the light of the later-adopted article IX expressly addressing local government's home-rule powers. If article IX's drafters believed that article II, section 1 independently applied to local elections, there would have been no reason for them

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[2] Plaintiffs argue that the *expressio unius* canon compels a restrictive reading of article II, section 1. But the section's language is phrased as an affirmative right for citizens, so application of the *expressio unius* canon would merely mean that only citizens meeting the terms of that section are "guarantee[d] the right to vote," *Stefanik*, 2024 N.Y. Slip Op. 04236 at *11-12, not that the section would preclude others from being authorized to vote by legislative enactment. Additionally, this Court rejected a similar argument in *Stefanik*, where the plaintiffs relied on the canon to claim that section 2, by enumerating categories of voters who could be legislatively authorized to vote absentee, precluded other categories of voters from being similarly authorized. This Court questioned whether the canon even applies to constitutional interpretation, *id.* at *22, but in any event declined to rely on it to "reaffirm and entrench historic barriers to the franchise," *id.* at *53 (Rivera, J., concurring), where the underlying constitutional history reflected an intention to "*broaden* voter participation," *id.* at *22 (Wilson, J., for the majority). Section 1 is likewise the product of a progressive expansive of the franchise, *see Blaikie v. Power*, 13 N.Y.2d 134, 140 (1963), and this Court should be similarly reluctant to interpret it to erect barriers to voting. And plaintiffs' negative implication theory is even weaker here because, as explained, article IX governs local elections and its express rule of liberal construction is an additional—and dispositive—obstacle.

to reference that provision in article IX itself. Whatever the case may have been before article IX's adoption, today that article is the authoritative source on the core constitutional parameters for the election of local officers.

Plaintiffs also misread the historical caselaw recognizing that article II, section 1 did not apply to local elections—even in the absence of article IX. *See Spitzer v. Fulton*, 172 N.Y. 285 (1902); *Blaikie v. Power*, 13 N.Y.2d 134, 144 (1963) (Burke, J., concurring); *Matter of Carrick*, 183 A.D. 916 (4th Dep't 1918). In *Spitzer*, this Court squarely held that article II, section 1 applied to statewide elections, not local elections. 172 N.Y. at 289. To be sure, *Spitzer* involved a village's finances, as noted in our opening brief (at 25-26), but this Court used expansive language when it rejected plaintiffs' argument that a voting requirement was unconstitutional because article II, section 1 prescribed "the right to vote for elective officers and upon all questions which may be submitted to the vote of the people," *id.* at 289, holding that the article was not meant to define the voting pool for "questions relating to the financial interests *or private affairs* of the various

cities or incorporated villages of the state." *Id.* (emphasis added). The concept of a city's private affairs includes the conduct of its elections; the election of the Mayor of Buffalo, for instance, concerns Buffalo only, not everyone in the state. And even if *Spitzer* could be read two different ways, that would only show that there is reasonable doubt and thus still require reversal. *See Stefanik*, 2024 N.Y. Slip Op. 04236 at *16-17 (two plausible interpretations of caselaw add to uncertainty about Constitution's requirements).

But there can be no doubt that *Spitzer* applies more broadly than plaintiffs contend. This Court relied on *Spitzer* to uphold voting laws that had nothing to do with finances in *Johnson v. City of New York*, 274 N.Y. 411 (1937), and *Blaikie*, 13 N.Y.2d at 140-41. While plaintiffs claim the Court's analysis in those cases shows that it applied article II, section 1, *Johnson* quoted *Spitzer* at length, repeating its holding that article II, section 1 applies only to elections that "affect the public affairs of the state." 274 N.Y. at 419-20. And *Blaikie* held that *Johnson* was "dispositive." 13 N.Y.2d at 138. To the extent that other language in *Blaikie* engaged with article II, the majority at most assumed for argument's sake that

the article applied, and the concurrence squarely rejected the notion. *Id*. at 144 (Burke, J., concurring).

