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

Plaintiffs,

-against-

Index #: 85007/2022

DECISION & ORDER
Motions #004, 005, 006

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

Defendants.

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Upon the papers filed in support of the application and the papers filed in opposition thereto, and after hearing oral arguments, it is

ORDERED that Motion #004 by Defendants Mayor Eric Adams and the New York City Council seeking summary judgment pursuant to §CPLR 3212 is hereby denied.

ORDERED that Motion #005 by Plaintiffs seeking summary judgment declaring Local Law No. 11 of 2022 is illegal, null and void because it violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law and permanently enjoining the implementation of the law is hereby granted.

ORDERED that Motion #006 by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, CPLR §3211(a)(3) dismissing the Complaint based on a lack of legal capacity to sue; CPLR §3211(a)(7) dismissing the Complaint for failure to state a cause of action is hereby denied.

FACTUAL AND PROCEDURAL HISTORY

On December 9, 2021, the New York City Council (hereinafter "City Council") passed Intro 1867-A and entitled "A Local Law to amend the New York City Charter, in relation to allowing lawful permanent residents and persons authorized to work in the United States in New York City to participate in municipal elections." The law created a new class of voters called "municipal voters," defined as

> a person who is not a United States Citizen on the date of the election on which he or she is voting, who is either a lawful permanent resident or authorized to work in the United States, who is a resident of New York city and will have been such a resident for 30 consecutive days or longer by the date of such election, who meets all qualifications for registering or pre-registering to vote under the election law, except for possessing United States citizenship and who has registered or pre-registered to vote with the board of elections in the city of New York under this chapter.

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Once passed by the City Council, the bill was sent to former Mayor Bill deBlasio, who declined to veto the bill, but also declined to sign it prior to leaving office at the end of 2021. Incoming Mayor Eric Adams also failed to sign or veto the bill. As the bill was neither signed, nor vetoed, within thirty days of its passage, the bill 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, entitled "Voting by Lawful Permanent Residents and Persons Authorized to Work in the United States," consisting of Sections 1057-aa through 1057-vv.

Local Law 11 of 2022 (hereinafter known as "Municipal Voting Law") enfranchises lawful permanent residents and green card holders who are residents of the City of New York to vote for municipal offices, which are defined as "the offices of mayor, public advocate, comptroller, borough president, and council member." City Charter, Ch. 46-A 1057-aa(a). Local Law 11 does not permit these residents to "vote for any state or federal office or political party position or on any state or federal ballot question." The Municipal Voting Law may ultimately permit approximately 800,000 to 1,000,000 residents who legally live, work, and pay taxes in the City to vote in local elections, despite not being citizens of the United States. Furthermore, in addition to voting in elections, the Municipal Voting Law allows non-citizen voters to enroll in political parties and to sign and witness petitions for municipal offices and referenda. See City Charter §§1057-ff and 1057-uu.

The New York City Board of Elections (hereinafter "Board of Elections") is tasked with "adopting all necessary rules and carrying out all necessary staff training to carry out the provisions of this chapter." City Charter §1057-cc. These changes include creating non-citizen voter registration forms, maintaining a unified voter registration list that distinguishes between citizen and non-citizen voters; and allowing citizens and non-citizens to vote at the same polling places. See City Charter §§1057-dd(a); 1057-dd(b); 1057-ee(a); 1057-hh(d).

The instant action was brought by the Plaintiffs with the filing of a Summons and Complaint on January 10, 2022. Defendant New York City Board of Elections moved by Motion #001 on February 25, 2022, for an application pursuant to CPLR §2004 and §3012(d) to extend the time in which to serve a response to the Complaint. The Court granted that application on March 18, 2022. Proposed Defendant-Intervenors moved by Motion #002 to intervene in the action, pursuant to CPLR 1012 and/or 1013. Motion #002 was granted without any opposition. The New York City Board of Elections filed Motion #003 on May 3, 2022, seeking an order to join the New York State Board of Elections as a Defendant. Motion #003 was granted without opposition. Defendants Mayor Eric Adams and the New York City Council brought Motion #004 on May 9, 2022, seeking summary judgment pursuant to CPLR §3212. Plaintiffs filed Motion #004 on May 9, 2022, seeking summary judgment, a declaratory judgment that Local Law 11 violates the New York State Constitution, the New York State Election Law, and the New York State Municipal Home Rule Law and a permanent injunction from implementing and enforcing the law. Motion #006 was brought on May 9, 2022, by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, §3211(a)(2) and CPLR §3211(a)(7). Motion #007 was filed by the Immigration Reform Law Institute seeking to file a brief as amici curiae on May 26, 2022. Motion #007 was granted without opposition. Oral arguments were held on June 7, 2022, on Motions #004, #005, and #006 and the Court's decision was reserved.

