To be argued by:
MICHAEL Y. HAWRYLCHAK
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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 IN RESPONSE TO AMICI CURIAE

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Dated: December 27, 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.

TABLE OF CONTENTS

Page

STATUS OF RELATED LITIGATION i

CORPORATE DISCLOSURE STATEMENT ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

PRELIMINARY STATEMENT 1

ARGUMENT 2

POINT I 2

ARTICLE II, SECTION 1 OF THE NEW YORK STATE CONSTITUTION LIMITS VOTING TO CITIZENS OF THE UNITED STATES 2

A. Article II, Section 1 refers to citizens of the United States. 3

B. Article II, Section 1 exclusively reserves voting rights for citizens. 7

C. Article II, Section 1 applies to local elections. 11

POINT II 13

ARTICLE IX INDEPENDENTLY LIMITS VOTING IN LOCAL ELECTIONS TO CITIZENS 13

POINT III 17

THE ELECTION LAW EXPRESSLY PROHIBITS VOTING BY NON-CITIZENS 17

A. The plain text of § 1-102 limits its carve-out to state law. 17

B. The legislative history of § 1-102 demonstrates that its exception is limited to state law. 23

CONCLUSION..28

WORD COUNT CERTIFICATION...30

TABLE OF AUTHORITIES

Page

New York State Cases

Albany Area Builders Ass'n v. Town of Guilderland,
74 N.Y.2d 372 (1989) 28

Bank of America, N.A. v. Kessler,
39 N.Y.3d 317 (2023) 18

Bareham v. Rochester,
246 N.Y. 140 (1927) 22

Blaikie v. Power,
13 N.Y.2d 134 (1963) 12, 13

Colon v. Martin,
35 N.Y.at 78 (2020) 10

Dening v. Cooke,
162 Misc. 723 (Sup. Ct. Lewis Cty. 1937) 9

Ginsberg v. Purcell,
51 N.Y.2d 272 (1980) 10

Johnson v. New York,
274 N.Y. 411 (1937) 12

Makhani v. Kiesel,
No. 1420/21, 2022 WL 16984186 (N.Y. App. Div. 1st Dep't Nov. 17, 2022) 18

