To be argued by:
MICHAEL Y. HAWRYLCHAK
Time Requested: 15 Minutes

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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 PLAINTIFFS-RESPONDENTS

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Dated: September 26, 2024

-and-

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

Defendants-Intervenors-Appellants,

-and-

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

Defendants.

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), Respondents state that they are not aware of any related litigation as of the date of filing of this brief.

CORPORATE DISCLOSURE STATEMENT

Pursuant to the Rules of Practice of the New York Court of Appeals (22 N.Y.C.R.R.) § 500.1(f), the New York Republican State Committee states that no such corporate parents, subsidiaries or affiliates exist; and the Republican National Committee states that no such corporate parents, subsidiaries or affiliates exist.

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QUESTIONS PRESENTED

1. Does New York City's Municipal Voting Law violate Article II, Section 1 of the New York Constitution by allowing non-citizens to vote in local elections?

2. Does the Municipal Voting Law violate Article IX of the New York Constitution by allowing voting by non-citizens?

3. Did the adoption of the Municipal Voting Law without a referendum violate the Municipal Home Rule Law?

4. Does the Municipal Voting Law violate the Election Law by allowing voting by non-citizens?

PRELIMINARY STATEMENT

The Municipal Voting Law enacted by the New York City Council is "impermissible simply and solely for the reason that the Constitution says that it cannot be done." *See Protect the Adirondacks! Inc. v. New York State Dep't of Env't Conservation*, 37 N.Y.3d 73, 84 (2021). The New York State Constitution establishes the State's voter eligibility requirements and expressly defines voting as a right granted only to *citizens*. Likewise, the State Election Law clearly and unambiguously prohibits non-citizens from participating in statewide and municipal elections. The City of New York enacted its Municipal Voting Law in defiance of these constitutional and statutory barriers.

The City's defenses of the Municipal Voting Law ultimately rely on a series of supposed exceptions and loopholes that would nullify limits imposed by the Constitution and the Legislature. But these defenses do not hold up to scrutiny. If the City wants to alter the rules of voter eligibility in this State, the proper course of action is to change the Constitution and the Election Law, not to ask the courts to contort their various provisions to allow the City to evade its legal obligations.

In addition to these substantive problems, the Municipal Voting Law was also adopted in a procedurally improper manner under the Municipal Home Rule Law.

Accordingly, the Second Department's Order, declaring the Municipal Voting Law null and void, should be affirmed.

BACKGROUND

I. The adoption of the Municipal Voting Law.

On December 9, 2021, the New York City Council, the legislative body for the City of New York, passed a bill, referred to as Intro 1867-A and entitled "A Local Law to amend the New York city charter, in relation to allowing lawful permanent residents and persons authorized to work in the United States in New York city to participate in municipal elections" (the "Municipal Voting Law"). (R.1490.) The bill was sent to then-Mayor Bill de Blasio the same day. (R.1490.) Mayor de Blasio publicly questioned the legality of the bill, stating that the City's "Law Department is very clear on this. It's (not) legal for this to be decided at the city level. I really believe this has to be decided at the state level." (R.1490 (alteration in original).) Despite "big legal questions" about its validity, Mayor de Blasio declined to veto the bill out of "respect [for] the City Council." (R.1491.) Mayor de Blasio neither signed nor vetoed the bill before leaving office at the end of the year. (R.1491.) Bill de Blasio was replaced as Mayor by Eric Adams on January 1, 2022. (R.1491.)

The incoming Mayor Adams likewise neither signed nor vetoed the bill, ultimately returning it unsigned on January 10, 2022. (R.1491.) As the bill was neither approved nor returned with objections within thirty days, the Municipal Voting Law was deemed adopted pursuant to § 37(b) of the New York City Charter as Local Law No. 11 of 2022 and is codified in the City Charter as the new Chapter 46-A. (R.1339.)

This law creates a new class of persons called "municipal voters," defined as non-citizens who are lawful permanent residents or otherwise authorized to work in the United States, "have lived in New York City for at least 30 consecutive days," and "meet[] all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship." N.Y.C. Charter § 1057-aa(a). Under the law, "eligible municipal voters shall have the right to vote in municipal elections and shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections." § 1057-bb(a).

The New York City Board of Elections is tasked with "adopt[ing] all necessary rules and carry[ing] out all necessary staff training to carry out the provisions of this chapter." § 1057-cc. These provisions include creating a parallel non-citizen voter registration form, § 1057-ee(a); maintaining a unified voter registration list that distinguishes between citizen and non-citizen voters, § 1057-

dd(a); creating parallel non-citizen ballots and absentee ballots, § 1057-dd(b), § 1057-hh(d); and allowing citizens and non-citizens to vote at the same polling places, § 1057-dd(a). In addition to voting in elections, the Municipal Voting Law allows registered non-citizen voters to enroll in political parties, § 1057-ff; and to sign and witness petitions for municipal offices and referenda, § 1057-uu.

The Municipal Voting Law purports to expand voting rights to roughly 900,000 non-citizens who live in the City. (R.1445.) The Executive Director of the Board of Elections estimated that the law could result in as much as "a 20 percent increase in the number of voters." (R.1449–50.)

II. This lawsuit and the rulings below.

On January 10, 2022, Plaintiffs, a collection of registered voters, candidate/officeholders, and political parties, filed their Complaint in this action in Supreme Court, Richmond County, alleging that the Municipal Voting Law is invalid under both the New York State Constitution and under statutory provisions of the Election Law and the Municipal Home Rule Law, and seeking declaratory and injunctive relief. (R.1402–12.) On April 11, 2022, several individual non-citizen residents of New York City filed a motion to intervene as defendants. (1432–41.) Supreme Court granted the unopposed motion to intervene on April 13, 2022. (R.1493.)

Plaintiffs, City Defendants, and Intervenors each filed motions for summary judgment, and on June 27, 2022, Supreme Court (Porzio, J.) issued a decision denying the City Defendants' and Intervenors' motions and granting summary judgment to Plaintiffs. (R.10.) Supreme Court held that the Municipal Voting Law violated the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law, declared it illegal, null, and void, and permanently enjoined its implementation. (R.10, 22.)