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SUMMARY JUDGMENT STANDARD OF REVIEW

It is well settled that a motion for summary judgment should be granted if "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR 3212(b). The proponent of a motion for summary judgment must make a prima facie showing by offering sufficient evidence to eliminate any material issues of fact from the case that as a matter of law the

movant is entitled to summary judgment. *Winegrad v. NYU Medical Center*, 64 NY2d 851, 853 (1985).

In order for the court to grant summary judgment, "it must clearly appear that no material triable issue of fact is presented" and it is not for the court to resolve issues of fact, "but merely to determine whether such issues exist." *See Rebecchi v. Whitmore,* 172 AD2d 600 [2d Dept. 1991]. Further, Courts have consistently held that allegations amounting to no more than unsubstantiated conclusory assertions are not sufficient to defeat the motion. *Ihmels v. Kahn,* 126 AD2d 701 [2d Dept. 1987].

Where an "issue is one of statutory interpretation, and there is no question of fact or factual interpretation, summary judgment is therefore appropriate as only questions of law are involved." *Hertz Corp. v. Corcoran,* 137 Misc. 2d 403, 404 [Sup. Ct. NY. Cty. 1987]; see also *Andre v. Pomeroy,* 35 NY2d 361, 364 [1974].

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MOTION TO DISMISS STANDARD OF REVIEW

Upon a motion to dismiss a complaint pursuant to CPLR §3211, a court must take the allegations in the complaint as true and resolve all inferences in favor of the plaintiff." *Morris v. Gianelli,* 71 AD3d 965, 967 [2d Dept. 2010]. A motion to dismiss should be granted where the Complaint fails to "contain allegations concerning each of the material elements necessary to sustain recovery under a viable legal theory." *Matlin Patterson ATA Holdings LLC v. Fed. Express Corp.,* 87 AD3d 836, 839 (1st Dept. 2011).

CPLR §3211(a)(7) provides that "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that…the pleading fails to state a cause of action." The Court will consider "whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail." *Guggenheimer v. Ginzburg,* 43 NY2d 268, 275 (1977). Dismissal pursuant to CPLR 3211(a)(7) is warranted if the evidentiary proof disproves an essential allegation of the complaint, even if the allegations of the complaint, standing alone, could withstand a motion to dismiss for failure to state a cause of action. *Korinsky v. Rose,* 120 AD3d 1307, 1308 (2d Dept. 2014). Courts have repeatedly granted motions to dismiss where the factual allegations in the claim were merely conclusory and speculative in nature and not supported by any specific facts." *See Residents for a More Beautiful Port Washington, Inc. v. Town of North*

Hempstead, 153 AD2d 727 [2d Dept. 1989]; *Stoianoff v. Gahona,* 248 AD2d 525 [2d Dept. 1998].

On a defendant's motion pursuant to CPLR §3211(a)(3) to dismiss a Complaint based upon an alleged lack of standing, "the burden is on the moving defendant to establish, prima facie, the plaintiff's lack of standing as a matter of law." *Bank of New York Mellon v. Chamoula,* 170 AD3d 788, 790 [2d Dept. 2019] *quoting New York Cmty. Bank v. McClendon,* 138 AD3d 805, 806 [2d Dept. 2016].

ANALYSIS

STANDING

The Court may reach the merits of Plaintiff's motion for summary judgment if "at least one plaintiff" has standing. *See Empire State Chapter of Assoc. Builders & Contractors, Inc. v. Smith,* 21 NY3d 309, 315 [2013]. A plaintiff has standing if he establishes an injury in fact and that his injury is "capable of judicial resolution." *Soc'y of Plastics Indus., Inc. v. Cty. Of Suffolk,* 77 NY2d 761, 772 [1991]. The injury requirement is satisfied if the injury "falls within the zone of interests protected by the statute invoked." *Id.* at 773. In this action there are a number of Plaintiffs, including elected officeholders, political party leadership, political parties, and voters. Defendant-Intervenors have moved to dismiss the action claiming that the Plaintiffs lack standing to proceed. The Court will address the standing issue as to each of the groups of Plaintiffs.

