SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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 MILLIOTAKIS, MICHAEL PETROV, WAFIK HABIB, PHILLIP YAN HING WONG, NEW YORK REPUBLICAN STATE COMMITTEE, and REPUBLICAN NATIONAL COMMITTEE

Plaintiffs,

Index No. 85007/2022

-against-

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

Defendants,

-and-

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

Defendant-Intervenors.

DEFENDANT- INTERVENORS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF DEFENDANT-INTERVENORS' MOTION TO DISMISS

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PRELIMINARY STATEMENT

Defendant-Intervenors Naveed, Paulos, Vargas Galindo, Santos Veloz, Prado, John, Salazar, Shahidullah and Undag ("Defendant-Intervenors") submit this memorandum of law in further support of Defendants' cross-motion for summary judgment and in opposition to Plaintiffs' motion for summary judgement or in the alternative for dismissal of all claims on the grounds that none of the named Plaintiffs have standing to bring this action.

First, before reaching the merits of this matter, the Court should dismiss all claims brought by Plaintiffs because they have not suffered an injury capable of redress and therefore lack standing. Nothing in Plaintiffs' complaint or summary judgement papers demonstrates that they have standing to challenge the rights of their neighbors and constituents to vote. The named plaintiffs include registered voters, municipal officeholders, a political party chair, and a political party – none which have demonstrated an injury in fact capable of redress by this Court. Further, they have not demonstrated that their claims fall within the zone of interests of New York State Constitution, Election, or Municipal Home Rule Law.

Even if Plaintiffs had demonstrated injury, the Court should deny them summary judgment and grant summary judgment to Defendants and Defendant-Intervenors, as there are no material issues of fact in this case. Under the New York Constitution, New York Election Law and the Municipal Home Rule Law, New York City was well within its powers as a municipality to enact a law that solely pertains to its local electoral affairs, and state law does not prohibit extension of the right to vote in municipal elections to noncitizens. As such, the Municipal Voting Law is lawful and must stand.

POINT I: PLAINTIFFS ACTION MUST BE DISMISSED AS NONE OF THE NAMED PARTIES HAVE STANDING TO COMMENCE THIS ACTION.

Plaintiffs have failed to establish an "injury in fact, distinct from that of the general public," *Brennan Ctr. for Justice at NYU Sch. of Law v. New York State Bd. of Elections,* 159 A.D.3d 1301, 1304 (3d Dep't 2018), and that such injury is "capable of judicial resolution." *Soc'y of Plastics Indus., Inc. v. Cnty. of Suffolk,* 77 N.Y. 2d 761, 772-73 (1991). In addition, Plaintiffs have not pleaded facts demonstrating that the alleged injury falls within the "zone of interests [to be] protected by the statute invoked." *Id.* at 772-73. This zone of interest prerequisite is crucial to ensure that groups or individuals "whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes." *Id.* at 774. In other words, the injury in fact must be more than "conjectural." *Brennan Ctr.*, 159 A.D.3d at 1305. Here, any alleged injuries by the Plaintiffs are "abstract and theoretical" and do not confer standing to bring this action. *See Montano v. Cnty. Legislature of Suffolk,* 70 A.D.3d 203, 216 (2d Dep't 2009).

A. Named Voter Plaintiffs Do Not Have Standing to Challenge the Municipal Voting Law.

The individual voter plaintiffs (the "Voter Plaintiffs")[1] do not have standing to bring this action. Voter Plaintiffs allege standing as "United States citizens who are registered voters in the City of New York." *See* Plaintiffs' Mem. in Support of Summary Judgment, Dkt. No. 98, at 5. They argue that by "adding 900,000 non-citizens to the eligible electorate, the Non-Citizen Voting Law dilutes the votes of citizen voters." *Id.* Plaintiffs are wrong.

[1] The Voter Plaintiffs are: Vito Fossella, Joseph Borrelli, Nicole Malliotakis, Veralia Malliotakis. Andrew Lanza, Michael Reilly, Michael Tannousis, Inna Vernikov, David Carr, Joann Ariola, Vickie Paladino, Robert Holden, Michael Petrov, Wafik Habib, and Phillip Yan Hing Wong.