Nostrom v. A.W. Chesterton Co.,
15 N.Y.3d 502 (2010) 23

People ex rel. Killeen v. Angle,
109 N.Y. 564 (1888) 9

People ex rel. Smith v. Pease,
27 N.Y. 45 (1863) .... passim

People v. Badji,
36 N.Y.3d 393 (2021) 23

People v. Bell,
306 N.Y. 110 (1953) 23

Red Hook Cold Storage Co. v. Dep't of Labor,
295 N.Y. 1 (1945) 15

Sill v. Village of Corning,
15 N.Y. 297 (1857) 9

Town of Aurora v. Village of East Aurora,
32 N.Y.3d 366 (2018) 9

Wendell v. Lavin,
246 N.Y. 115 (1927) 3

White v. Cuomo,
38 N.Y.3d 209 (2022) 17

Out-of-State Cases

Gauci v. Gauci,
471 S.W.3d 899 (Tex. App. 2015) 19

United States Constitution

U.S. Const. Amend. 17 4

U.S. Const. Art. I, § 2 4

New York State Constitution

N.Y. Const. Art. I, § 1 7

N.Y. Const. Art. I, § 8 7

N.Y. Const. Art. II, § 1 .... passim

N.Y. Const. Art. II, § 5 .... 8, 10, 11, 12

N.Y. Const. Art. II, § 7 .... 8, 10, 11, 12

N.Y. Const. Art. II, § 8 12

N.Y. Const. Art. IX, § 3(c) 15, 16

N.Y. Const. Art. IX, § 3(d) 14

N.Y. Const. Art. IX, § 3(d)(3) 14, 15

Federal Statutes

18 U.S.C. § 611 4

New York State Statutes

County Law § 105 20

Election Law § 1-102 .... passim

Election Law § 3-200(2) 21

Election Law § 4-104(3) 21

Election Law § 5-102(1) 7, 17, 22

General City Law § 8 .... 20, 21

General Municipal Law § 701 14

Municipal Home Rule Law § 2 14

Municipal Home Rule Law § 28 20

Rapid Transit Law § 2 14

Statute of Local Government § 3 14

Vehicle & Traffic Law § 1642 21

Other

James J. Brudney and Ethan J. Leib, "Any", 49 BYU L. Rev. 465 (2023) 18

PRELIMINARY STATEMENT

A collection of amici curiae — the New York Immigration Coalition and United Neighborhood Houses ("NYIC Br."); Legal Scholars Richard Briffault, Nestor Davidson, Joshua Douglas, Clayton Gillette, and Roderick Hills ("Scholars' Br."); New York Civil Liberties Union ("NYCLU Br."); Demos ("Demos Br."); Professor Ron Hayduk ("Hayduk Br."); and Common Cause New York ("Common Cause Br.") — have filed briefs in support of the City and Intervenors, urging this Court to reverse the Appellate Division, Second Department and uphold New York City's Municipal Voting Law as legal and constitutional.

Several of these amici provide extended policy arguments about the benefits of extending the franchise to certain non-citizens. *See, e.g.*, NYIC Br. 3–10; Demos Br. 19–23; Hayduk Br. 15–25. But whatever the merits of these policy arguments, this Court is tasked with answering distinctly *legal* questions: whether the Municipal Voting Law violates the New York State Constitution; whether it is invalid under the Election Law; and whether it was adopted in violation of the Municipal Home Rule Law.

Although many of the arguments put forward by amici have already been addressed in Plaintiffs–Respondents' principal brief in opposition to the City and

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Intervenors, Plaintiffs–Respondents submit this further brief pursuant to 22 N.Y.C.R.R. § 500.12(f) to directly respond to amici. Ultimately, amici provide no meritorious basis on which to overturn the Second Department's judgment, and the decision below, declaring the Municipal Voting Law null and void, should be affirmed.

ARGUMENT

POINT I

ARTICLE II, SECTION 1 OF THE NEW YORK STATE CONSTITUTION LIMITS VOTING TO CITIZENS OF THE UNITED STATES

Article II, Section 1 of the New York State Constitution guarantees the right to vote to "citizen[s]" who meet the specified age and residency requirements. N.Y. Const. Art. II, § 1. The natural reading of this language — that it defines the exclusive class of persons permitted to vote in New York elections — is confirmed by longstanding judicial interpretation. *See People ex rel. Smith v. Pease*, 27 N.Y. 45, 53 (1863).

In response, Amici raise several distinct arguments: First, that the term "citizen" in Article II, Section 1 does not refer to United States citizenship. Second,

that Article II, Section 1 does not exclusively define eligible voters. And third, that Article II, Section 1 does not apply to local elections.

But each of these arguments asks this Court to ignore the clear import of the Constitution's language. "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).

A. Article II, Section 1 refers to citizens of the United States.

Echoing an argument made by Intervenors, some of the amici argue that the word "citizens" in Article II, Section 1 does not refer to citizens of the United States, but instead to some broader class that includes at least some persons who are *not* citizens of the United States. (*See* NYCLU Br. 3—8; Hayduk Br. 4–5.) But although Plaintiffs–Respondents highlighted how radical this approach claim is, (Plaintiffs–Respondents Br. 23–24,) Amici refuse to acknowledge the inescapable implications of their theory.

This much is beyond dispute: Article II, Section 1 declares that citizens meeting its age and residency requirements are "entitled to vote at every election." If Amici are correct, and the entitlement to vote in Article II, Section 1 applies to a class of persons who are not United States citizens, then the implication is not that

New York City is *permitted* to allow voting by non-citizens, but rather that New York State — and every municipality within the State — is *required* to allow voting by non-citizens, and that the State has therefore been unconstitutionally abridging the right to vote for as long as Article II, Section 1 or its predecessor provisions have existed in the Constitution. And under this approach, Election Law § 5-102, which expressly prohibits voting by persons who are not U.S. citizens, is itself unconstitutional.

This interpretation of the New York Constitution would also place it in direct conflict with federal law. The United States Constitution bases voter eligibility for House and Senate elections on state voter qualifications, without reference to citizenship. U.S. Const. Art. I, § 2, Amend. 17. If the class of "citizens" under Article II, Section 1 includes some persons who are not United States citizens — thereby guaranteeing that these non-U.S.-citizens are "entitled to vote at every election" in New York — then under the United States Constitution these same non-citizens would be qualified voters for the House and Senate. Federal law, however, expressly prohibits aliens from voting in federal elections. 18 U.S.C. § 611. Amici's interpretation places the New York Constitution in direct conflict with federal statutory law. This Court should not accept an interpretation of the Constitution that

conflicts with caselaw, forces a direct conflict with federal law, and deems two hundred years of New York practice unconstitutional disenfranchisement.