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Voters

It is well established in the New York State Constitution that 'no member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof." *Landes v. Town of N. Hempstead*, 20 N.Y.2d 417, 421 [1967], *citing to* §1 of Article I of the State Constitution. Plaintiffs are United States citizens and registered voters in New York, who therefore retain the right to participate in municipal elections as voters.

These Plaintiffs allege that their votes will be diluted based upon the addition of new voter registrations. "Voter standing arises when the right to vote is eliminated or votes are diluted." *Saratoga Cty. Chamber of Com. Inc. v. Pataki,* 275 AD2d 145, 156 (3d Dept. 2000), aff'd 100 NY2d 801 [2003]. The United States Supreme Court held in the *Reynolds* matter that "one cannot speak of 'debasement' or 'dilution' of the value of a vote until there is first defined a standard of reference as to what a vote should be worth." *Landes v. Town of N. Hempstead*, 20 N.Y.2d 417,

421 (1967), citing *Reynolds v. Sims,* 377 US 533 [1964]. "The right of suffrage… can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Id.*

Defendant-Intervenors claim that the Plaintiffs lack standing because "vote dilution is not a cognizable harm under New York State Law." However, the Plaintiffs did not raise a cause of action under the Voting Rights Act, or any state law equivalent. The causes of action were for declaratory judgments for purported violations of the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law. This Court finds that the registration of new voters will certainly affect voters, political parties, candidate's campaigns, re-elections, and the makeup of their constituency and is not speculative. The weight of the citizens' vote will be diluted by municipal voters and candidates and political parties alike will need to reconfigure their campaigns. Though the Plaintiffs have not suffered any harm today, the harm they will suffer is imminent, and it is reasonably certain that they will suffer their claimed harm if the proposed municipal voters are entitled to vote. *See Police Benevolent Assn. of NY State Troopers, Inc. v. Division of NY State Police,* 29 AD3d 68, 70 [3d Dept. 2006].

"Voting is of the most fundamental significance under our constitutional structure" (*Matter of Walsh v. Katz,* 17 NY3d 336 [2011] citing *Illinois Bd. Of Elections v. Socialist Workers Party,* 440 US 173, 189 [1979]). The addition of 800,000 to 1,000,000 non-eligible votes into municipal elections significantly devalues the votes of the New York citizens who have lawfully and meaningfully earned the right to vote pursuant to constitutional requirements. The allowance of the Municipal Voting Law is asking this Court to diminish this standard. Therefore, plaintiffs are well within their rights to bring this suit, to protect the value of their vote, and to decrease injuries that will ensue from dilution.

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Municipal Officeholders and Political Parties

The Plaintiff elected officeholders allege that the Municipal Voting Law will significantly alter the electorate of the City of New York and will force candidates to adjust the way they campaign for reelection. A candidate for office "suffers a consequent present harm" if he is "forced to structure his campaign to offset a potential disadvantage" created by an election law. *Becker v. Fed. Election Comm'n,* 230 F.3d 381, 386 [1st Cir. 2000].

Plaintiffs New York Republican State Committee and Republican National Committee also claim that they have standing as organizations to bring suit to the same extent as any other

"person…seeking to vindicate a legal right." *NY Civil Liberties Union v. NYV Transit Auth.,* 684 F3d 286, 294 [2d Cir. 2012]. It is well established that political parties have standing to challenge election laws that effect their ability to "campaign for office." *Green Party of Tennessee v. Hargett,* 767 F3d 533, 544 [6th Cir. 2014]. Furthermore, Courts have routinely held that chairs of political parties have standing to bring actions on behalf of the interests of their parties. *Schulz v. Williams,* 44 F3d 48, 52 [2d Cir. 1994]. Plaintiffs also allege that their claims are plainly "within the zone of interests" protected by the Municipal Home Rule Law's referendum requirement, which was enacted to "ensure that electors have a voice" regarding any significant changes to local governance." *Gizzo v. Town of Mamaroneck,* 36 AD3d 162, 168 [2d Dept. 2006] lv. Denied, 8 NY3d 806 [2007].

Therefore, this Court finds that the Plaintiffs have standing to proceed with this action, as current elected office holders, candidates, and political parties, who are subject to the New York State Constitution, the New York State Election Law and the Municipal Home Rule Law. The influx of the number of voters in New York City will affect their ability to campaign for office. Furthermore, these Plaintiffs certainly have claims "within the zone of interests" under the Municipal Home Rule Law's referendum requirement.