Consistent with this caselaw, the State Legislature has long acted on the understanding that article II, section 1 applies to statewide elections only. For decades before home rule, the Legislature defined the franchise for local elections in ways that diverged from article II, section 1 (*see* App. Br. 23-25). The Legislature certainly was of the view that article II, section 1 was inapplicable when it came to defining the voter pool in local elections. Plaintiffs have no answer to this point.

Plaintiffs nonetheless claim that references in other sections of article II to cities, counties, and villages prove that section 1 applies to local elections (Resp. Br. 12-13). But of course, elections for statewide office take place in cities, counties, and villages, and article II, section 1 certainly applies to those elections. *Cf. Hoerger v. Spota*, 21 N.Y.3d 549, 553 (2013) (municipalities have no power

to change terms of statewide office). That does not mean that article II, section 1 governs the election of local officers.[3]

Plaintiffs finally claim that *People ex rel. Smith v. Pease*, 27 N.Y. 45, 63 (1863), decided the precise question at issue here (Resp. Br. 16). But that's mistaken as well. The *Pease* Court assumed that noncitizens could not vote—no party argued otherwise—and that assumption was correct at the time. In 1863, no law authorized noncitizens to vote. Moreover, *Pease* was decided long before article IX's enactment in 1963 and says nothing about municipal home-rule powers today. Whatever the state of affairs was in 1863, today it is undisputed that article IX gives cities "significant autonomy" to act on "local matters." *City of N.Y. v. Patrolmen's Ben. Ass'n*, 89 N.Y.2d 380, 387 (1996).

* * *

[3] This Court need not decide whether article II, sections 5 and 7 apply to elections for purely local office as neither is relevant here. But section 5 merely provides that registration is not required for certain local elections, while section 7 addresses the manner of voting, not who can vote. Neither suggests that section 1 directly regulates—and restricts—who can vote in local elections.

The City Council has the power to experiment with local elections in an effort to enhance local democracy. The effort cannot be rejected just because some may find discomfort in the unfamiliar. "We must not shudder every time a change is proposed." *Johnson v. N.Y.*, 274 N.Y. 411, 430 (1937). Not all experiments succeed, of course; not all change yields progress; and not all will agree about what counts as progress in any event. But our Constitution plainly and deliberately affords local governments broad room for experimentation in local affairs. Plaintiffs have failed to grapple with that principle and have failed to show that Local Law 11 is unconstitutional beyond a reasonable doubt.

POINT II

PLAINTIFFS HAVE NOT SHOWN THAT LOCAL LAW 11 CHANGES THE METHOD OF ELECTING OFFICERS AND THUS REQUIRES A REFERENDUM

Plaintiffs have no real answer to our points about the Municipal Home Rule Law. They completely ignore the law's plain language and structure (*see* App. Br. 31-33). They don't dispute that a referendum is the exception to the rule (*see* App. Br. 30-31). They

don't identify a basis for the Appellate Division majority's "far-reaching implications" test (*see* App. Br. 34-35). Nor do they defend the majority's incorrect belief that the local law somehow authorized noncitizens to hold local elective offices, not just vote for them (*see* App. Br. 34-35). They don't seriously grapple with our arguments at all.

To succeed on their referendum claim, plaintiffs must show that Local Law 11 changes the "method of nominating, electing or removing an elective officer." Mun. Home Rule Law § 23(2)(e). And this Court recently confirmed our interpretation of the word "method" in a similar context. *Stefanik*, 2024 N.Y. Slip Op. at *26-27. *Stefanik* considered article II, section 7, which provides that certain elections shall be "by ballot, or by such other *method* as may be prescribed by law" (emphasis added). This Court defined a method as "a procedure or process for attaining an object"—the same definition we relied on in our opening brief (App. Br. 31). 2024 N.Y. Slip Op. at *25-28. There is no reason to interpret the word "method" in a such a fundamentally different way under the

Municipal Home Rule Law that it would have the effect of sweeping in increases of the voter pool.