The Municipal Voting Law does not eliminate, dilute, or inhibit the free exercise of the vote for New York City residents already able to vote. Plaintiffs' citation to *Landes v. Town of N. Hempstead*, 20 N.Y. 2d 417 (1967) does not accurately detail the circumstances that give rise to cognizable "vote dilution" claims. *Landes* is an equal protection case that strikes down a town's requirement that its elected officials be owners of real property as an "arbitrary exclusion," irrational and discriminatory. *Id.* at 420. The *Landes* court analogized the town's property ownership requirement to unlawful state malapportioned legislative redistricting, which provide certain voters with more power to elect state officials than others. But malapportionment cases such as *Baker v. Carr*, 369 U.S. 186 (1962) and *Reynolds v. Sims*, 377 U.S. 533 (1964) do not support Plaintiffs' argument. These landmark cases, brought under the Fourteenth Amendment's Equal Protection Clause, hold that state legislative districts must be roughly equal in population to ensure the principle of "one person, one vote" and emphasize that unlawful "debasement or dilution of the weight" of a vote occurs when some votes have more value than others. *Reynolds*, 377 U.S. at 555.

Here, the Voter Plaintiffs have no such claim. They will enjoy uninhibited access to the franchise in the same manner as prior to the enactment of the law. They continue to be part of electoral districts at all levels of municipal government, and the value of their votes is no more diluted than it would be if additional neighbors moved into their districts. Nothing in the Municipal Voting Law changes district lines or gerrymanders on a partisan, racial, or other impermissible basis. There is no voter dilution here. The power of Plaintiffs' votes is exactly the same as it is for any of the new class of eligible voters who reside in New York City and deserve a voice in local governance.

Plaintiffs' claims also fail to meet the zone of interest requirement to establish standing. This zone of interest prerequisite is crucial to ensure that groups or individuals "whose interests are only marginally related to, or even inconsistent with, the purposes of the statute cannot use the courts to further their own purposes at the expense of the statutory purposes." *See Soc'y of Plastics Indus.*, 77 N.Y.S.2d at 774. To obtain standing, "a plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Hammer v. American Kennel Club*, 304 A.D. 2d 74, 80 (1st Dep't 2003). To establish "an injury in fact" within the "zone of interests" protected by a constitutional guarantee, Plaintiffs must demonstrate "an abridgement of the right guaranteed by the State Constitution." *Burns v. Egan*, 129 Misc. 2d 133 (Sup. Ct. Albany Cnty. 1985). Moreover, "the injury-in-fact element, which requires petitioners to establish that they have suffered or will suffer concrete harm "that differs from that suffered by the general public." *Brennan Ctr.*, 159 A.D.3d at 1306. Here, Plaintiffs cannot demonstrate an injury in fact sufficient to establish standing because Plaintiffs have not, and cannot, articulate any constitutional right of their own that would be abridged nor a concrete harm that is "distinct from that of the general public." The passage of the Municipal Voting Law has no effect on their right to enjoy the rights and privileges granted to them under the New York State Constitution or the New York Election Law, including their right to vote. Thus, without identifying any constitutional right of their own which has been harmed by Non-Citizen Voting Law, Plaintiffs do not pass the zone of interest test and therefore fail to establish standing.

Plaintiffs are also wrong to argue that their claims fall within the "zone of interests protected by the Municipal Home Rule Law's referendum." *See* Plaintiffs' Mem. at 11. Their citation to *Gizzo v. Town of Mamaroneck* is inapposite. In *Gizzo,* the Court stated that the purpose

of Municipal Home Rule Law § 23(2)(f)'s referendum requirement is to "ensure that electors have a voice when substantial changes are proposed *to the powers of the officials whom they elect*." *Gizzo v. Town of Mamaroneck*, 36 A.D. 3d 162, 168 (2d Dep't 2006) (emphasis added). But Plaintiffs have no claim that the powers of elected officials have changed, and the Municipal Home Rule Law does not address "expanding the electorate," Complaint ¶ 58, the target of Plaintiffs' claims.

