

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,

**RESPONSE TO
STATEMENT OF
UNDISPUTED
MATERIAL FACTS**

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,

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

Defendant-Intervenors.

Fulvia Vargas-De Leon, an attorney duly admitted to practice law in the Courts of the
State of New York submits the following response to Plaintiffs' Statement of Undisputed

Material Facts filed with this Court on May 9, 2022. *See* Docket No. 97. As required under N.Y. Comp. Codes R. & Regs. tit. 22 § 202.8-g(b):

1. The Non-Citizen Voting Law 1. 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.” *See* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.
 - a. **Defendant-Intervenors admit the allegations set forth in Paragraph 1 of Plaintiffs’ Statement of Material Allegations.**
2. The bill was sent to then-Mayor Bill de Blasio the same day. *See* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.
 - a. **Defendant-Intervenors admit the allegation set forth in Paragraph 2.**
3. 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.” Alexandra Hutzler, New York City Bill to Allow Noncitizens to Vote Has Support From Incoming Mayor Eric Adams, Newsweek, Nov. 23, 2021, <https://bit.ly/3KU9zv3> (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.” Natalie Colarassi, De Blasio Has ‘Mixed Feelings’ Over

Allowing 800k Non-Citizens to Vote in NYC Elections, Newsweek, (Dec. 12, 2021),

<https://bit.ly/3KHswB1>.

- a. Defendant-Intervenors admit the allegations set forth in Paragraph 3 insofar as the statements are direct quotations from the news articles cited.**
4. Mayor de Blasio neither signed nor vetoed the bill before leaving office at the end of the year. See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.
 - a. Defendant-Intervenors admit the allegations set forth in Paragraph 4.**
5. Bill de Blasio was replaced as Mayor by Eric Adams on January 1, 2022. See <https://www1.nyc.gov/office-of-the-mayor/news/000-22/eric-l-adams-sworn-as-110th-mayornew-york-city>.
 - a. Defendant-Intervenors admit the allegations set forth in Paragraph 5.**
6. The incoming Mayor Adams returned the bill unsigned on January 10, 2022. See <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62&Options=ID%7cText%7c&Search=1867>.
 - a. Defendant-Intervenors admit the allegations set forth in Paragraph 6.**
7. As the bill was neither approved nor returned with objections within thirty days, it 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. See Hawrylchak Aff., Exs. A, B.
 - a. Defendant-Intervenors admit the allegations set forth in Paragraph 7.**

8. This law creates a new class of persons called “municipal voters,” defined as noncitizens who are either lawful permanent residents or persons authorized to work in the United States, “who 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); Hawrylchak Aff., Ex. B.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 8.

9. 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.” N.Y.C. Charter § 1057-bb(a); Hawrylchak Aff., Ex. B.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 9.

10. 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.” N.Y.C. Charter § 1057-cc; Hawrylchak Aff., Ex. B.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 10.

11. 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, N.Y.C. Charter § 1057-dd(a); creating parallel non-citizen ballots and absentee ballots, N.Y.C. Charter §§ 1057-dd(b), 1057-hh(d); and allowing citizens and non-citizens to vote at the same polling places, N.Y.C. Charter § 1057-dd(a). Hawrylchak Aff., Ex. B.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 11.

12. In addition to voting in elections, the Non-Citizen Voting Law allows registered non-citizen voters to enroll in political parties, N.Y.C. Charter § 1057-ff; and to sign and

witness petitions for municipal offices and referenda, N.Y.C. Charter § 1057-uu.

Hawrylchak Aff., Ex. B.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 12.

13. On January 10, 2022, Plaintiffs filed their Complaint in this action, alleging that the Non-Citizen 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. Hawrylchak Aff., Ex. E.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 13.

14. On February 25, 2022, Defendants Eric Adams and the City Council of the City of New York filed their Answer. Hawrylchak Aff., Ex. F.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 14.

15. On April 11, 2022, Defendant Board of Elections in the City of New York filed its Answer. Hawrylchak Aff., Ex. G.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 15.

16. Also on April 11, 2022, several individual non-citizen residents of New York City filed a motion to intervene as defendants with a proposed answer. NYSCEF No. 36; Hawrylchak Aff., Ex. H.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 16.

17. On April 13, 2022, the Court granted the motion to intervene, which was unopposed. NYSCEF No. 51.

a. Defendant-Intervenors admit the allegations set forth in Paragraph 17.

18. Plaintiff Vito J. Fossella is the current Staten Island Borough President. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Fossella Aff. ¶¶ 3, 5.

a. Defendant-Intervenors admit the allegation regarding Plaintiff Vito J.

Fossella as current Staten Island Borough President. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 18.

19. Plaintiff Nicholas A. Langworthy is the current Chairman of the New York Republican State Committee. He is directly involved in the party's election-related efforts, including with respect to New York City municipal elections. Langworthy Aff. ¶¶ 2, 7.

a. Defendant-Intervenors admit the allegation regarding Plaintiff Nicholas A.

Langworthy as current Chairman of the New York Republican State Committee. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 19.