Ignoring the plain language of the statute, plaintiffs instead claim that a referendum was required because Local Law 11 changes the "eligibility criteria" for voters (Resp. Br. 30). The Municipal Home Rule Law says nothing about changes to eligibility criteria for voting. And while we can find no case addressing changes to *voter* eligibility criteria, the Appellate Division has held that changes to *candidate* eligibility criteria do not require a referendum. In *Holbrook v. Rockland County*, 260 A.D.2d 437, 437 (2d Dep't 1999), a county adopted a "two hat" law prohibiting a person from simultaneously holding two different elected positions. The plaintiff, a member of the local legislature and also town supervisor, argued that the law changed the "term" and "power" of an elected officer and thus required a referendum. The Appellate Division rejected that argument, stating that a "new eligibility requirement" did not require a referendum. So too here. Eligibility to vote is distinct from the method of voting, and did not require a referendum.

As plaintiffs note, a referendum may be required if the Council changes an officer's selection method from appointment to election—two fundamentally distinct methods of selecting officers (Resp. Br. 29). But that observation has no absolutely bearing here, where all officers will continue to be elected in the same manner.

Plaintiffs further claim that a referendum was required here because Local Law 11 supposedly "replac[es] the existing electorate" with "a differently-constituted electorate" (Resp. Br. 29-30). This is incorrect; the law may increase the size of the voter pool by adding new voters, but everyone who could vote before can still vote. No one has been replaced. And more to the point, the change to the eligible voter pool has no effect on the *method* of electing officers. After all, plaintiffs concede that changing district boundary lines does not require a referendum (*id.* at 29), and that also changes the composition of a district's voter pool. *See Baldwin v. Buffalo*, 6 N.Y.2d 168, 175 (1959) (change of boundary lines does not change "mode of selection").

Plaintiffs' arguments ignore a basic reality about New York City. It is not a crypt with an unchanging population. It is a living,

breathing city of over eight million people, constantly attracting new residents while seeing others leave. The characteristics of the voter pool are different in every election. Such changes do not require a referendum.

POINT III

PLAINTIFFS CANNOT REVIVE THEIR ELECTION LAW CLAIM, WHICH HAS NO MERIT IN ANY EVENT

A. Plaintiffs' failure to cross-appeal bars consideration of their election law claim.

Though plaintiffs lost on their Election Law claim before the Appellate Division, they now try to revive the claim by styling it as "an alternative ground for affirmance" (Resp. Br. 32). But that characterization is mistaken, and the claim is jurisdictionally barred.

At bottom, plaintiffs are trying to rewrite the Appellate Division's order and restyle their own lawsuit. They suggest that all they have ever sought in this case is a simple declaration that Local Law 11 is "null and void" (Resp. Br. 33). But the truth is that they demanded a judgment declaring that the law violates the Election Law *specifically* (*see* R1412 (seeking judgment "declaring

that the [law] is void as violative of the … State Election Law")). And the judgment plaintiffs obtained from Supreme Court granted them that relief, declaring that law violates the Election Law *specifically* (*see* R22 (declaring law "void as violative of … the New York State Election Law")). They also sought and received declarations that the local law violated the State Constitution and Municipal Home Rule Law.

The problem for plaintiffs—one the argument section of their brief does not even acknowledge—is that the Appellate Division "modified" the judgment to excise the relief pertaining *specifically* to the Election Law (R1842). The court "delet[ed] the provision" of the judgment "declaring [the law] null and void on the ground that it violates the New York State Election Law," and in its place, substituted a provision granting "summary judgment dismissing [the claim] and, in effect, declaring that the Local Law does not violate the New York State Election Law" (*id.*). So when the court remitted for the ministerial step of entering a new judgment, it made clear that the only relief that plaintiffs were entitled to is a declaration that Local Law 11 is "void on the grounds that it

violates the New York State constitution and Municipal Home Rule Law" (*id.*).