As the Court of Appeals has held, the goal of the zone of interest requirement is to assure that groups whose interests are only "marginally related" to the statute do not "use the courts to further their own purposes" *Soc'y of Plastics Indus., Inc.*, 77 N.Y.2d at 774. Plaintiffs' interests here are marginally, if at all, related to the Municipal Home Rule Law; their interests instead appear to lie in obstructing access to the municipal ballot to a broader number of eligible voters. As such, Plaintiffs fail to meet the zone of interest requirement, and they lack standing to pursue this action.

B. Named Municipal Officeholder Plaintiffs Do Not Have Standing to Challenge the Municipal Voting Law.

Individual municipal officeholders ("Officeholder Plaintiffs")[2] also do not have standing to pursue this action. Plaintiffs allege that "significantly altering the electorate of New York City will require candidates to alter the way they campaign for reelection to attempt to attract, or to offset the effects of, the influx of new voters." Their alleged harm is speculative at best and is not a concrete harm "distinct from that of the general public" that confers standing in this matter. *See Brennan Ctr.*,159 A.D. 3d at 1304.

In *Brennan Center*, Plaintiffs were current or former candidates for local legislative office who alleged that an Election Law loophole enjoyed by limited liability corporations (LLCs)

[2] The Officeholder Plaintiffs are: Vito Fossella, Joseph Borrelli, and Robert Holden.

hampered "their electoral campaigns by placing them at a competitive disadvantage against opponents who receive larger contributions, [and thereby] damage their ability to represent their constituents[.]" *Id.* at 1305. The Court held that these "political injuries" were "likewise common to all candidates." *Id*. Further, in finding the candidates lacked standing, the Court noted that while the plaintiffs alleged "competitive disadvantages in future electoral campaigns as a result of the LLC loophole" this "injury [was] conjectural and, therefore, does not operate to establish standing." *Id*.

The facts here fit squarely within the principles articulated in *Brennan Center*. The injuries alleged by the Officeholder Plaintiffs, as well as by state and national partisan groups, are speculative, conjectural, and are no different than those suffered by any other political party campaigning in the New York City. Expansion of the electorate may alter the way officeholders campaign for election or reelection, but that is an incontrovertible fact of life in the political process, not a cognizable injury. Campaign strategies always will shift to garner support whether on policy issues or the background qualifications of the candidate; the Municipal Voting Law does not tilt the scales in favor of one candidate or another and would not require them to do anything different from the calculus in normal political process. In fact, Plaintiffs' contention that this law will "place candidates who depend on citizen voters for their electoral support at a decided advantage" is speculative, relying on baseless assumptions regarding the political party affiliations of this new class of voters.

Plaintiffs cite to *Becker v. Federal Election Com'n* to support the contention that a candidate "suffers a consequent present harm" where he is "forced to structure his campaign to offset this potential disadvantage." *Becker v. Federal Election Com'n*, 230 F.3d 381, 386 (1st Cir. 2000). But *Becker* addresses the disadvantages faced by a candidate who does not accept corporate

funds, unlike his competitors, and was therefore forced to decline participation in a corporate-sponsored debate and compete on unequal footing. *Id.* at 389. It has no relevance to Plaintiffs' apparent argument that a candidate or officeholder has the right to control the composition of his or her electorate and that a cognizable injury occurs when candidates must "alter the way they campaign for reelection to attempt to attract, or to offset the effects of, the influx of new voters." Plaintiffs' Mem. at 6. Plaintiffs point to no statute or other legal authority finding that an injury occurs when candidates must appeal to new constituents.

To establish standing, an injury must be "actual or imminent, not conjectural or hypothetical." *Hassan v. U.S.*, 441 Fed. Appx. 11, 11 (2d Cir. 2011). Officeholder Plaintiffs' allegation that they will need alter strategy in order to attract or offset the influx of new voters and are thus harmed by the Municipal Voting Law is a hypothetical injury. Plaintiffs have not pled any facts to show that this expansion of the electorate is any different than the re-strategizing that occurs every year when new voters are added or when districts are changed. Their ability to campaign, organize, fundraise, and attract voters has not changed; if their strategies and positions may, Plaintiffs have not explained how. "'[S]ome day' intentions—without any description of concrete plans, or indeed any specification of *when* the some day will be—do not support a finding of the 'actual or imminent' injury that our cases require." *Id.* at 11-12. In any case, choices about candidate platforms or strategies are for campaign strategists to address and coordinate, not this Court.