20. Plaintiff Joseph Borelli is a current Member of the New York City Council from Staten Island representing the 51st District and is currently serving as the Minority Leader. As a Member of the City Council, he voted against the Non-Citizen Voting Law. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Borelli Aff. ¶¶ 3, 5.

a. Defendant-Intervenors admit the allegations regarding Plaintiff Joseph

Borelli as current Member of the New York City Council from Staten Island representing the 51st District and Minority Leader. Defendant-Intervenors

lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 20.

21. Plaintiff Michael Reilly is a State Assemblymember representing the 62nd District, which includes part of Staten Island. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Reilly Aff. ¶¶ 3, 4.

a. Defendant-Intervenors admit the allegation regarding Plaintiff Michael Reilly as State Assemblymember representing the 62nd District. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 21.

22. Plaintiff Michael Tannousis is a State Assemblymember representing the 64th District, which includes parts of Staten Island and Brooklyn. He is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York. Tannousis Aff. ¶¶ 3, 4.

a. Defendant-Intervenors admit the allegation regarding Plaintiff Michael Tannousis as State Assemblymember representing the 64th District. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 22.

23. Plaintiff Robert Holden is a current Member of the New York City Council from Queens representing the 30th District. As a Member of the City Council, he voted against the Non-Citizen Voting Law. He is a citizen of the United States, a resident of Queens County, a registered voter in Queens County and the City of New York, and an enrolled Democrat. Holden Aff. ¶¶ 3, 5.

- a. Defendant-Intervenors admit the allegation regarding Plaintiff Robert Holden as Member of the New York City Council from Queens representing the 30th District. Defendant Intervenors admit he voted against the Non-Citizen Voting Law, also known as the Municipal Voting Law. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 23.**
24. Plaintiff Gerard Kassar is the current Chairman of the Conservative Party of New York State, a New York State political committee, as defined by New York State Election Law § 2-102. He is directly involved in the party's election-related efforts, including with respect to New York City municipal elections. He is a citizen of the United States, a resident of Kings County, and a registered voter in Kings County and the City of New York. Kassar Aff. ¶¶ 3, 4, 6, 11.
- a. Defendant-Intervenors admit the allegation regarding Plaintiff Gerard Kassar as current Chairman of the Conservative Party of New York State. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 24.**
25. Plaintiff Phillip Yan Hing Wong is a naturalized citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York. Wong Aff. ¶ 3.
- a. Defendant-Intervenors lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 25.**
26. Plaintiff New York Republican State Committee is a New York State political committee, as defined by New York State Election Law § 2-102. Langworthy Aff. ¶ 4.

- a. **Defendant-Intervenors admit the allegations set forth in Paragraph 26.**
27. Plaintiff Republican National Committee is the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14). Echols Aff. ¶ 3.
- a. **Defendant-Intervenors admit the allegations set forth in Paragraph 27.**
28. Plaintiffs Vito J. Fossella, Joseph Borelli, Michael Reilly, Michael Tannousis, Robert Holden, Gerard Kassar, and Phillip Yan Hing Wong have regularly voted in New York City municipal elections and intend to continue doing so in the future. Fossella Aff. ¶ 6; Borelli Aff. ¶ 6; Reilly Aff. ¶ 5; Tannousis Aff. ¶ 5; Holden Aff. ¶ 6; Kassar Aff. ¶ 12; Wong Aff. ¶ 4.
- a. **Defendant-Intervenors lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 28.**
29. According to statements in the legislative record by proponents of the Non-Citizen Voting Law, it would allow “900,000 New Yorkers with legal status the ability to vote.” Hawrylchak Aff., Ex. G, at 2.
- a. **Defendant-Intervenors admit the allegations set forth in Paragraph 29.**
30. 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.” Hawrylchak Aff., Ex. H, at 67–69.
- a. **Defendant-Intervenors lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 30.**
31. By dramatically increasing the pool of eligible voters, the Non-Citizen Voting Law will dilute the votes of citizens in future municipal elections. Fossella Aff. ¶ 7; Borelli Aff. ¶ 7; Reilly Aff. ¶ 6; Tannousis Aff. ¶ 6; Holden Aff. ¶ 7; Kassar Aff. ¶ 13; Wong Aff. ¶ 5.

- a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 31 insofar as they are the opinions of Plaintiffs supported by self-serving affidavits.**
32. The Non-Citizen Voting Law, which purports to allow certain non-citizens to vote in New York City municipal elections, would dramatically change the electoral composition of the City of New York and its electoral subdivisions. This will require current officeholders, including Plaintiffs Vito J. Fossella, Joseph Borelli, and Robert Holden, to change the way they campaign for reelection and may materially affect their likelihood of electoral victory. Fossella Aff. ¶ 4; Borelli Aff. ¶ 4; Holden Aff. ¶ 4.
- a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 32 insofar as they are the opinions of Plaintiffs supported by self-serving affidavits.**
33. The New York Republican State Committee and the Conservative Party of New York State manage their respective parties' business at the state level, including supporting candidates for public office at all levels in New York State elections, coordinating fundraising and election strategy, and developing and promoting their respective state platforms. Langworthy Aff. ¶ 5; Kassir Aff. ¶ 6.
- a. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 33.**
34. The New York Republican State Committee and the Conservative Party of New York State engage in various activities to help elect Republicans and Conservatives in New York, including to municipal office in New York City. Langworthy Aff. ¶ 6; Kassir Aff. ¶ 5.