To affirm, this Court would therefore have to conclude that Local Law 11 violates both the State Constitution and the Municipal Home Rule. It makes no sense for plaintiffs to suggest that the Court could affirm on neither of these grounds, but rather a third ground that the Appellate Division deliberately omitted from the decretal language defining the scope of the declaratory judgment. That is not an "alternative ground" for affirmance; that is a proposal to modify the Appellate Division's order to direct entry of a different and additional declaration—one that is incompatible not just with the Appellate Division's underlying reasoning, but also with the specific relief that court awarded.

Stated differently, plaintiffs cannot simply wave away the inconvenient fact that the Appellate Division modified, rather than affirmed, the judgment entered by Supreme Court. That disposition was not meaningless. The court vacated the judgment in plaintiffs' favor to the extent it declared that Local Law 11 violates the Election Law. Plaintiffs were aggrieved by that aspect of the

Appellate Division's order. *See generally Parochial Bus. Sys., Inc. v. Bd. of Educ.*, 60 N.Y.2d 539, 544-45 (1983). And their failure to pursue a cross-appeal bars consideration of their Election Law claim. *See 511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 98 N.Y.2d 144, 151 n.3 (2002); *Kelly's Rental, Inc. v. N.Y.*, 44 N.Y.2d 700, 702 (1978) (declining to grant affirmative relief to non-appealing respondent).

B. In any event, the Appellate Division correctly rejected plaintiffs' Election Law claim.

Even if plaintiffs' Election Law claim were properly before the Court, it would fail. The Appellate Division correctly declared that Local Law 11 does not violate Election Law § 5-102. Unlike the State Constitution, Election Law § 5-102 is framed as a prohibition: "[n]o person" may vote "unless he is a citizen of the United States." But § 1-102, titled "Applicability of chapter," provides that the Election Law yields to "any other law" that specifically addresses a matter covered therein, unless a particular provision of the Election Law explicitly says otherwise. Section 5-102 does not say otherwise, so it must yield to "any other law," which by its plain terms includes

a local law regulating local elections. Accordingly, the City has the power to depart from § 5-102's default rule in local elections, within the bounds of the federal and state constitutions.

1. The Legislature followed a well-worn path in setting default rules and allowing local governments to supersede them.

That result may initially seem surprising, but a deeper look shows that it is not. Local governments have long been authorized to supersede state law under certain circumstances. The Vehicle and Traffic Law, for example, permits the City to supersede state law on a variety of important traffic-related matters. VTL § 1642; *People v. Torres*, 37 N.Y.3d 256, 268 (2021). And more broadly, local governments are permitted to supersede special state laws—laws that do not apply alike to all municipalities in the same category—where they relate to local property, affairs, or government. *See, e.g.*, *Kamhi v. Yorktown*, 74 N.Y.2d 423, 429-30 (1989); *Murray v. Town of N. Castle*, 203 A.D.3d 150, 160-61 (2d Dep't 2022).

It makes complete sense that the Legislature would designate the Election Law as an area where local governments may supersede state rules when it comes to local elections.

Municipalities have long had "great autonomy in experimenting" with election practices. *Resnick*, 44 N.Y.2d at 286. Indeed, § 1-102 simply codifies longstanding caselaw holding that a "municipality is empowered to modify an election law in so far as that law affects the property, government or affairs of the municipality." *Bareham v. Rochester*, 246 N.Y. 140, 149 (1927). Under this precedent, the Council could supersede the Election Law as to local election matters even without § 1-102's express authorization.

But this power is not limitless. The default rule of Election Law § 1-102 is subject to key constraints as it regards local enactments. First, local lawmaking power does not reach federal or state elections, which do not involve a locality's "property, affairs or government." So the rules of the Election Law will govern federal and state elections, absent contrary federal or state law.

Second, as § 1-102's plain text provides, the Legislature may specify that certain provisions of the Election Law will not give way to local enactments as to local elections where that is its intention. Thus, § 1-102 does not allow the City to supersede the parts of the Election Law that the Legislature has indicated apply

notwithstanding any other law. *See, e.g.*, Elec. Law § 14-120(3) (campaign contributions of limited liability companies); § 17-220 (John R. Lewis Voting Rights Act of New York). And federal law, including the Voting Rights Act, also cabins local discretion by, for example, prohibiting political subdivisions from engaging in voter suppression tactics. *See, e.g.*, 52 U.S.C. § 10301.