City Defendants and Intervenors appealed this decision to the Appellate Division, Second Department. (R.4, 7.) On February 21, 2024, the Second Department issued a decision affirming Supreme Court's holdings that the Municipal Home Rule violates the New York State Constitution and the Municipal Home Rule Law, but reversing that portion of Supreme Court's order that held that the Municipal Voting Law violates the Election Law. (R.1842.) The Second Department affirmed Supreme Court's order as modified and ordered entry of judgment that the Municipal Home Rule Law "is null and void on the grounds that it violates the New York State Constitution and the Municipal Home Rule Law." (R.1842.) A single justice dissented, arguing for reversal of Supreme Court's decision (R.1862.)

Intervenors and the New York City Council now appeal to this Court.

ARGUMENT

POINT I

THE SECOND DEPARTMENT CORRECTLY HELD THAT THE MUNICIPAL VOTING LAW VIOLATES THE NEW YORK STATE CONSTITUTION

Article II, Section 1 of the New York State Constitution exclusively reserves voting rights for "citizen[s]." N.Y. Const. Art. II, § 1. It therefore excludes noncitizens from voting because "[t]he qualifications of voters are prescribed by section 1 of article 2 of the Constitution, and those qualifications are exclusive." *Hopper v. Britt*, 203 N.Y. 144 (1911) . Its limits apply alike to state and local elections. And multiple other constitutional provisions — Article II, Section 5; Article II, Section 7; Article IX, Section 1; and Article IX, Section 3 — individually and collectively confirm that voters in local elections must be United States citizens. "The courts should not strain for distinctions to avoid the plain and simple provisions of the Constitution." *Wendell v. Lavin*, 246 N.Y. 115, 127 (1927). Because the Municipal Voting Law flouts these requirements, it is unconstitutional.

A. Article II, Section 1 exclusively reserves voting rights for citizens.

The New York State Constitution limits voting rights to citizens. Under Article II, Section 1, which expressly establishes voting qualifications, voting in New York is defined as a right belonging only to citizens:

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

N.Y. Const. Art. II, § 1.

Because Article II, Section 1 positively declares that "[e]very citizen shall be entitled to vote," it follows that non-citizens are not entitled to vote. It is well-established that "[w]here a statute describes the particular situations in which it is to apply and no qualifying exception is added, 'an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded.'" *Matter of Jose R.*, 83 N.Y.2d 388, 394 (1994); *see also Kimmel v State*, 29 N.Y.3d 386, 394 (2017) ("Where the legislature has addressed a subject and provided specific exceptions to a general rule — as it has done here — the maxim expressio unius est exclusio alterius applies"); McKinney's Cons. Laws of NY, Book 1, Statutes § 240 ("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."). And "[t]he same rules apply to the construction of a Constitution as to that of statute law." *Wendell v. Lavin*, 246 N.Y. 115, 123 (1927). Thus, Article II, Section 1's enumeration of particular characteristics of voters — *i.e.*, citizens who meet the minimum age and residency requirement — necessarily excludes those who do not meet these criteria.

This Court has confirmed this common-sense reading of Article II, Section 1. "The qualifications of voters are prescribed by section 1 of article 2 of the Constitution, and those qualifications are exclusive." *Hopper v. Britt*, 203 N.Y. 144 (1911). Indeed, this Court has held in respect to the corresponding provision of an earlier version of the State Constitution that the voter eligibility requirements are exclusive. "It follows that none others than those possessing these qualifications can lawfully vote." *People ex rel. Smith v. Pease*, 27 N.Y. 45, 53 (1863). It has explained that "[t]he obvious purpose of that article was to prescribe the general qualifications that voters throughout the state *were required to possess* to authorize them to vote for public officers or upon public questions relating to general governmental affairs." *Spitzer v. Vill. of Fulton*, 172 N.Y. 285, 289 (1902) (emphasis added). This provision was intended "to protect *otherwise qualified voters* from electoral discrimination," and those voters were identified as "citizen[s], qualified by age and residence." *Blaikie v. Power*, 13 N.Y.2d 134, 140 (1963)

(emphasis added). Therefore, nobody other than citizens can vote under Article II, Section 1.

This understanding of Article II, Section 1 is confirmed by other constitutional provisions. First, Article II, Section 5 provides that "[l]aws shall be made for ascertaining, by proper proofs, *the citizens who shall be entitled to the right of suffrage hereby established*, and for the registration of voters." N.Y. Const. Art. II, § 5 (emphasis added). Second, Article II, Section 7 provides that "*[a]ll elections by the citizens*, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law." N.Y. Const. Art. II, § 7 (emphasis added). The language of both provisions confirms that the Constitution's drafters and ratifiers understood the right to vote to inhere only in citizens. *Cf. Ginsberg v. Purcell*, 51 N.Y.2d 272, 276 (1980) (construction of constitutional provision was "warranted by its compatibility with . . . other provisions" of the New York State Constitution).

These provisions also rebut Appellants' reformulations of Article II, Section 1. Appellants argue that because Article II, Section 1 is phrased in the affirmative, it does not prohibit non-citizens from voting, but instead provides only a constitutional floor, not a ceiling. But if Appellants were correct, then Section 5 would require eligible citizen voters to prove their identities before voting but

impose no such requirement on "eligible" non-citizen voters. That outcome cannot plausibly be attributed to the Constitution's drafters. And Section 7's reference to "elections by the citizens" would be meaningless if elections in New York were not, in fact, limited to citizens. Intervenors argue that "[t]he framers could have used the word 'citizen' to describe the electorate, but they chose not to." (Intervenors Br. 42.) This interpretation, however, is impossible to reconcile with the other sections in Article II, where the framers *did* describe the electorate in exactly that way. Indeed, Appellants have provided no plausible explanation for this language in Sections 5 and 7 if voting is not limited to citizens. On the other hand, every section in Article II is perfectly consistent if the framers understood Section 1 to grant the franchise to citizens alone.