The Municipal Voting Law's modified voter registration procedures will not be implemented until late December 2022. Officeholders are already required to represent all their constituents, and the Municipal Voting Law allows more constituents to vote. That those

campaigning may need to be aware of that fact when running for elected positions does not constitute an injury for the purpose of establishing standing.

C. Named Political Party and Party Chair Plaintiffs Do Not Have Standing to Challenge the Municipal Voting Law.

Plaintiffs New York Republican State Committee, Republican National Committee, New York Conservative Party Chair Gerard Kassar, and New York Republican Party Chair Nicholas Langworthy ("Political Party Plaintiffs") also do not have standing to pursue this action. The Political Party Plaintiffs allege they have standing to pursue this action on the grounds that they will now need to

> change the way they conduct their activities…including creating more non-English-language advertising to target non-citizen communities, recruiting volunteers from non-citizen communities for canvassing and voter turnout efforts.

SMF ¶¶ 37-39. But these allegations are pure conjecture. First, it is not known what number or percentages of new voters speak, read or write basic English. The creation or use of "non-English" advertising materials is already a legal requirement to ensure equitable and fair access for limited English-proficient voters in the electoral and voting processes of all five covered counties of New York City.[3] Second, it is unclear what Plaintiffs refer to when they allege an injury based on having to "recruit[] volunteers from non-citizen communities." Plaintiffs' Mem. at 7. There is no such thing as a "non-citizen community." Non-citizens live in the same communities, neighborhoods, and households as other eligible voters in New York City. There is no barrier to using non-citizens in campaigns – indeed, many of the Defendant-Intervenors in this case participated actively in the campaign for passage of the Municipal Voting Law, as well as in numerous other political efforts

[3] *See* 86 FR 69611; *Poll Site Language Assist*, NYC Civil Engagement Commission, https://www1.nyc.gov/site/civicengagement/voting/poll-site-language-assistance-list.page (last visited May 27, 2022).

relevant to their communities. *See, e.g.*, Naveed Aff. at ¶ 9 (Dkt. 40); Prado Aff. at ¶ 7 (Dkt. 43); John Aff. at ¶ 10 (Dkt. 45). Those enfranchised by the Municipal Voting Law live, work and pay taxes in New York City, and their ability to choose the people representing them, like all other *eligible voters*, within the municipality. The need to recruit volunteers who can effectively assist candidates with political organizing is simply not a cognizable injury; it is business as usual in the marketplace of ideas.

For similar reasons, Political Party Plaintiffs cannot demonstrate injury based on speculative allegations as to how they will use organizational resources in the future. The mission of Political Party Plaintiffs is to assist candidates in running for election. Plaintiffs correctly cite to *Animal Legal Def. Fund, Inc. v. Aubertine*, 119 A.D.3d 1202 (3d Dep't 2014), where the Court held that the injury-in-fact requirement must be based on more than conjecture or speculation. But that case does not help them. There, the Court held that an organization lacked standing because it was "expending funds in a manner consistent with its stated core mission." *Id*. at 486. A purported "increased need to raise and spend money for political campaign purposes," as Plaintiffs put it, Plaintiffs' Mem. at 7, is no different than the efforts they would undertake under the normal expansion of the electorate every year, for example when new residents move into their districts or minor residents turn 18. Additionally, the alleged harm to the election prospect of a political candidate also does not confer standing; there is no right to win an election. *See Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 275 A.D. 2d 145, 156-57 (3d Dep't 2000) (holding that plaintiff legislators lacked standing where claim was based on a possible "loss of political power rather than the assertion that they have been deprived of something to which they are personally are entitled"). Political Party Plaintiffs have not alleged any injury capable of redress by this Court.

As none of the named Plaintiffs in this action have demonstrated a justiciable injury, this matter should be dismissed by the Court on that basis alone.

POINT II: PLAINTIFFS FAIL TO SHOW THAT THE MUNICIPAL VOTING LAW VIOLATES THENEW YORK STATE CONSTITUION.