The practical problems with Amici's theory do not end there. The Municipal Voting Law does not extend the right to vote to all non-citizens, but only to lawful permanent residents or persons authorized to work in the United States. But Amici provide no argument that the broader category of citizens encompassed by their interpretation of Article II, Section 1 is coextensive with the categories of non-citizens identified in the Municipal Voter Law. In other words, what reason is there to believe that every one of the many categories of non-citizens with work authorization — including, for example, various short-term visa holders — qualifies as a "citizen" of the State of New York? This highlights the inherent problems with the idea that the Constitution grants an entitlement to vote to some vague class of persons that has never been defined by the courts or the Legislature.

Even leaving aside the immense practical problems with Amici's approach, it is wrong as a matter of law. As an initial matter, this Court has already held that Article II, Section 1 ties voting eligibility to federal citizenship. *See Pease*, 27 NY at 63. Amicus NYCLU asserts that *Pease* is irrelevant because "this Court was not interpreting the definition of 'citizen' in the New York State Constitution."

(NYCLU Br. 8 n.2.) But, in fact, this Court did exactly that. In evaluating a challenge to votes cast by allegedly ineligible voters, the Court cited Article II, Section 1 as the source of a citizenship requirement, and then discussed evidence of foreign birth and naturalization — indicia of federal, not state, citizenship. *Pease*, 27 NY at 52–53, 63. And contrary to Amicus's suggestion, the Court did not rely on any statutory definition of citizenship, but rooted the federal citizenship requirement directly in Article II, Section 1. *Id.* at 52–53.

NYCLU further argues that the presumption of consistent usage supports its position, asserting that because the Constitution on three occasions uses the phrase "citizen of the United States," the other nine references to "citizen" should be interpreted to refer to something different — state citizenship. (NYCLU Br. 4–6.) But, as Plaintiffs–Respondents already pointed out in their Brief in Opposition, (Plaintiffs–Respondents Br. 26,) two of the nine uses of the term citizen expressly reference *state* citizenship. Any argument based on consistent usage of terminology throughout the Constitution therefore necessarily fails. Contrary to NYCLU's characterization, (*see* NYCLU Br. 6,) Plaintiffs–Respondents have argued that each of the uses of "citizen" that does not expressly reference either federal or state citizenship must be interpreted contextually. For example, the free speech guarantee

of Article I, Section 8, which has been properly been held to extend beyond U.S. citizens, is among the "rights or privileges" that Article I, Section 1 describes as secured to *citizens of the state*, in contrast to the franchise, which Article I, Section 1 does not connect with state citizenship.

Article II, unlike Article I, contains no explicit reference to state citizenship, and unlike the free speech guarantee, both this Court's decision in *Pease*, 27 N.Y. 45,[1] and the Legislature's longstanding implementation of Article II, Section 1, *see* Election Law § 5-102(1), have limited voting to United States citizens. Amici provide no good grounds to overturn this long settled understanding.

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

Several of the Amici argue that Article II, Section 1, which speaks in terms of citizens' entitlement to vote, establishes only a floor, and not a ceiling, for the right to vote under the Constitution. (*See, e.g.*, Scholars' Br. 19.) This argument is not

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[1] NYCLU asserts that "none of the uses of 'citizen' in the State Constitution that are currently not qualified by "of the United States" have *ever* been held to mean U.S. citizenship." (NYCLU Br. 6.) NYCLU can make this assertion only by ignoring this Court's decision in *Pease*.

only at odds with this Court's precedent but is incompatible with other provisions of Article II.

This Court, in a holding that is directly on point and has never been overturned, expressly held that the predecessor provision to Article II, Section 1 expressly limited voting to United States citizens. *People ex rel. Smith v. Pease*, 27 N.Y. 45, 53 (1863). In evaluating an election challenge involving allegedly ineligible voters, this Court noted that Article II, Section 1 establishes qualifications — including citizenship — for those entitled to vote in elections, and held that "[i]t follows that none others than those possessing these qualifications can lawfully vote." *Pease*, 27 N.Y. 45 at 53. This Court's exclusive reading is confirmed by language in other sections of Article II that presupposes that voters are citizens. Both Article II, Section 5 and Article II, Section 7 refer to voters as citizens, and neither makes sense if the electorate can be expanded to include non-citizens.[2]

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[2] Amici Scholars attempt to provide a rationale for Article II, Section 5, (Scholars' Br. 20–21,) but it only serves to highlight the irrationality. Why would any rational constitutional drafter require citizens to provide proof of eligibility, but allow non-citizens to vote without any such proof? And Amici have no explanation for Section 7's reference to "elections by the citizens."