Article II, Section 3 is consistent with this interpretation. Both Intervenors (Intervenors' Br. 40) and the dissent below (R.1849) argue that the failure to include noncitizens among Article II, Section 3's categories of persons prohibited from voting means that they are not excluded. But Section 3 carves out exceptions from those persons *otherwise eligible to vote*. For the same reason that Section 3 does not expressly exclude minors or nonresidents, it does not exclude non-citizens — because they were never included in the first place. *See* N.Y. Const. Art. II, § 1.

The plain text, binding precedent, and related provisions all confirm that Article II, Section 1 limits voting rights to citizens.

B. Article II, Section 1 applies to local elections.

The plain text of Article II, Section 1 applies to local elections. By its own terms, it neither limits its scope to statewide elections nor provides any exception for local elections. It applies in sweeping terms to "every election for all officers elected by the people." N.Y. Const. Art. II, § 1.

Furthermore, Section 1 includes an express reference to localities, guaranteeing a right to vote to citizens who "shall have been a resident of this state, and of *the* county, city, or village for thirty days next preceding an election." *Id.* (emphasis added). The reference to "the county, city, or village" makes sense only if Article II, Section 1 applies to county, city, and village elections.

Article II, Section 5 further demonstrates that Section 1 applies to local elections. Section 5, mandates laws ascertaining "the citizens who shall be entitled to the right of suffrage hereby established," as well as laws for the registration of voters. A specific carve-out, however, states that "[s]uch registration shall not be required for town and village elections except by express provision of law." If Article II applied only to statewide elections, this carve-out for town and village elections would be wholly superfluous. *Cf. Nadkos, Inc. v. Preferred Contractors*

Ins. Co. Risk Retention Grp. LLC, 34 N.Y.3d 1, 7 (2019) (noting that it is "well-established" that courts should "avoid[] a construction that treats a word or phrase as superfluous"). Moreover, the exemption applies only to Section 5's registration requirement, and not the ascertainment of "the citizens who shall be entitled to the right of suffrage" established under Article II, Section 1. Finally, the carve-out exempts only towns and villages, which implies that city and county elections are not exempt from Article II, Section 5's registration requirement, or, by extension, from Article II, Section 1's voter qualifications.

Article II, Section 7 similarly demonstrates that the citizenship requirement in Article II, Section 1 applies to local elections. It specifically excludes elections for "such town officers as may by law be directed to be otherwise chosen." N.Y. Const. Art. II, § 7. The obvious implication is that elections for town officers *are* covered where the law has not directed that they be otherwise chosen. And this carve out is limited to town officers, not officers of cities, villages, or counties, implying that they are within its coverage. When Intervenors argue that Section 7 is irrelevant because the exception for town officers existed for a specific historical reason not relevant to this case, they miss the point. (Intervenors Br. 28–29.) The carve out from Section 7, regardless of its motivation, demonstrates that local elections are

included among the "elections by the citizens" described in that provision in the first place.

Appellants misread past cases from this Court to justify their departure from the plain text of Article II, Section 1. In *Spitzer v. Fulton*, 172 N.Y. at 289, this Court upheld a statute that limited voting for certain village propositions that "involved the creation of a debt or an extraordinary expenditure to be raised by taxation" to taxpayers. The Court repeatedly emphasized that the law in question was concerned with "borrowing money or contracting debts," and found that Article II needed to be read in harmony with Article XII, which the Court interpreted as imposing a "duty" on the "legislature to protect the taxpayers." *Id.*

The Court also referred broadly to Article II, Section 1 as "general, relating to the whole state," and relating "to the general governmental affairs of the state." *Id.* at 289–90. Appellants read *Spitzer* to establish a bright line rule that Article II, Section 1 has no application to local elections, but the case never purported to hold so broadly. In fact, it carefully limited its holding to elections involving a a municipality's "financial interests or private affairs," which raise unique practical and constitutional concerns not at issue here. *Id.* at 289. As the Second Department explained, *Spitzer* "did not address the applicability of article II to municipal elections for elective officers such as mayor, public advocate, comptroller, borough

president, and council member," so it is "of limited instructive value in this case." (R.1835.)

And this Court's later cases have not endorsed Appellants' reading of *Spitzer*. In *Johnson v. New York*, 274 N.Y. 411, 416 (1937), a statute enacting proportional representation for the City Council was challenged as violating Article II, Section 1. The Court quoted *Spitzer*, but rather than holding that Section 1 had no application to the local elections at issue, the Court engaged in a detailed discussion of the mechanics of the proportional election system, *id.* at 425–29, and ultimately concluded that it was consistent with the requirements of Section 1. It held that "[r]eason likewise points out that if the law permits a borough to be divided into districts, and the people of the borough thus forced to vote for only one Councilman in each district, it is equally permissible to elect the same number from the entire borough, each voter selecting but one." *Id.* at 424. The Court made no suggestion that Section 1 did not apply, but instead applied Section 1 to the election system in question.

In *Blaikie v. Power*, 13 N.Y.2d at 138, the Court similarly considered a newly adopted system of "limited voting" for councilmen at large. The Court, relying extensively on its decision in *Johnson*, held that "[i]n the context of the constitutional provision (art. II, § 1), limited voting and proportional representation are in

substance and effect identical." *Id.* at 143. In other words, the Court held that the election system in question was compatible with the requirements of Section 1, not that Section 1 had no application. A concurrence advocated the view put forward by Appellants here — that Section 1 "is limited in its application to elections involving state officers or state issues," *id.* at 144 — but this opinion was not join by any other Judge. Under Appellants' view, the Court's lengthy discussion of election mechanics in *Johnson* and *Blaikie* would have been irrelevant and superfluous.

In short, the language in *Spitzer* on which Appellants rely was heavily qualified by the specific context of taxpayer protection, and between *Johnson* and *Blaikie*, Appellants' position had the vote of only one single Judge. The very fact that the Court had to engage in its analysis to uphold the election systems in *Johnson* and *Blaikie* demonstrates that Article II, Section 1 *does* apply to local elections. In fact, in *People ex rel. Smith v. Pease*, 27 NY at 63, the only decision that this Court has ever decided on the precise question at issue here — whether Article II, Section 1 prohibits a non-citizen from voting in a local election — the Court clearly and unequivocally declared that it does.