A. Plaintiffs Fail to Provide Support Showing that Article II, Section 1 of the New York Constitution Imposes a U.S. Citizenship Requirement to the Right to Vote.

Plaintiffs do not point to any statutory language or legislative history to support their contention that Article II, Section 1 of the New York Constitution imposes a U.S. citizenship requirement to the right to vote. Rather, Plaintiffs simply argue, in conclusory fashion, that "[b]y positively declaring that "[e]very citizen shall be entitled to vote," ***it necessarily follows that non-citizens are not permitted to vote***." *See* Plaintiffs' Mem. at 9. (emphasis added). But there is nothing in the text of the Constitution that supports Plaintiffs' incorrect assumption that non-U.S. citizens "are not permitted to vote," and the cases Plaintiffs cite are inapposite.

For example, *Matter of Jose R.*, which Plaintiffs cite, concerns statutory procedural requirements in a juvenile delinquency proceeding. In that case, the court found that Family Court Act § 365.1, which provides for speedy adjudication protection in juvenile delinquency proceeding only applies at the fact-finding stage and does not apply to the dispositional stage. 83 N.Y.2d 388, 392 (1994). The Court relied on the fact that "[t]he express terms of this provision limit this protection to the fact-finding adjudication" and there is a separate section of the statute that "does provide expressly for dismissal of petitions and does not include failure of speedy dispositional hearing as a ground." *Id.* at 393-394. The court noted that "[t]he respective provisions governing fact finding and disposition serve different purposes and focus on functionally distinct stages of the juvenile delinquency proceeding." *Id.*

Thus, nothing about the facts or holding of *Matter of Jose R.* supports Plaintiffs' contention that under the Constitution "non-citizens are not permitted to vote." If anything, even under Plaintiffs' logic, U.S. Citizenship should not be read as an implied requirement since Article II, Section 1 ***does*** specifically set forth voting requirements (*i.e*. age and residency) but does not specifically state U.S. citizenship as a requirement[4]. *Id.* ("Where 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***.") *Id*. (emphasis added).

Likewise, Plaintiffs' reliance on *Hoerger v. Spota III* is equally misplaced. In *Hoerger*, the court found that the New York Constitution preempted a county law that "no person shall serve as District Attorney for more than 12 consecutive years." 109 A.D.3d 564, 565 (2d Dep't 2013), aff'd, 21 N.Y.3d 549 (2013). According to the court, because "the New York Constitution and state law speak to the duration and term of office of the District Attorney, there is an irrefutable inference that the imposition of any limit on the duration of that office was intended to be omitted or excluded." *Id.* at 568. The court, thus concluded, that it was beyond the power of the County to restrict the number of consecutive years that a person may serve as District Attorney for the County of Suffolk, which was specifically addressed by the Constitution. *Id.* Notably, the Court points out that "the Constitution imposed a durational limit on County Court judges, but not on District Attorneys, who are also 'constitutional officers,' ***indicates that the omission was***

[4] Plaintiffs are also wrong to argue that the residency requirement in Article II, Section 1 suggests that this section applies to county, city and village elections, and not just state elections. *See* Plaintiffs' Mem. at 11. Moreover, such residency requirement is not rendered "unintelligible" if Article II, Section 1 only applies to statewide elections, because statewide elections do in fact include issues and ballot measures that are specific to a county, city, or village.

intentional and that it was intended that there be no durational limit on District Attorneys." *Id.* (emphasis added).

Thus, *Hoerger*'s holding does not comport with Plaintiffs' contention that the Constitution imposes a U.S. Citizenship voting requirement. Unlike the statutory provision governing the term requirements of the District Attorney, there is no provision under the New York Constitution that addresses citizenship as a requirement for voting. In fact, the statutory construction employed by the *Hoerger* court actually supports the interpretation that the omission of an express requirement that voters be "citizens of the United States" is intentional.