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NEW YORK STATE CONSITUTION

Article II

The New York State Constitution expressly establishes voting qualifications for local elections. Under Article II, §1, voting is defined as a right of "citizens":

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

Furthermore, "citizens" is again addressed under Article II, §5, which states:

> Laws 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; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law.

"[T]he strongest indication of [a] statute's meaning is in its plain language." *People v. Badii*, 36 N.Y.3d 393, 399 [2021]. Defendants claim that Article II, §1 does not apply to municipal elections and even if it did, it does not require that voters be United States citizens. However, based upon a plain reading of the New York State Constitution, "every citizen," in this Court's opinion, means every citizen of the United States. "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.'" *Matter of Jose R.*, 83 NY2d 388, 394 [1994]. Article II, §5 furthers this point, providing that "laws 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.

The New York State Constitution explicitly lays the foundation for ascertaining that only proper citizens retain the right to voter privileges. It is this Court's belief that by not expressly including non-citizens in the New York State Constitution, it was the intent of the framers for non-citizens to be omitted.

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Article IX

Article IX, §§1 and 3 of the New York State Constitution reaffirms that only United States citizens are permitted to vote in New York elections. Article IX, §1 of the New York State Constitution states:

> Every local government, except a county wholly included within a city, shall have a legislative body elective by the *people* thereof. Every local government shall have the power to adopt local laws as provided by this article. *Emphasis added.*

Local government is defined by Article IX, §3(d)(2) states:

> "Local government." A county, city, town or village.

The "people" is defined within Article IX, §3(d)(3) as:

> "People." Persons entitled to vote as provided in section one of article two of this constitution.

"The Constitution is the voice of the people speaking in their sovereign capacity, and it must be heeded." *In re NY E. R.. Co.,* 70 NY 327, 342 [1877]. Furthermore, the "Constitution is to be construed…to give its provisions practical effect, so that it receives a 'fair and liberal

construction, not only to its letter, but also according to its spirit and the general purposes of its enactment.'" *Ginsberg v. Purcell,* 51 NY2d 272 [1980]. Reading these sections of the New York State Constitution together, it is clear to this Court that voting is a right granted to citizens of the United States. Local governments, including city governments, must be elected by the *people*, which is defined as *citizens* under Article II, §1. Based upon the foregoing analysis, the Court finds that the Municipal Voting Law explicitly violates the New York State Constitution, as only "citizens" may vote in elections.

ELECTION LAW

Election Law 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 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. *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. Emphasis added.*

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"The primary consideration…in the construction of statutes is to ascertain and give effect to the intention of the legislature." *Castine v. Zurlo,* 46 Misc. 3d 995, 999 [Sup. Ct. Clinton County 2014] citing *Matter of Tutunjian v. Conroy,* 55 AD3d 1128, 1130 [2008]. "To ascertain that intent, the court must first read the statute literally and determine whether its language is unambiguous and clearly expresses the Legislature's intent." *Id.*

On its face, the Municipal Voting Law is inconsistent with the Election Law, specifically Election Law 5-102(1). However, despite that inconsistency, the question arises whether the intent of Election Law 1-102 was applicable to inconsistent laws made by cities, towns, or villages, or whether "any other law" was intended to mean any other *state* law. This Court finds the latter.

The matter of *Castine v. Zurlo,* the Supreme Court of New York in Clinton County engaged in an in-depth analysis of the *Election Law* and the intent of the legislature regarding "*any other law"* within 1-102. The *Election Law* was recodified in chapter 233 of the Laws of 1976, to "eliminate obsolete and conflicting provisions therein." *Castine v Zurlo,* 46 Misc. 3d 995, 1000

[Sup. Ct. Clinton County 2014] *citing* Sponsor's Mem., Bill Jacket, L1976 ch. 233. In 1976, prior to the recodification of the Election Law, §1-102, stated:

> 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 office or deciding any matter whereon a vote of its citizens is required or permitted. Where a specific provision of law exists in the *education* law, which is inconsistent with the provisions of this chapter, such provision shall apply.

The Bill Jacket is replete with statements that the law was intended to correct oversights and did not make any substantive changes. For example, the State Board of Elections stated, "The bill contains a minimum of substantive changes, none of which are of major significance, but makes numerous technical and procedural amendments."[1] The Association of the Bar of the City of New York submitted, "the bill…would amend the newly enacted revised election law. The amendments are minor in nature and for the most part intended to correct defects in the new law."[2] The League of Women Voters of New York State agreed, "this recodification eliminates obsolete sections and duplication; reorganizes the law in logical, clear order; and has been written in language more easily understood…It is truly a recodification, not making substantial or highly controversial changes in the law."[3]

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The Court finds the recodification of the Election Law in 1976 was not intended to make substantive changes to the law as it was previously written and how it was modified to its current form. The removal of "education" law and the insertion of "any other law" does not change the intent of the provision and its applicability to state laws, rather than local laws.