Subject to those limits and applicable constitutional constraints, the City may depart from the Election Law's default rules in local elections. That state of affairs makes good sense: control over local elections is a core principle of home rule. *See, e.g.*, *Resnick*, 44 N.Y.2d at 286; *Blaikie*, 13 N.Y.2d at 144 (Burke, J., concurring). In authorizing municipalities to supersede the Election Law with regard to local elections, the Legislature merely recognized that longstanding principle.

2. The plain text allows local governments to supersede the Election Law's default rules unless expressly prohibited.

The Election Law says that it yields to "any other law." Elec. Law § 1-102. As the Appellate Division correctly found, "any other law" includes a local law (R1838-39).

The only other appellate court to consider § 1-102 likewise agreed that it means exactly what it says. In *City of New York v. Board of Elections*, Supreme Court expressly upheld a local law governing City Council vacancies, even though it was inconsistent with the Election Law, explaining that "the Election Law gives way to inconsistent local law provisions." 1991 N.Y. Misc. LEXIS 895 (Sup. Ct., N.Y. Cnty. Apr. 3, 1991). The court noted some ambiguity in the legislative history but found that it could not ignore the plain and clear language of the statute. *Id.* The First Department affirmed for the reasons given by Supreme Court, and this Court denied leave to appeal. 1991 N.Y. App. Div. LEXIS 18134 (1st Dep't Apr. 5, 1991), *lv. denied*, 1991 N.Y. LEXIS 6169 (Apr. 10, 1991).[4]

And just six months after that decision, the Legislature added the exact same language from § 1-102 to General City Law § 8, the Municipal Home Rule Law § 28, and County Law § 105, all of which

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[4] A federal court came to the same conclusion, finding § 1-102 "unambiguous" and presuming legislators "meant what they wrote." *Castine v. Zurlo*, 938 F. Supp. 2d 302, 313 (N.D.N.Y. 2013), *vacated on other grounds*, 756 F.3d 171 (2d Cir. 2014). A Supreme Court decision came to a different conclusion without mentioning the contrary precedent or acknowledging the plain language. *Castine v. Zurlo*, 46 Misc. 3d 995, 999-1001 (Sup. Ct. Clinton Cnty. 2014).

provide that the Election Law governs the conduct of certain local elections unless a provision of "any other law" says otherwise. L.1991, ch.727. The insertion of this language into laws that specifically address local elections makes it even clearer that "any other law" includes any local law.

Nor is it unusual for the Legislature to treat the word "law" broadly. Municipal Home Rule Law § 2, for example, expressly defines the word "law" to include a "charter or local law". And § 28 uses the phrase "any other law" in a manner that plainly includes local laws, given that it specifically addresses ballot questions submitted to municipal voters.

Plaintiffs go to great lengths to make "any other law" mean something other than what it says (Resp. Br. 34-39). But this Court need only read the statute. There is no mystery here. *See Kimmel v. State of N.Y.*, 29 N.Y.3d 386, 393 (2017) ("any civil action" means exactly that); *Prego v. N.Y.*, 147 A.D.2d 165, 170 (2d Dep't 1989) (same, as to "any substance"). The phrase "any other law" is plain and broadly encompasses any local law. Thus, Local Law 11

permissibly departs, for local elections, from the Election Law's default provision stating that only citizens may vote.

Plaintiffs nonetheless claim that the word "law" is ambiguous and should be read to mean "state law" (Resp. Br. 35-36). This argument is based on the premise that the statutory term "law" could be read to cover administrative agency regulations, which they claim would be "untenable" (Resp. Br. 35). This fear is unwarranted, since an administrative regulation "has the force of law, but it is not a law." *Garcia v. N.Y. City Dep't of Health & Mental Hygiene*, 31 N.Y.3d 601, 610 (2018). That is because administrative regulations and legislative enactments—whether state or local—are categorically distinct.