C. Under Article IX, only citizens may vote in local elections.

Even assuming — contrary to its plain language — that Article II, Section 1 could be construed to permit non-citizens to vote in local elections, Article IX independently limits voting in local elections to citizens. Article IX, Section 1 provides that "[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof," and "[a]ll officers of every local government whose election or appointment is not provided for by this constitution shall be 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." N.Y. Const. Art. IX, § 1. Under these provisions, officers and city council members must be elected by "the people" of the City of New York. Article IX, Section 3(d)(3) of the New York State Constitution in turn defines the term "People" as "Persons entitled to vote as provided in section one of article two of this constitution." N.Y. Const. Art. IX, § 3(d)(3). Together, these provisions unambiguously establish that "the people" of New York City who "shall" elect municipal officeholders are those *citizens* eighteen years of age or over who have resided in the City for thirty days preceding the election.

By expressly incorporating the voter qualifications of Article II, Section 1 into the definition of "the people" making up the local electorate, Article IX limits local

elections to citizens regardless of the effect of Article II, Section 1 alone. In other words, even if this Court were to hold that Article II, Section 1 itself applies only to statewide elections and that Article II, Section 1 only guarantees but does not limit the franchise to citizens, Article IX would nevertheless limit local elections to citizens by expressly requiring that local legislators and officeholders be elected by "[p]ersons entitled to vote as provided in section one of article two."[1]

To avoid this fatal outcome, Defendants put great weight on the introductory language of the definition section, which provides that the listed terms "shall *mean or include*" the provided definitions. Article IX, Section 3 (emphasis added). According to Defendants, because "include" is a word of enlargement, "mean or include" should be interpreted as nonexclusive. (City Br. 19.) This interpretation, however, fails to give meaning to the entire phrase, ignores the constitutional context, and renders the constitutional protection indeterminate.

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[1] Intervenors assert that "because Article II, Section 1 does not limit the right to vote to United States citizens, the 'people' referred to, including by reference to Article II, Section 1, is likewise not so limited." (Intervenors Br. 51.) This is wrong as a matter of logic. If, as Respondents argue, Article IX incorporates Section 1's voter qualifications for local elections, then these requirements would be exclusive for local elections even if Section 1 by itself imposed only a floor.

For starters, "mean" and "include" have significantly different definitions. The United States Supreme Court has contrasted these words as follows: "The natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents, and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition." *Helvering v. Morgan's, Inc.*, 293 U.S. 121, 125 n.1 (1934). The two words are to some degree incompatible, with one denoting equivalency while the other introduces representative examples. Appellants resolve this tension by simply rendering the term "mean" entirely superfluous and construing "mean or include" to be synonymous with "include".

Appellants accuse Respondents and the Second Department of similarly giving no meaning to the word "include", but they misconstrue Respondents' argument and ignore the constitutional context in which the phrase "mean or include" appears. It is not contained within a single definition, but as an introduction to a list of several defined terms: "Whenever used in this article the following terms shall mean *or* include:". Art. IX, § 3(d) (emphasis added). Each listed term either "means" *or* "includes" the associated definition. With this understanding, context makes the appropriate interpretation clear.

The word "People" is associated with "Persons entitled to vote as provided in section one of article two of this constitution." Art. IX, § 3(d)(3). This definition does *not* consist of representative instances of a general class, but rather specifically cross-references another constitutional provision, expressly incorporating its requirements by reference. Such cross-references are ubiquitous in legal definitions and are understood to import a definition elsewhere as an "interchangeable equivalent." This Court has held that even when the phrase "mean or include" introduces "a list of named special classes" within a general class, it may nevertheless "evidence[e] an intention to restrict the application . . . to the categories listed." *U.S. Steel Corp. v. Gerosa*, 7 N.Y.2d 454, 459 (1960). Here, where there is no textual suggestion that the cross-reference is intended to be a representative example, only the exclusive reading is plausible.

Under Appellants' interpretation, by contrast, the meaning of the term "people" in Article IX is rendered indeterminate. It "includes" those persons entitled to vote under Article II, Section 1, but it also includes some unspecified class of persons who are *not* entitled to vote under Article II, Section 1. Defining a word in such unbounded terms defeats the purpose of including a definition section; the whole purpose of a definition is to *make definite* the scope and meaning of the defined term.

Appellants' construction opens a Pandora's box of additional problems. First, if "the people," as a matter of constitutional meaning, includes some class of non-citizens, then it runs into the same problem created by the expansive reading of citizen in Article II — every other municipality in the state is necessarily violating the Constitution by excluding those non-citizens from participating in local governance.

To avoid this argument, Appellants suggest that the term "people" is constitutionally indeterminate such that the City's interpretation is a permissible, though not mandatory, interpretation. But the idea that specific language in the Constitution — constitutionally *defined* language, no less — may be assigned different meanings by different municipalities throughout the state is utterly unprecedented and runs afoul of the fundamental principle that "it is the province of the judicial branch to define the rights and prohibitions set forth in the State Constitution." *White v. Cuomo*, 38 N.Y.3d 209, 216–17 (2022) (cleaned up). The meaning of the Constitution's language should not be left up for grabs in a state with more than a thousand local jurisdictions, each of which may have a different interpretation.

Finally, Appellants argue that "the people" should be interpreted as broad enough to include non-citizens because Article IX states that the "[r]ights, powers,

privileges and immunities granted to local governments by this article shall be liberally construed." Art. IX, § 3(c). The City argues that "the term 'people' is plainly susceptible to a liberal construction.," (City Br. 20,) and Intervenors likewise assert that "the City is entitled to expand the definition of 'People' under Article IX, Section 3 to include noncitizens." (Intervenors Br. 58.) But this argument fails, because the provision that the City asks this Court to liberally construe is not a right, power, privilege, or immunity, but rather, a *definition* — and one that necessarily applies to every municipality in the state, not just New York City.