Perhaps even more significantly, Article II, Section 1 itself has not one, but two, references to citizens. After describing citizens' entitlement to vote, Section 1 goes on to establish age and residency requirements for "such citizen[s]." Again, the Constitution presupposes that voters are necessarily citizens. Amici's approach would lead to the absurd result that while citizen voters must meet additional eligibility criteria, non-citizen voters face no such limitation.

Amicus NYIC criticizes Plaintiffs–Respondents invocation of the *expressio unius* canon, arguing on the basis of an unsourced assertion in a single Supreme Court decision from 1937 that *expressio unius* can come into play only after a finding of ambiguity. *See Dening v. Cooke*, 162 Misc. 723, 725 (Sup. Ct. Lewis Cty. 1937). This argument, however, finds no support in this Court's caselaw. On the contrary, this Court has regularly applied the *expressio unius* canon without first finding ambiguity. *See Town of Aurora v. Village of East Aurora*, 32 N.Y.3d 366, 373 (2018) (statute establishing one method by which village "may" exercise power precludes use of other methods); *People ex rel. Killeen v. Angle*, 109 N.Y. 564, 574–75 (1888) (applying expressio unius to Constitution to infer a limitation on Legislative power); *Sill v. Village of Corning*, 15 N.Y. 297, 300 (1857) (Constitution's grant of legislative power to create certain courts implied a bar on

creating certain other courts); *see also Colon v. Martin*, 35 N.Y.3d 75, 78 (2020) ("the maxim "is typically used to limit the expansion of a right or exception — not as a basis for recognizing unexpressed rights by negative implication.").

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).

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

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

Several amici argue that Article II, Section 1 applies only to statewide elections, and not to local elections. (*See, e.g.*, Scholars' Br. 21–24; Demos Br. 5–14.) This Court should reject this argument.

First, Article II by its own terms applies to local elections. The language of Article II, Section 1 is neither limited in scope to statewide elections, nor does it provide any exception for local elections. Rather, it applies in sweeping terms to "every election for all officers elected by the people." N.Y. Const. Art. II, § 1. To the extent there remains any doubt about the scope of its application, however, other provisions of Article II provide confirmation.[3]

Article II, Section 5 and Article II, Section 7 refer to "the citizens who shall be entitled to the right of suffrage hereby established" and "elections by the citizens," respectively, referring back to Article II, Section 1's voter qualifications. And each of these two sections exempts only a limited subset of local elections from its

[3] The argument that the language of Election Law § 1-102 ("any other law") unambiguously extends to its maximal breadth (Common Cause Br. 3) directly contradicts the argument that the unqualified, universal language of Article II, Section 1 ("every election") should be construed to exclude local elections. Plaintiffs-Respondents have consistently argued that each provision must be interpreted in light of its full statutory or constitutional context.

coverage — town and village elections for Section 5 and certain town officers for Section 7 — indicating that all other local elections remain subject to these constitutional provisions. Article II, Section 8, regulating the election boards responsible for counting votes at elections, similarly expressly exempts only town and village elections from its coverage. Under Amici's theory, Section 1 stands alone as the only provision in Article II that is limited to statewide elections and has no application to local elections — a position that has no basis in the Constitution's text or structure.

Nor does this Court's caselaw require otherwise. The Court directly addressed the applicability of Article II, Section 1 to local elections in both *Johnson v. New York*, 274 N.Y. 411 (1937), and *Blaikie v. Power*, 13 N.Y.2d 134 (1963), upholding proportional representation and "limited voting" for councilmen at large, respectively. In neither of these cases, however, did the Court hold that Article II, Section 1 did not apply to the local elections in question. Rather, in each case, the Court examined the particular mechanics of the proposed election system and held that it complied with Section 1's requirements. *Johnson*, 274 N.Y. at 425–29;

Blaikie, 13 N.Y.2d at 143.[4] In each case, the Court's substantive analysis of the adopted electoral system — on which the Court's decision turned — would have been entirely unnecessary if Article II, Section 1 were limited to statewide elections.