Had the New York legislature intended that a voter must be a U.S. citizen to qualify to vote, it would have done so in express language—as it had done in other parts of the Constitution. *See, e.g.*, N.Y. Const. art. III, § 7 ("No person shall serve as a member of the legislature unless he or she is a citizen of the United States[.]"); *see also*, *Id.* art. IV, § 2 ("No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States[.]") Thus, the fact that Article II, Section 1 does not expressly state "citizen of the United States" as a requirement, where such requirement is expressly noted in other parts of the Constitution, evinces the legislative intent that the word "citizen" as used in Article II does not mean "citizen of the United States." *Hoerger*, 109 A.D.3d at 568 ("[t]hat the Constitution imposed a durational limit on County Court judges, but not on District Attorneys [] indicates that the omission was intentional and that it was intended that there be no durational limit on District Attorneys.")

Last, even if Article II, Section 1 can be read to impose a citizenship requirement, Plaintiffs fail to present any support that that "citizen" as used in Article II, Section 1 means "citizens of the United States." Plaintiffs simply imply, with no evidence, that "citizen" should be understood to mean "citizen of the United States." *See* Plaintiff's Mem. at 10. But, as set forth in Defendant-

Intervenor's May 9, 2022 Motion to Dismiss For Lack Of Standing and Motion for Summary Judgment (Defs' Mem.), both the statutory language and legislative history of the Constitution indicate that "citizen" as used in Article II, Section 1 does not mean "citizen of the United States."

B. Article IX of the New York Constitution Does Not Impose a U.S. Citizenship Requirement in Local Elections.

Plaintiffs argue that Article IX independently limits voting in local elections to citizens because "these provisions [sections 1 and 3(d)(3)] unambiguously state 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." *See* Plaintiff's Motion at 11.

But, as already addressed in Defendant-Intervenors' May 9, 2022 Motion to Dismiss For Lack Of Standing and Motion for Summary Judgment, Dkt. No. 115 ("Intervenors' Mem."), Plaintiffs misquote and mischaracterize the definitions provision in Article IX. Section 3(d)(3) of Article IX states: "Whenever used in this article the following terms shall mean ***or include***…." and goes on to list a series of terms, among them, the term "People." N.Y. Const. art. IX, § 3(d)(3) (emphasis added). The use of the phrase "mean or include" makes clear that the definition of the "People" eligible to vote in local elections was not intended to be limited to the citizen voters of Article II, Section 1.

Moreover, and as previously discussed, because Article II, Section 1 does not impose a federal citizenship requirement on otherwise eligible voters in New York, "people" as used in Article IX also does not refer to U.S. citizens. Instead, the term "people" in Article IX refers to "people" of the local government. *See id.*§ 1(a)-(b) ("(a) Every local government, except a county wholly included within a city, shall have a legislative body elective by ***the people thereof***…(b) All 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***[.]"). (emphases added).

Lastly, Article IX, § 3 states: "Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed." *Id.* § 3(c). A liberal construction of the term "People" would be in keeping with the permissive spirit of Article IX by empowering local governments to expand the franchise for elections bearing on matters of local concern.

POINT III: THE MUNICIPAL VOTING LAW DOES NOT VIOLATE STATE ELECTION LAW

Plaintiffs' reading of State Election Law is not supported by the plain meaning of the law, longstanding precedent, or legislative history. Plaintiffs claim that the plain language of the State Election Law § 5-102(1) (hereinafter "§ 5-102(1)") "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.'" Plaintiffs' Mem. at 12. While they acknowledge that § 1-102 contains an exception for instances "[w]here a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter," they argue that it "does not save the Non-Citizen Voting Law." *Id.* To support this argument, Plaintiffs rely on *Castine v. Zurlo*, 46 Misc. 3d 995, 1000–01 (N.Y. Sup. Ct. Clinton Cnty. 2014), which they claim limits the reading of the phrase "any other law" in § 1-102 to permit state laws to conflict solely with State Election Law rather than with local laws. This argument must be rejected., because it flies in the face of the plain meaning of § 1-102, goes against the bulk of case law interpreting the meaning of the phrase "any other law" in § 1-102 to include local laws, and is not corroborated by the legislative history of the provision.

A. The Plain Language of State Election Law § 1-102 Qualifies Language of State Election Law § 5-102 by Allowing Conflicts with "Any Other Laws" Which Includes Local Laws.