- a. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 34.**
35. The Republican National Committee manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. Echols Aff. ¶ 4.
- a. Defendant-Intervenor lacks sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 35.**
36. The Republican National Committee engages in various activities to help elect Republicans in New York, including to municipal office in New York City. One of these activities is providing support to the New York Republican State Committee in its efforts to elect Republicans up and down the ballot in New York. Echols Aff. ¶ 5.
- a. Defendant-Intervenors lack sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 36.**
37. The Non-Citizen Voting Law, which purports to allow certain non-citizens to vote in New York City municipal elections, would dramatically change the electoral composition of New York City for municipal elections. Langworthy Aff. ¶ 8; Kassar Aff. ¶ 7; Echols Aff. ¶ 6.
- a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 37 insofar as they are opinions of Plaintiffs supported by self-serving affidavits.**
38. The Non-Citizen Voting Law will require the New York Republican State Committee, the Conservative Party of New York State, and the Republican National Committee to

make changes to virtually all of their activities with respect to New York City municipal elections, including fundraising, election strategy, candidate development and selection, the content and targeting of election advertising, and voter turnout efforts. These changes would likely include, for example, creating more non-English-language advertising to target non-citizen communities and recruiting volunteers from non-citizen communities for canvassing and voter turnout efforts. Langworthy Aff. ¶ 9; Kassar Aff. ¶ 8; Echols Aff. ¶ 7.

a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 38 insofar as they are opinions of Plaintiffs supported by self-serving affidavits.

39. The Non-Citizen Voting Law's expansion of the electorate to include non-citizens necessarily increases the burden on the New York Republican State Committee, the Conservative Party of New York State, and the Republican National Committee in supporting their candidates participating in New York City municipal elections by forcing them to appropriate additional resources due to the expanded voter pool. Langworthy Aff. ¶ 10; Kassar ¶ 9; Echols Aff. ¶ 8.

a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 39 insofar as they are opinions of Plaintiffs supported by self-serving affidavits.

40. The Non-Citizen Voting Law may materially affect the likelihood of electoral victory by Republican and Conservative candidates in New York City municipal elections. Langworthy Aff. ¶ 11; Kassar Aff. ¶ 10; Echols Aff. ¶ 9.

- a. Defendant-Intervenors neither affirm nor deny allegations set forth in Paragraph 40 insofar as they are opinions of Plaintiffs supported by self-serving affidavits.

Defendant-Intervenors' Additional Undisputed Material Facts

41. Local Law 11 allows qualified lawful permanent residents or individuals authorized to work in the United States (referred to as "Municipal Voters") to vote in City elections to fill City offices. Charter § 1057-bb states:
- a. Consistent with the provisions of this chapter, 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. All registered municipal voters shall have their names entered in the registration records maintained by the board of elections in the city of New York under article 5 of the election law for the purposes of registering and voting in municipal elections and may thereafter vote in any such election. Registrations for municipal voters entered in such records shall not contain United States citizenship data as required under 5-500 of the election law and shall be designated with an "M". Municipal voter registration records shall be filed with the state board of elections with such designation, to be included in any appropriate list or database in accordance with law.
 - b. Section 5-102 of the election law shall apply to municipal elections, except that the qualification of United States citizenship shall not apply to municipal voters registering to vote in municipal elections and the municipal voting processes implemented pursuant to this chapter.
 - c. References to voter qualification or voter eligibility in the election law shall be construed to include municipal voter qualifications with respect to the municipal voting processes implemented pursuant to this chapter.
42. The Law does not authorize such voters to participate in State or Federal elections. *See* Charter §1057-rr.
43. Defendant-Intervenors filed a motion to intervene on April 11, 2022. *See* Docket No. 51

44. Defendant-Intervenors are current residents of New York City who under Local Law 2022/011 now have a right to register and vote in the City's municipal elections. Naveed Aff. ¶ 4-6, Paulos Aff. ¶ 4-6, Galindo Aff. ¶ 4-6, Prado Aff. ¶ 4-6, Veloz Aff. ¶ 4-6, John Aff. ¶ 4-6, Salazar Aff. ¶ 4-6, Shahidullah Aff. ¶ 4-6, Undag Aff. ¶ 4-6.

Dated: New York, NY
May 27, 2022

/s/Fulvia Vargas-De Leon
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CERTIFICATION UNDER UNIFORM CIVIL RULE 202.8-b

According to Microsoft Word, the portions of this Affirmation in Opposition that must be included in a word count contain 3408 words, and comply with Uniform Civil Rule 202.8-b.

Respectfully submitted,

Dated: New York, New York
May 27, 2022

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