Even if the Election Law did not specifically authorize inconsistent laws, the Council would retain independent authority to enact Local Law 11. Article IX and the Municipal Home Rule Law expressly authorize municipalities to supersede special laws. *Kamhi*, 74 N.Y.2d at 429-30. And the Election Law is a special law, since it does not apply alike to all municipalities. *Bareham*, 246 N.Y. at 148 (the Election Law is "not a statute applicable alike to

all the cities of the State"). It contains different rules for cities across the State, showing that there is no uniform State policy regarding local elections that should preclude localities from varying the State's default rules. *See, e.g.*, Elec. Law § 3-506 (different publication rule for New York City); § 3-202 (different terms for commissioners in Schenectady and New York City); § 4-130 (different rules regarding registration supplies for New York City, Buffalo, and Rochester). And the elections in the City of Watertown are governed by a separate act entirely. L.1993 ch.247 (Watertown Nonpartisan Primaries and Elections Act). The City would thus be entitled to depart from the Election Law even if § 1-102 did not exist. But § 1-102 does exist, and those background principles of home rule and constitutional structure provide only further reason to construe the section in accordance with its plain language.

Plaintiffs cannot understand why the State would bother enacting laws if municipalities are free to override them (Resp. Br. 39). But the rules of the Election Law will govern elections for federal and state offices. And the Legislature may well have

thought it advisable to provide local governments with a ready-made body of default laws for local elections, so that they need not all reinvent the wheel, but rather could consider whether to depart from one or more of those default rules as the time and inclination arose.

At its core, plaintiffs' confusion is based on their refusal to acknowledge longstanding home rule principles. There is simply nothing unusual about the State establishing default rules, and then allowing localities to depart from those rules if they so choose. As plaintiffs themselves note (Resp. Br. 39), the Election Law is full of locality-specific rules, like § 3-506's requirement that the City provide voting information in Russian. But they get the import of this backwards. While plaintiffs claim that the existence of locality-specific laws proves that the Legislature would not have intended for local governments to have the power of supersession, a core principle of our constitutional structure is that special laws limited to particular municipalities typically *are* subject to local supersession, even without the express language found in Election

Law § 1-102. *Bareham*, 246 N.Y. at 148; *see also Kamhi*, 74 N.Y.2d at 429-30.

Plaintiffs also fail to acknowledge the City's long history of superseding the Election Law. From the non-partisan system for filling local vacancies to ranked-choice voting, the City has departed from the default rules multiple times over the last 30 plus years. The fact that these measures have stood for so long—and in at least one case were challenged and upheld, *City of New York v. Board of Elections*, 1991 N.Y. Misc. LEXIS 895, at *4 (Sup. Ct., N.Y. Cnty. Apr. 3, 1991), *aff'd*, 1991 N.Y. App. Div. LEXIS 18134 (1st Dep't Apr. 5, 1991), *lv. denied*, 1991 N.Y. LEXIS 6169 (Apr. 10, 1991)—shows that such supersession is permitted.

Plaintiffs further argue that interpreting § 1-102 to mean what it says would render superfluous a reference to local law in a single clause of § 3-200 (Resp. Br. 39). But the rule against surplusage constructions "is not absolute" and must yield to a law's plain language. *Stefanik*, 2024 N.Y. Slip Op. 04236 at *25; *Lamie v. United States*, 540 U.S. 526, 536 (2004). That is particularly true where the alleged surplusage is a mere redundancy in statutory

language across a broad range of provisions, as opposed to unique statutory text that would be drained of meaning under a given construction. Simply stated, "[r]edundancies across statutes are not unusual events in drafting." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992); *see also Matter of Seiferheld v. Kelly*, 16 N.Y.3d 561, 567 (2011) (noting redundancies in the Administrative Code).