Even if it made sense to "liberally" construe such a definitional provision, Appellants are asking for something very different — for this Court to render a constitutionally defined term indeterminate and relinquish its role as the arbiter of constitutional meaning. When this Court liberally construes a constitutional provision granting a *power* to municipalities, that provision does not mean different things in different parts of the state. Some localities may not choose to exercise their power to the full constitutional limit, but the constitution's *meaning*, liberally construed, is the same everywhere. Appellants here ask for something radically different — not that this Court liberally construe the term "people" in Article IX to include certain non-citizens, but that this Court allow each municipality to independently construe a constitutional definition such that it means different things

in different places. This position is unprecedented and has no basis in the liberal construction requirement of Article IX, Section 3(c).

Finally, even if the liberal construction provision were relevant, it is misapplied here. Article IX places local governance in the hands of "the people." A broad construction of those rights, powers, privileges, and immunities enhances the scope of local governance. By contrast, a constitutional construction that expands the meaning of "the people" has the effect of diluting and thereby reducing the control over local governance by those persons specifically identified in the constitution as responsible for local governance.

D. Article II, Section 1 limits the franchise to citizens of the United States.

Although the City argues that Article II, Section 1 does not apply to local elections, it has not contested that the provision refers to United States citizenship. By contrast, Intervenors argue that the term "citizen" in Article II, Section 1 does not refer to a citizen of the United States at all, but rather refers to some broader class of citizenship, which extends to non-U.S. citizen residents of the state. (Intervenors Br. 45–47.) Intervenors' interpretation of "citizen" is wrong.

Intervenors' theory would radically disrupt settled law. Although it is presented as an argument in support of the constitutionality of the Municipal Voting

Law, the inescapable implication of Intervenors' theory is that the State Election Law and the voter registration requirements applicable to *every single municipality* in the State of New York are in fact unconstitutional. Article II, Section 1, *guarantees* the right to vote to citizens meeting the age and residency requirements. If, as Intervenors argue, the word "citizen" in Article II, Section 1 can be construed to include at least some New York residents who are not citizens of the United States, then State Election Law § 5-102 which prohibits voting by any person who is not a citizen of the United States would flatly violate the New York State Constitution by excluding this subset of New York residents.

It is not even clear that the City's own law at issue in this case would be constitutional under Intervenors' interpretation. The Municipal Voting Law extends the right to vote only to those non-U.S. citizens with permanent resident status or work authorization. There is no reason to think that this broader concept of citizenship on which Intervenors rely tracks these particular categories —the application of Article I, Section 8 to state citizens has not been construed so narrowly — so even the Municipal Voting Law itself would be unconstitutional.

Intervenors' argument would also overturn longstanding historical practice under which the right to vote has been limited to United States citizens. The connection of the vote to citizenship dates from the Constitution of 1821 and has

been carried forward in modified form in every subsequent constitution. In *Pease*, this Court discussed the appropriate standard for assessing a challenge to voter eligibility, making clear that an alien who had not been naturalized was ineligible to vote. *People ex rel. Smith v. Pease*, 27 NY at 63. It has since been settled law that only a citizen of the United States can be eligible to vote under the New York State Constitution and implementing statutes. *People ex rel. Juarbe v. Bd. of Inspectors of Twenty-Fourth Election Dist. of Twenty-Fifth Assembly Dist. of Borough of Manhattan*, 32 Misc. 584, 585 (Sup. Ct. N.Y. Cty. 1900).

Intervenors' interpretation would create additional problems for New York under federal law. Federal law expressly prohibits aliens from voting in federal elections. 18 U.S.C. § 611. The United States Constitution, on the other hand, bases voter eligibility on state voting requirements, without reference to citizenship. U.S. Const. Art. I, § 2, Amend. 17. If Article II of the New York Constitution guarantees non-U.S. citizens the right to vote, it places these federal provisions into direct conflict.

Intervenors' textual argument strains common sense. Intervenors note that of the Constitution's twelve uses of the term "citizen," three of them expressly use the language "citizen of the United States." Art. III, § 7; Art. IV, § 2; Art. V, § 6. This difference in terminology is significant, they argue — had the Constitution's framers

meant Article II, Section 1 to apply to citizens of the United States, they would have said so expressly.

The problem with this argument is that the Constitution elsewhere expressly refers to State citizenship. Article I, Section 1 refers to a "member of this state" and "citizen thereof." Article III, Section 19 expressly refers to "citizens of the state." Intervenors' argument could just as easily be reversed — if the Constitution's framers had intended to guarantee the right to vote to State citizens, they would have said so, as they did elsewhere in the Constitution. Any argument based on consistent usage of terminology throughout the Constitution necessarily fails.

Intervenors note that courts have interpreted the term "citizen" in Article I, *Section 8* to encompass non-U.S. citizens. That interpretation is grounded in the fact that it follows Article I, Section 1, which expressly references state citizenship. Article II, by contrast, contains no explicit reference to state citizenship, and there is no similar history in practice or caselaw of interpreting it to grant a right to non-U.S. citizens. Intervenors' analogy to Article I, Section 8 is inapt for another reason. Unlike civil rights like free expression, voting is necessarily zero sum — each additional voter dilutes the power of other voters in the pool. That is why every system of political election defines a closed pool of eligible voters, and it is therefore reasonable to interpret a provision designating those who are qualified to vote as

implicitly declaring that all others are not qualified to vote. Moreover, voting qualifications in every version of New York's constitution since the term "citizen" was introduced in 1821 have included both citizenship and residency requirements. If citizenship for purposes of Article II is taken to be synonymous with New York domicile, then the residency requirements would render the citizenship requirement entirely superfluous.

A final factor weighing against Intervenors' interpretation is the lack of a clear definition of New York State Citizen. Neither the State Constitution, nor any state statute defines who is a citizen of New York State. Indeed, courts have recognized that the term "citizen" is susceptible to a "variety of meanings" and is sometimes "loosely" used as a synonym for domiciliary. *Halaby v. Board of Directors of University of Cincinnati*, 162 Ohio St. 290, 293 (1954). In contrast to this "loose" usage, that court recognized that the term "applies ordinarily to one's relationship to a national government and a state of domicile *within such government*." *Id.* at 293 (emphasis added). In other words, that court viewed state citizenship, in its strict sense, as a *subset* of national citizenship, which would make Intervenors' argument pointless.