The plain language of § 1-102 qualifies the language of § 5-102(1) allowing for local laws that conflict with the State Election Law unless a provision of the State Election law specifies that

such provision shall apply notwithstanding any other provision of law. "In statutory interpretation cases, the Court's primary consideration is to ascertain and give effect to the intention of the legislature. The statutory text is the clearest indication of legislative intent and courts should construe unambiguous language to give effect to its plain meaning." *People v. Badji*, 36 N.Y.3d 393, 398 (2021) (internal citations omitted). Section 1-102 states:

> This chapter shall govern the conduct of 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 offic*e, 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. Where a specific provision of law exists in any other law which is inconsistent with the provisions of this chapter, such provision shall apply unless a provision of this chapter specifies that such provision of this chapter shall apply notwithstanding any other provision of law.

Defendant-Intervenors agree with Plaintiffs' assertion that the "strongest indication of a statute's meaning is its plain language." Plaintiffs' Mem. at 12, citing *Badji*, 36 N.Y.3d at 399. That principle applies to both § 5-102(1) and §1-102. Thus, while § 5-102(1) may appear to explicitly tie the right to vote to U.S. citizenship, it still is subject to the exception provided for in § 1-102. As the plain language of that section makes clear, the laws of "any… county, city town or village" fall under the exception.

B. Plaintiffs' Claim That the Term "Any Other Law" Is Not Inclusive of Local Laws Is Against the Weight of Contrary Authority.

Plaintiffs' reliance on *Castine* as the sole support for a restrictive reading of § 1-102 is against the weight of authority interpreting the exception to cover local laws. For example, in *La Cagnina v. City of Schenectady*, 100 Misc. 2d 72, 75–76 (N.Y. Sup. Ct. Schenectady Cnty. 1979), *aff'd*, 70 A.D. 2d 761 (3d Dep't 1979), the Court applied the exception to dispute over city

council's power to adopt or repeal a local law creating the "strong mayor" form of government. The Court held that § 1-102 "provides that the Election Law does not apply when it is inconsistent with another law" and explicitly applied that interpretation to a city council's power over laws governing the city. Similarly, in *Lane v. Town of Oyster Bay*, 149 Misc. 2d 237, 241–42 (N.Y. Sup. Ct. Nassau Cnty. 1990), *aff'd*, 197 A.D.2d 690 (2d Dep't 1993), the court made clear that § 1-102 did not require local law to strictly comply with State Election Law. *See also N.Y.P.I.R.G.—Citizen's Alliance v. City of Buffalo*, 130 Misc. 2d 448, 449 (N.Y. Sup. Ct. Erie Cnty. 1985) (holding that §1-102 allowed for certain petitioning provisions of the Buffalo City Charter to stand despite differences with State Election Law); *City of New York v. N.Y. City Bd. of Elections*, No. 41450/91, slip op. at 4 (N.Y. Sup. Ct. Apr. 3, 1991) (finding no contradiction between the state law and New York City's charter revision). There is no indication in any case, but *Castine* that local law is not covered.

C. Legislative History of § 1-102 Demonstrates that It Should Be Read to Be Inclusive of Local Laws.

Finally, Plaintiffs' assertion that the legislative history of § 1-102 "confirms that the Election Law governs local law, not the other way around," Plaintiffs' Mem. at 13, is misleading. "The primary consideration of courts in interpreting a statute is to ascertain and give effect to the intention of the [l]egislature." *Badji*, 36 N.Y.3d at 399 (internal citations omitted). Although the strongest indication of a statute's meaning is in its plain language, "the legislative history of an enactment may also be relevant and is not to be ignored even if words be clear." *Id*. The legislative history makes clear that in enacting § 1-102, legislators aimed to balance the interest of the state in regulating elections and the interest of localities in governing and electoral autonomy.