By enacting default election rules that localities can supersede for local elections, the State has ensured that local governments have genuine home rule when it comes to the election of local officers, a matter in which "the State has no paramount interest." *Baldwin*, 6 N.Y.2d at 173-74. It is not for plaintiffs to second guess that determination.

3. The legislative history confirms the point.

While this Court need not look beyond the clear language of § 1-102 to resolve the Election Law claim, the legislative history reinforces the City Council's points. Plaintiffs misread that legislative history (Resp. Br. 40-43), which contains nothing to suggest that the Legislature intended anything other than what it

wrote. To the contrary, the Legislature has long permitted localities to depart from the Election Law.

Section 1-102 has its roots in §§ 130 and 190 of the prior Election Law, and these sections expressly contemplated supersession by other laws. *See* L.1922, ch.588. Section 190 provided that the article regarding the conduct of elections applied to general elections and special elections called by the governor. For all other elections that used official ballots, the article applied only "so far as practicable" and only "if other provision for the conduct thereof is not made by law." Section 130, on the applicability of the article about nominating candidates, was even more explicit: it was not intended to repeal or affect any other statute, "general or local, prescribing a particular method of making nominations or candidates for certain school or city offices." This provision was cited by this Court in *Bareham v. Rochester* in support of the authority of Rochester to adopt its own innovative election scheme by local law. 246 N.Y. 140, 148.

These provisions were merged into today's § 1-102 in 1976, during a recodification and simplification of the Election Law.

L. 1976, ch. 233. The new law initially contained a reference to the Education Law: "Where a specific provision of law exists in the *education law* which is inconsistent with the provisions of this chapter, such provision shall apply." L.1976, ch.233 (emphasis added). While plaintiffs try to make hay of that Education Law reference, their argument doesn't hold up when one knows the full story. The legislative history recognized that the initial bill was rushed and needed to be amended to correct several mistakes. Bill Jacket, L.1976, ch.233, Assembly Member Miller, Memorandum in Support. The Legislature did just that before the governor even signed the first bill, changing "education law" to "any other law"—text that remains in the statute now. L.1976, ch.234. The governor signed both bills the same day. Thus, the version of the bill referring to the Education Law was never in effect—not even for a day.

Neither bill jacket says anything about the provision in question, and there is no indication that the Legislature meant to write "any other state law" rather than "any other law." Plaintiffs focus on some statements indicating the amendments were intended to correct typos (Resp. Br. 41). But the typo here was the

reference to the Education Law, which seems to have no basis in any prior law and was included by mistake. The Legislature corrected that mistake, deleting the reference to the "education law" and substituting the expansive phrase "any other law."

To be clear, a ruling in plaintiffs' favor on this point could have dramatic consequences beyond this case. The freedom of municipalities to innovate in local elections by departing from the Election Law, when not specifically prohibited, has been a foundational principle of local elections for decades. As explained in our opening brief (at 12-14), municipalities have long enacted laws for their local elections that are at least arguably inconsistent with the Election Law. Indeed, while any challenge would be time barred, plaintiffs' misguided understanding of the Election Law would seemingly call into question significant measures that the City has enacted over the years to promote local democracy. In recent years, for example, the City adopted a ranked-choice voting system, a cornerstone of the City's local electoral process. In 2010, the City reduced the number of signatures needed to get on the ballot for local office. And in 1988, the City enacted a non-partisan

system to fill vacancies in local offices (a system already upheld, *see supra* at 25-26). All of these measures promote the City's self-governance, and all differ from the default rules in the Election Law.

CONCLUSION

This Court should modify the order below, declare that Local Law 11 does not violate the Constitution or the Municipal Home Rule Law, and vacate the attendant permanent injunction prohibiting the City from implementing the law. If it considers plaintiffs' Election Law claim, it should affirm the Appellate Division's determination that Local Law 11 does not violate that law. The Court should grant summary judgment to defendants and deny summary judgment to plaintiffs.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 6,996 words, not including the table of contents, the table of cases and authorities, the statement of questions presented, this certificate, and the cover.

MACKENZIE FILLOW