Although Intervenors argue that citizenship encompasses persons who are not U.S. citizens, and that it is broad enough to include those classes of non-citizens

subject to the Municipal Voting Law, they do not offer a precise definition of its contours. The fact that state citizenship remains so poorly defined is reason to doubt that the framers of the State Constitution defined such an important right in those terms.

POINT II

THE SECOND DEPARTMENT CORRECTLY HELD THAT THE MUNICIPAL VOTING LAW VIOLATES THE MUNICIPAL HOME RULE LAW

As noted above, the Municipal Voting Law is substantively incompatible with the New York State Constitution. But in addition, it was adopted in a procedurally improper manner under the Municipal Home Rule Law and therefore should be held unlawful on that independent ground. Under § 23 of the Municipal Home Rule Law, any law that "changes the method of nominating, electing, or removing an elective officer," must be approved by a public referendum held within sixty days after the law's adoption. Municipal Home Rule Law §§ 23(1), 23(2)(e). This provision provides a fundamental check against efforts by municipal officials to entrench themselves by changing the rules of the game without public approval. "[W]here a local law is subject to mandatory referendum, the failure to conduct the referendum invalidates the law." 1986 N.Y. Op. Att'y Gen. (Inf.) 57 (1986). Because the

Municipal Voting Law was never submitted for approval via a public referendum, it is invalid under Section 23(1) of the Municipal Home Rule Law.

The referendum requirement has been interpreted to apply to laws like the Municipal Voting Law. It applies, for example, to "changes including the requirement of enrollment, form of petition, [and] number of signatures required," which "together constitute a change in method of nominating elective officers." 1967 N.Y. Op. Att'y Gen. No. 73 (Apr. 5, 1967); *see also* 1966 N.Y. Op. Att'y Gen. No. 71 (Apr. 6, 1966) (referendum required to "change of method of selection of the Acting City Judge from appointment by the Mayor to election by the people"). Here, in enacting the Municipal Voting Law, the City Council has similarly changed the method by which all municipal elective officers are elected by effectively replacing the existing electorate with a differently constituted population. Under Municipal Home Rule Law § 23(2)(e), this change can be made only by referendum.

Courts have held that no referendum is necessary when a local government merely changes ward boundary lines or reapportions legislative districts. But a redrawing of district lines does not "change the method" of an election. When boundaries are redrawn, the same voter pool casts its votes for the same body of public officials, under the same basic procedures.

The Municipal Voting Law is different in kind. It changes the eligibility criteria for voters, effectively replacing the existing electorate for municipal offices with a differently-constituted electorate.[2] This is more akin to a "change of method of selection of the Acting City Judge from appointment by the Mayor to election by the people," which the Attorney General determined required a referendum, 1966 N.Y. Op. Att'y Gen. No. 71 (Apr. 6, 1966), rather than merely reallocating existing voters between electoral districts.

Similarly, another provision of § 23 requiring a referendum on laws that "change[] the membership or composition of the legislative body," has been held to apply only to "structural changes" that, for example, change the number of seats in the legislature. But in the same way that adding an additional seat to the legislature is a structural change to the composition of that body, adding a large new class of voters to the body of electors is a structural change to the method of electing municipal officeholders.

The City responds that "[a] change in the composition of the voter pool does not change the 'method' of election." (City Br. 2; *see also* 30–31.) The dissent

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[2] Contrary to the characterization of the dissent below, (R.1859,) Respondents' argument has nothing to do with the *size* of the electorate, but with the nature of its composition.

below similarly argued that "[t]he law broadens the scope of persons who may participate in that process without changing the process itself." (R.1860.) But the "method" of electing an officer inherently depends on the identity of the electoral pool. Just as changing the identity of the persons who *appoint* a given officer (*e.g.*, a change from appointment by the mayor to appointment by the mayor and city council) would undoubtedly be a change to the *method* of appointment, so a change to the identity of the persons who elect an officer would be a change to the method of election. The power to completely redefine the composition of the electorate is a radical one that amounts to "chang[ing] the method of nominating, electing, or removing an elective officer," and therefore requires the approval of the existing electorate under the Municipal Home Rule Law.

This interpretation of the scope of the referendum provision also aligns with its purpose. Elections are the mechanism through which the people — who are the ultimate repositories of sovereign authority in our system — control their government. If their elected representatives can unilaterally change the rules of the very system by which the people keep them in check, then the people's sovereignty and ability to control those who purport to act for them is undermined. Here, the City argues that its attempt to institute the most significant change in New York City

elections in generations[3] entirely evades the Municipal Home Rule Law's protections.

POINT III

AS AN ALTERNATIVE GROUND FOR AFFIRMANCE, THIS COURT SHOULD HOLD THAT THE MUNICIPAL VOTING LAW VIOLATES THE ELECTION LAW

As an alternative ground for affirmance, this Court should hold that the Municipal Voting Law violates the State Election Law. Respondents fully preserved this issue. The City says that "Plaintiffs have not sought to cross-appeal from that aspect of the ruling" by the Second Department that rejected this argument, (City Br. 9,) but it is well-settled law that a prevailing party who is not aggrieved by a decision *cannot* cross-appeal. "[T]he successful party, who is not aggrieved by the judgment or order appealed from and who, therefore, has no right to bring an appeal,

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[3] Intervenors and the dissent below complain that Respondents' position will burden local governments by applying to "too many" local laws, resulting in "more referendums than any community could well manage." (R.1860; Intervenors Br. 61.) But the law in question is not some picayune modification to election law details, but rather one described by its own proponents as expanding the electorate in a dramatic and sweeping way, and there is no reason to believe that Respondents' position — that a redefinition of the composition of the electorate "changes the method" of electing officeholders — would affect any significant number of laws.

is entitled to raise an error made below, for review by the appellate court, as long as that error has been properly preserved and would, if corrected, support a judgment in his favor." *Parochial Bus Sys., Inc. v. Bd. of Educ.*, 60 N.Y.2d 539, 545–46 (1983); CPLR § 5501(a)(1); *see also People v. Goodfriend*, 64 N.Y.2d 695, 697 (1984) ("In a civil case, an appellate court has a broad scope of review concerning the arguments of a respondent urging affirmance."). Instead, a successful party simply seeks affirmance on alternative grounds to those relied on by the court below in reaching its judgment. *See Parochial Bus*, 60 N.Y.2d at 546.