Over the years, the legislature has done nothing to narrow the exception set forth in adopting § 1-102. In fact, its predecessor statute explicitly stated that local laws would not be

affected by the Election Law. *See* N.Y. Elec. Law § 130 (1922). And contrary to Plaintiffs' assertions, in subsequent sessions the legislature has repeatedly increased the scope of § 1-102. *See* N.Y. Bill Jacket, L. 1975, ch. 374 (expanding the scope of § 1-102 to limit the Election Law's effect on school district elections); N.Y. Bill Jacket, L. 1991, ch. 727 (broadening language regarding the application of the sentence permitting other inconsistent laws from "the education law" to "any other law" and clarifying provision to add the concept that express language would be necessary for an Election Law to control over other law). Executive and judicial opinions corroborate this reading of the legislative history of § 1-102's exception. *See, e.g.*, Opinion to James H. Eckl, Esq., 1980 N.Y. Op. Atty. Gen. (Inf.) 109 (1980) (State Attorney General concluding that "any other law" in § 1-102 includes any other local law.); *McDonald v. N.Y. City Campaign Fin. Bd*., 40 Misc. 3d 826, 840 (N.Y. Sup. Ct. N.Y. Cnty. 2013) ("[N]ot only did the Legislature specifically re-enact [§] 1-102, it even chose to amend and extend its scope").

Plaintiffs' assertion that the Municipal Voting Law violates New York State Election contradicts the plain meaning of § 1-102, the case law interpreting § 1-102, and the legislative history of the enactment and amendments of § 1-102. The Municipal Voting law does not violate State Election Law, because State Election Law has never expressly prohibited localities from allowing authorized immigrants to vote.

POINT IV: PLAINTIFFS FAIL TO SHOW THAT THE MUNICIPAL VOTING LAW VIOLATES THE MUNICIPAL HOME RULE LAW.

The Municipal Home Rule Law and the New York City Charter are explicit in mandating a referendum when a locality seeks to pass a law that "abolishes an elective officer, or *changes the method* of nominating, electing or removing an elective officer, or changes the term of an elective

office, or reduces the salary of an elective officer during his term of office."[5] Plaintiffs allege that the City has changed the method of electing all municipal voters by "replacing the existing electorate with a differently constituted population." Plaintiffs' Mem. at 15. This claim is wrong.

The Municipal Home Rule Law expands the group now eligible to vote for local office and does not "replace" an existing electorate. The Municipal Voting Law has not changed a single provision addressing *how* a candidate is elected to local office. Voters must still meet residency and age requirements as well as the requirements for voting in primary and general elections to vote for their candidate of choice. *See* Def-Intervenors' Motion to Dismiss and Motion for Summary Judgment, Dkt. No. 115. Courts have found a violation of the law only where a locality, on its face, explicitly violated the statutory requirements.[6] For example, in *Sacco v, Maruca*, the Court held that the creation of new position of town administrator impinged on the town supervisor's statutory responsibilities. *Sacco v. Maruca,* 175 A.D.2d 578, 578 (4th Dep't 1991). Because this change curtailed the power of the town supervisor, it required a referendum. *Id.*

The Municipal Home Rule Law enumerates twelve instances requiring localities to submit a law for referendum; expansion of the electorate is not one of them. If the legislature intended to add such a power, it would be delineated in the enumerated exceptions. While Plaintiffs may argue that the addition of new voters for eligibility through the Municipal Voting Law is no different from the addition of the thousands of new voters through changes in residence or minors reaching the age of majority. New York City's process for electing candidates to local office remains

[5] N.Y. Mun. Home Rule Law § 23(2)(e); N.Y.C. Charter § 38(4), (5).
[6] However, New York City was required to submit a change in the law to a referendum when it opted to change the method of electing candidates in the primaries from a winner take all system to a ranking system of preferred candidates. *See History of RCV in NYC,* Rank the Vote NYC, https://rankthevotenyc.org/history-of-rcv-in-nyc/ (last accessed May 27, 2022).

entirely the same under the Municipal Home Rule Law, and no referendum was required to enact the law.

CONCLUSION

Plaintiffs' Motion for Summary Judgment makes clear that they do not have standing as voters, as officeholders, or as partisan political organizations, to challenge the Municipal Voting Law. Further, even if they did, their arguments that the Municipal Voting Law violates the state Constitution, state Election Law, or Municipal Home Rule Law are not supported by either the plain meaning of the statutes or the case law.

Respectfully submitted,

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CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-b

According to Microsoft Word, the portions of this Memorandum of Law that must be included in a word count contain 6043 words, and comply with Uniform Civil Rule 202.8-b.

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