In fact, in *People ex rel. Smith v. Pease*, 27 NY at 63, this Court's only decision involving the precise question at issue here —the application of the citizenship requirement of Article II, Section 1 to a local election — the Court clearly and unequivocally held that it does.

POINT II

ARTICLE IX INDEPENDENTLY LIMITS VOTING IN LOCAL ELECTIONS TO CITIZENS

Plaintiffs–Respondents' argument is straightforward. Article II, Section 1 provides that United States citizens are entitled to vote.[5] In defining the electorate for local offices, Article IX incorporates Article II, Section 1 by cross-reference; Article IX, Section 1 requires that local elected officials be chosen "by the people of

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[4] In *Blaikie*, a concurring opinion argued that Article II, Section 1 does not apply to local elections. 13 N.Y.2d at 144. This opinion received the vote of only a single Judge.

[5] As explained in Point I.A, *supra*, the argument that "citizen" in Article II, Section 1 refers to some broader class of persons beyond United States citizens is untenable.

the local government," and Article IX, Section 3(d)(3) defines the people as "[p]ersons entitled to vote as provided in section one of article two of this constitution." As a result, even if Article II, Section 1 did not by itself apply to local elections or prohibit voting by non-citizens, its incorporation into Article IX, Section 3(d)(3)'s definition of the people has the same effect.

Amici resist this clear language primarily through two arguments: (1) that the introductory language in Section 3(d) acts to expand the definition of the people; and (2) that Article IX's liberal construction provision grants municipalities the power to define the people expansively. Neither argument has merit.

Article IX, Section 3(d) uses the phrase "the following terms shall mean or include" to introduce a list of defined terms. This is a common formula in definition sections. *See, e.g.*, Gen. Mun. Law § 701; Stat. Local Gov't § 3; Mun. Home Rule Law § 2; Rapid Trans. Law § 2. Amici argue that the use of the word "include" requires an inclusive interpretation of the defined term "people". (*See* NYIC Br. 19.) In so arguing, however, Amici fail to give any significance to the word "mean" or the disjunctive conjunction "or". As Plaintiffs–Respondents explained in their Brief in Opposition, the introductory language "mean or include" requires a court to consider whether each listed term is associated with a definition ("means") or a list

of representative examples ("includes"). (*See* Plaintiffs–Respondents Br. 19–20.) Article IX, Section 3(d)(3)'s cross-reference to the persons identified in Article II, Section 1 is clearly the former.

Indeed, an inclusive reading would make no sense here. This Court has explained that the word "include" is used to "show the meaning of the defined word by listing some of the things meant to be referred to, but not by such listing excluding *others of the same kind*." *Red Hook Cold Storage Co. v. Dep't of Labor*, 295 N.Y. 1, 8 (1945)(emphasis added). Here, however, the definition identifies one specific class of persons — those "entitled to vote as provided in section one of article two." Here, Amici seek to expand the definition of the people, not to include "others of the same kind," but rather to include precisely the opposite of the specified class — persons *not* entitled to vote under Article II, Section 1. This is a nonsensical way to interpret a specifically defined term.

Finally, Amici rely on Article IX's liberal construction provision which holds that the "[r]ights, powers, privileges and immunities granted to local governments by this article shall be liberally construed." Art. IX, § 3(c). (*See* NYIC Br. 19; Scholars' Br. 14.) But, as Plaintiffs–Respondents have noted, (Plaintiffs–Respondents Br. 21–22,) this theory rests not on the liberal construal of 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. Indeed, 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.

Respondents are not aware of — and Amici have not cited — any case in which this Court has held that a constitutionally defined term can be assigned a different scope by different municipalities throughout the state. When this Court liberally construes a *power* granted to municipalities, localities may differ in the extent that they choose to exercise the power to its 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, has no basis in the liberal construction provision of Article IX, Section 3(c), 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.

POINT III

THE ELECTION LAW EXPRESSLY PROHIBITS VOTING BY NON-CITIZENS

Plaintiffs–Respondents have urged this Court to hold, as an alternative ground for affirmance, that the Municipal Voting Law is invalid under Election Law § 5-102(1), which provides that "[n]o person shall be qualified to register for and vote at any election unless he is a citizen of the United States." Amicus Common Cause argues that Election Law § 1-102 grants local governments the power to supersede the requirements of the Election Law. This is a misreading of § 1-102 and a misunderstanding of the relationship between state and local law.