The decision below, declaring the Municipal Voting Law null and void, gave complete relief to Respondents. The State Election Law issue, which would provide an alternative ground for Respondents to prevail in this Court, was pleaded in the Complaint, and was argued and decided in both Supreme Court and the Appellate Division and is therefore fully preserved for review in this Court.

"[T]he strongest indication of [a] statute's meaning is in its plain language." *People v. Badii*, 36 N.Y.3d 393, 399 (2021). Like the State Constitution, the Election Law limits voting rights to citizens. It categorically states that "[n]o person shall be qualified to register for and vote at any election unless he is a citizen of the United States." Election Law § 5-102(1). Notably, the law applies to "all elections at which voters of the state of New York may cast a ballot for the purpose of electing an

individual to any party position or nominating or electing an individual to any federal, state, county, city, town, or village office." Election Law § 1-102 (emphasis added). The law is clear: voting in "any" public election in New York is limited to U.S. citizens. *Cf. Kimmel v. State*, 29 N.Y.3d 286, 401 (2017) ("It is not for this Court to engraft limitations onto the plain language of the statute.").

The court below held, however, that another clause in § 1-102 grants local jurisdictions the almost unlimited power to override this clear statutory language declaring that the Election Law's numerous requirements apply fully to local elections. But the Second Department has misread the language of § 1-102 in a way that is at odds with its history and function.

A. The plain text of § 1-102 limits its carve-out to state law.

The only issue in dispute is whether the Election Law's allowance that it may be overridden by "any other law which is inconsistent with the provisions of this chapter," Election Law § 1-102 (emphasis added), includes local laws like the Municipal Voting Law.

The Second Department reasoned that the Municipal Voting Law qualifies as "any other law" inconsistent with provisions of the Election Law and therefore under the terms of Election Law § 1-102, the Municipal Voting Law provides the

applicable law. But this reasoning depends on an interpretation of the words "any other law" that is divorced from context and ignores relevant legislative history.

First, the word "law" standing alone is not self-defining. It is capable of conveying a range of meanings and can include, for example, regulations enacted by administrative agencies. *See* LAW, Black's Law Dictionary (11th ed. 2019) ("the body of authoritative grounds of judicial and administrative action; esp., the body of rules, standards, and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them"). Applying such a broad definition to Election Law § 1-102 would allow the State Board of Elections to override the statute by regulation. That is untenable.

Nor does Section 2 of the Municipal Home Rule Law, which defines "Law" to mean "[a] state statute, charter or local law," suggest that the Election Law's reference to the term may include local laws. Rather, that observation weighs *against* any such interpretation. The Legislature's decision to clearly define the word "law" in the Municipal Home Rule Law only illustrates that the term is far from unambiguous and must be interpreted in accordance with the context, purpose, and history of a particular statute. And unlike the Municipal Home Rule Law, the Election Law does not expressly include local law.

Nor does the phrase "any other law" render the meaning of "law" unambiguous. Courts have recognized that the apparent breadth of the words "any other" may be limited by context. For example, a Texas court interpreting this exact same phrase held that "any other law" in a statute concerning guardianship procedures referred only to other laws regarding guardianship. *Gauci v. Gauci*, 471 S.W.3d 899, 902 (Tex. App. 2015). This Court, in its recent decision in *Bank of America, N.A. v. Kessler*, 39 N.Y.3d 317, 325 (2023), considered the statutory phrase "any other mailing or notice" and, rejecting the broad literal meaning, interpreted the phrase to refer only to "other kinds of notices." Similarly, a recent decision by the First Department, *Makhani v. Kiesel*, No. 1420/21, 2022 WL 16984186, at *8 (N.Y. App. Div. 1st Dep't Nov. 17, 2022), considered the meaning of the phrase "any other department, authority, division or agency of the state," and held that it should be read as limited to executive branch agencies after reading "other" to mean "other such like" and defining its scope by reference to the specific agencies enumerated in the statute. Here, the phrase "any other law" can be properly interpreted only in its full statutory context.

To determine the intended scope of the term "law," therefore, it is necessary to give close attention to the precise language of Election Law § 1-102, which does not simply give preference to any provision of law inconsistent with the Election

Law, but rather refers to an inconsistent "specific provision of law [that] exists in any other law" (emphasis added). Key to a proper interpretation of this phrase is referent of the word "other." Here, it refers to the Election Law itself. Section 1-102 provides that the Election Law yields to a provision in any law other than the Election Law that is inconsistent with "provisions of *this chapter*" (*i.e.*, the Election Law). In this context, the most natural reading of "any other law" is any other state statutory law outside this chapter.

Guidance can also be found in the "familiar canon of construction that the intent with which statutes have been enacted is to be collected from the context, from the occasion and necessity of the law, from the mischief felt, and the objects and the remedy in view." *People v. Bell*, 306 N.Y. 110, 113 (1953) (internal quotation marks omitted). Here, at the time § 1-102 was enacted as part of the 1976 recodification of the Election Law, another body of state law governing elections for schools and libraries existed in the Education Law. Unlike conflicts between state and local law, which are governed by well-established preemption principles, *see, e.g.*, *Albany Area Builders Ass'n v. Town of Guilderland*, 74 N.Y.2d 372, 377 (1989), conflicts between different provisions of state statutory law create unique difficulties in determining the applicable law. Section 1-102 addresses this problem by ensuring that specific election provisions elsewhere in state law, for example, the Education

Law's provisions for school district elections, will prevail over the general provisions of the Election Law.

The carve-out clause should also be considered in the context of the entirety of § 1-102. The first sentence establishes that the Election Law is fully applicable to local elections, including "electing an individual to any federal, state, county, city, town or village office, or deciding any ballot question submitted to all the voters of the state or the voters of any county or city, or deciding any ballot question submitted to the voters of any town or village at the time of a general election." N.Y. Elec. § 1-102. According to the Second Department, however, the broad uniform applicability of the Election Law is immediately undercut by the second sentence, which, under its interpretation, allows any local jurisdiction to unilaterally exempt itself from nearly every requirement of the Election Law, including several provisions that specifically govern the operations of local elections. This makes no sense. Indeed, under the Second Department's interpretation, virtually the entirety of the Election Law with the exception of handful of provisions is subject to override by any municipality in the state. This is a recipe for electoral chaos.[4]

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[4] Although the dissent below says that this interpretation "does not lead to absurd results," (R.1854,) elsewhere it appears to recognize the problems it will cause and seeks to cabin its breadth by asserting that this override is applicable "only in

Finally, other provisions of the Election Law are rendered ineffectual or superfluous by the Second Department's interpretation. For example, certain provisions of the Election Law impose additional requirements on particular localities. *See, e.g.*, N.Y. Elec. Law § 3-506. According to the Second Department, however, § 1-102 allows these localities to disregard and override these statutory requirements by simply enacting a contrary local law. Other provisions of the Election Law expressly allow localities to override the Election Law's default rule through local law. *See, e.g.*, N.Y. Elec. Law § 3-200(2) (county legislature may increase number of commissioners through local law). Under the City's interpretation, these provisions are entirely superfluous, as localities have a general power under § 1-102 to freely override the Election Law by enacting local laws. *See Branford House, Inc. v. Michetti*, 81 N.Y.2d 681, 688 (1993) ("A construction rendering statutory language superfluous is to be avoided." (cleaned up)). Under normal principles of statutory construction, the express inclusion of local overrides in certain provisions implies that such overrides are not available when not so provided for.

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circumstances pertaining to local matters." (R.1858.) This constraint is not found in § 1-102, which applies by its terms to "any other law," without limitation.

B. The legislative history of § 1-102 proves that its exception is limited to state law.

In interpreting statutory language, a court must give weight to "the spirit and purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history." *Nostrom v. A.W. Chesterton Co.*, 15 N.Y.3d 502, 507 (2010). "[L]egislative history buttresses the conclusion that is evident from the [Election Law's] plain language." *Badii*, 36 N.Y.3d at 399.

Section 1-102 was introduced in the 1976 recodification of the Election Law, enacted through a pair of bills, Chapters 233 and 234. Notably, in the first of these bills, the carve out language was different, specifying only that "[w]here 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). As noted above, school district and library elections are governed by the Education Law, and the carve out in § 1-102 aimed to prevent the newly recodified Election Law from usurping the Education Law's role with respect to those elections. Most significantly, this original language demonstrates that when the Legislature was first crafting the carve out provision of § 1-102, its focus was on other provisions of *state* law that might come into conflict with the Election Law.

The second bill, Chapter 234, enacted on the same day as Chapter 233, modified the new § 1-102 by changing "the education law" to "any other law." L. 1976, ch. 234. The purpose of this bill was to make "many technical and typographical corrections in the recodification," as well as certain more substantive amendments including new changes from existing law and reversions to existing law by undoing changes in the first recodification bill. Bill Jacket, Memorandum of Support, at 1.

Although the Memorandum of Support includes explanations of numerous provisions in the bill, including various "Additional Changes in Existing Law Made by Chapter Amendment to Recodification of Election Law" and "Reversions to Existing Law Effected by Chapter Amendment to Recodification," the change to § 1-102 is not explained or even listed in the memorandum. *Id.* at 2–4. The clear implication is that the change to § 1-102 was considered neither a significant substantive change to the Election Law nor the reversion of a significant change to the Election Law, but rather only one of the "many technical and typographical corrections" to the original recodification in Chapter 233. In other words, the replacement of "the education law" with "any other law" was not intended to effect a major change in the recodification.

Allowing not only the state Education Law, but also the laws of any of New York's more than one thousand local governments, to displace almost the entirety of the Election Law would have been a major alteration of the relationship between the Election Law and local law. But if "any other law" refers to state law, then the change is easily understood as a minor technical correction recognizing that provisions of state law that conflict with the Election Law may not be confined to the Education Law.

That the Legislature's focus was on conflicts with other state laws is demonstrated by the next amendment to § 1-102 in 1978. This bill, enacted as Chapter 374, modified the application clause of § 1-102 for the specific purpose of completely exempting certain elections governed by other bodies of state law from the coverage of the Election Law, including school district elections governed by the Education Law, fire district elections governed by the Town Law, and special town elections governed by the Town Law and the Municipal Home Rule Law. *See* Bill Jacket, Letter from Association of Towns. Although the recodification provided that the Election Law would yield to inconsistent provisions of "any other law", its language left open the possibility that, for example, school district elections would be subject to the requirements of *both* the Education Law and the Election Law where the two did not conflict, imposing unnecessary burdens on local officials. Bill

Jacket, New York State Assembly Memorandum in Support of Legislation. The statements of support in the bill jacket repeatedly emphasize that this bill was intended as a *clarification* of the recodification, which was always intended to exempt these special district elections from the Election Law's coverage. In other words, this amendment confirms that the "any other law" language was intended to govern the interplay between the Election Law and other bodies of state law that govern certain elections.

CONCLUSION

This Court should affirm the order and judgment of the court below, granting summary judgment in favor of Plaintiffs-Respondents and declaring the Municipal Voting Law null and void.

Dated: September 26, 2024
Albany, New York

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STATE OF NEW YORK
COURT OF APPEALS

VITO J. FOSSELLA, et al.,

Plaintiffs-Respondents,

-against-

CITY COUNCIL OF THE CITY OF NEW YORK,

Defendant-Appellant,

-and-

HINA NAVEED, et al.,

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-Intervenors-Appellants.

AFFIDAVIT OF SERVICE

APL-2024-00033

STATE OF NEW YORK)
)ss.:
COUNTY OF ALBANY)

Rebecca D'Anza, being duly sworn, deposes and says: I am not a party to the action, and over 18 years of age and I reside in Delmar, New York. On September 26, 2024, I served **3** true copies of the within Brief for Plaintiffs-Respondents via FedEx Priority Overnight service in properly addressed FedEx Paks by depositing in a FedEx official depository, under the exclusive custody and care of FedEx, within the State of New York, addressed to the last known address of the addressees as indicated below:

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