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

Amicus Common Cause argues, echoing the Second Department below, that the phrase "any other law" in Election Law § 1-102 is unambiguous and requires no further interpretation. (Common Cause Br. 3, 4.) With due respect, this is a facile

analysis — courts have regularly found the interpretation of the word "any" in statutes to be far from trivial. A recent law review article surveyed cases from the United States Supreme Court involving disputes over the scope of the word "any", examining more than a dozen examples from that Court, as well as legislative drafting manuals that consider the interpretive difficulties caused by the word. James J. Brudney and Ethan J. Leib, "Any", 49 BYU L. Rev. 465 (2023). That study found that the Supreme Court's "any" decisions in recent years have been "fairly evenly divided between expansive and confining constructions," and concluded that "any" is "a word which has multiple uses [and] needs a lot of context for sensitive interpretation appropriate to the relevant statutory setting." *Id.* at 478, 511.

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. A Texas court interpreting the exact phrase at issue here 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). Here, the phrase "any other law" can be properly interpreted only in its full statutory context.

Here, the immediate statutory context is informative. Election Law § 1-102 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.

This interpretation is reinforced when the "any other law" clause is 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 Amici, however, the broad uniform applicability of the Election Law is immediately undercut by the second sentence, which 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. Indeed, under this interpretation, virtually the entirety of the Election Law with the exception of a handful of provisions is subject to override by any municipality in the state.

Related provisions in other chapters also provide relevant context. Several other statutory provisions contain parallel provisions similarly stating that the Election Law will yield to "any other law." *See* Gen. City Law § 8; Municipal Home Rule Law § 28; County Law § 105. First, the placement of this provision within several bodies of state statutory law, each of which contains its own election-related provisions, reinforces the idea that the purpose of the "any other law" provision was to provide a rule of priority to govern the various election provisions scattered across multiple chapters of the state code. But more significantly, each of these parallel statutory sections contains an additional reference to "any other law." For example, General City Law § 8 provides that "[t]he provisions of the election law or *any other*

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law relating to the submission of questions at general elections, so far as the same are applicable and not inconsistent with this chapter, shall apply to the conduct of all elections at which questions are submitted to all the voters of a city." Gen. City Law § 8 (emphasis added). The language of these provisions contemplates other laws broadly applicable to "the submission of questions at general elections," rather than local laws narrowly aimed at a particular municipality.

Elsewhere, when the Legislature wanted to expressly grant municipalities the power to supersede otherwise applicable general laws, it has done so expressly. *See, e.g.*, Veh. & Traf. Law § 1642 ("such local laws, ordinances, orders, rules, regulations and health code provisions shall supersede the provisions of this chapter where inconsistent or in conflict with respect to the following enumerated subjects"). Such express provisions exist even within the Election Law itself, though they would be superfluous under Amici's interpretation of § 1-102. *See, e.g.*, N.Y. Elec. Law § 3-200(2) (county legislature may increase number of commissioners through local law).[6]

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[6] Although a number of provisions of the Election Law expressly apply "[n]otwithstanding any other law," Amicus Common Cause points to a single provision that applies "[n]otwithstanding the provisions of any general, special or local law." Election Law § 4-104(3). (Common Cause Br. 5–6.) Common Cause

Finally, Amici cite *Bareham v. Rochester*, 246 N.Y. 140 (1927), for the broad proposition that local governments may supersede the Election Law when legislating as to local subjects. (*See* Demos Br. 16–17.) But the Court's decision in *Bareham* is far more limited. In *Bareham*, the Court held that the specific provision of the Election Law at issue, which pertained to nominations and elections of city officers, was a special law, "not a statute applicable alike to all the cities of the State," because the Legislature had "enacted several local statutes, applicable only to certain cities . . . different from the general scheme defined in the Election Law." *Id.* at 148. Indeed, the Court expressly distinguished general laws, stating that the argument that "the statute must prevail and the local law is void . . . would be unanswerable if the Election Law were, in so far as it regulates the nomination and election of city officers, such a statute as in terms and in effect applies alike to all cities." *Id.* Here, Election Law § 5-102(1) is exactly such a general law that applies alike to all localities, without exception.

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argues that this provision is superfluous under Plaintiffs–Respondents' interpretation. But under Common Cause's interpretation, the express reference to local law is equally superfluous because the phrase "any other law" in every other notwithstanding provision would include local laws.

B. The legislative history of § 1-102 demonstrates 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." *People v. Badji*, 36 N.Y.3d 393, 399 (2021).

Guidance can 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). 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.

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 was necessary 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.

Amicus Common Cause points to prior code provisions from which § 1-102 was derived, asserting that "Section 1-102 was intended to be a codification of the earlier election law provisions from which it derived." (Common Cause Br. 14.) A cursory comparison of the relevant provisions demonstrates that this is plainly false.

Prior code sections listed in the Derivation table for § 1-102 contain provisions that were not carried over into the new provision, including, for example, detailed specifications concerning the use of voting machines. Amicus Common Cause argues that § 1-102 should be interpreted to allow supersession by local law because prior code provisions "explicitly provided that their provisions could be superseded by other laws, including local laws." (Common Cause Br. 14.) This is highly misleading. Prior code provisions had a narrow carve out for local laws "prescribing a particular method of making nominations of candidates for certain school or city offices," not the blanket authorization for any municipality to supersede nearly the entirety of the Election Law advocated by Amici.

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.[7]

Amicus Common Cause asserts that the "reference to 'any other law' was *especially* intended to include local and municipal laws, even more so than inconsistent state laws." (Common Cause Br. 11.) With respect, this is nonsense.

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[7] Amicus Common Cause argues that the Legislature's failure to revise § 1-102 during subsequent amendments to "make clear that local governments could not supersede" the Election Law demonstrates that it was intended to apply to local laws. (Common Cause Br. 19–20.) This assumes the conclusion. If "any other law" was always intended to refer to state statutory law, no revision was necessary.

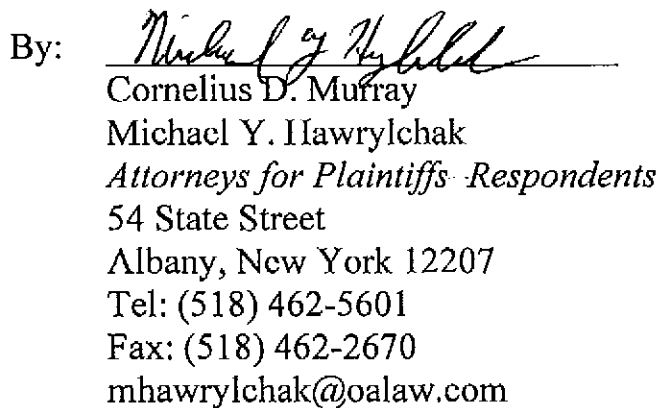
As noted above, in 1976 the Education Law contained an entire distinct set of election laws governing school district and library elections. Significant election provisions existed in other chapters including the Town Law and the Municipal Home Rule Law. Unlike conflicts between state and local law, 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 addressed 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 subsequent amendment in 1978 demonstrates beyond doubt that the Legislature was motivated by the need to avoid conflicts between different bodies of state statutory law.

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: December 27, 2024
Albany, New York

O'CONNELL AND ARONOWITZ, P.C.



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WORD COUNT CERTIFICATION

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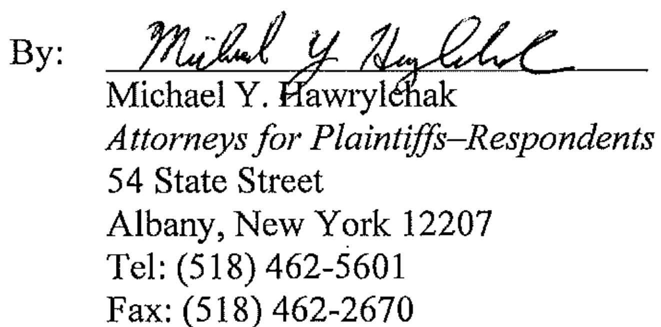
By: 

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STATE OF NEW YORK
COURT OF APPEALS

VITO J. FOSSELLA, et al.,

Plaintiffs-Respondents,

-against-

AFFIDAVIT OF SERVICE

APL-2024-00033

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.

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

I, Erica McLaughlin, being duly sworn, deposes and says: I am not a party to the action, and over 18 years of age and I reside in Albany, New York. On December 27, 2024, I served **3** true copies of the within Brief for Plaintiffs-Respondents in Response to Amici Curiae via FedEx 2Day 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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27th day of December 2024.

Notary Public - New York State

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MY COMMISSION EXPIRES JULY 3, 2027

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