Furthermore, Election Law 5-102(1) states clearly and unequivocally,

> "No person shall be qualified to register for and vote at *any* election unless he is a citizen of the United States."

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[1] New York State Bill jackets- L- 1976-Ch-0234, Letter from State Board of Elections dated May 27, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

[2] New York State Bill jackets- L- 1976-Ch-0234, Letter from the Association of the Bar of the City of New York dated May 27, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

[3] New York State Bill jackets- L- 1976-Ch-0234, Letter from the League of Women Voters of New York State dated May 20, 1976; https://nysl.ptfs.com/knowvation/app/consolidatedSearch/#search/v=list,c=1,q=qs%3D%5B*%5D%2Cfacet-fields%3D%5Bbrowse1_ss%3A%22All%20Government%20Collections%22%3E%3Ebrowse2_ss%3A%22New%20York%20State%20Legislative%20Bill%20Jackets%22%3E%3Ebrowse3_ss%3A%221970s%22%3E%3Ebrowse4_ss%3A%221976%22%5D%2CqueryType%3D%5B16%5D,sm=s,l=library1_lib, last accessed June 15, 2022.

The Court need not look to the legislative intent of this section to know there is no carveout for non-citizens to vote under the Election Law. This section applies to "any" election within New York State.

Based upon the foregoing analysis, the Court finds that the Municipal Voting Law explicitly violates the Election Law, as it states only "citizens" may vote in elections. If Election Law §1-102 "was interpreted to mean any other law whatsoever, municipalities would have the ability to rewrite all but 12 sections of the *Election Law*." See *Castine, supra*. The Court finds that the Election Law can only be preempted by inconsistent *state* laws, not local laws.

MUNICIPAL HOME RULE LAW

New York State Constitution Article IX, §2(b) provides "…the legislature…shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only…" and New York State Constitution Article 9, Section 3(a)(3) provides, "except as expressly provided, nothing in this article shall restrict or impair any power of the legislature in relation to… matters other than property, affairs or governments to act with respect to local matters, and correspondingly, limit the authority of the State Legislature to intrude in local affairs by requiring it to act through general or special laws." *See Patrolmen's Benevolent Ass'n of City of New York Inc. v. City of New York,* 97 NY2d 378, 385-386 [2001].

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The *Municipal Home Rule Law* sets forth the general powers of local governments to adopt and amend local laws in accordance with Article IX of the New York State Constitution. *Boening v Nassau County Dept. of Assessment,* 157 AD3d 757, 764, 69 N.Y.S.3d 666. Under §23 of the *Municipal Home Rule Law*, any law that "changes the method of nominating, elevating, or removing an elective officer," must be approved by a public referendum held within sixty days after the law's adoption. *Municipal Home Rule Law 23(1), 23(2)(e); see also Mayor of City of N.Y. v Council of City of N.Y., 38 AD3d 89, 96, 825 NYS2d 201 [2006].* "Where a local law is subject to mandatory referendum, the failure to conduct the referendum invalidates the law." 1986 NY Op. Att'y Gen. (Inf.) 57 (1986).

Furthermore, the New York State Constitution Article IX, Section 2(c) is echoed within the *Municipal Home Rule Law §*10 which states:

> In addition to powers granted in the constitution, the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws *not inconsistent* with the provisions

> of the constitution or not inconsistent with any general law relating to its property, affairs or government…

Local laws may not be inconsistent with the provisions of the Constitution or of any general law. *City of Amsterdam v. Helsby,* 371 NYS2d 404 [1975]; *Toia v. Regan*, 387 NYS2d 309 [1976]. "Where local government is otherwise authorized to act, it will be prohibited from legislating on a subject only if the State pre-empts the field through legislation evidencing a state purpose to exclude the possibility of varying local legislation." *Monroe-Livingston Sanitary Landfill, Inc. v. Caledonia,* 51 NY2d 679 [1980]. Based upon the above analysis, the Municipal Voting Law is wholly inconsistent with the provisions of suffrage in the New York State Constitution and the New York State Election Law and therefore, the Municipal Voting Law violates the Municipal Home Rule Law.

Assuming arguendo that there was not a prima facie violation and inconsistency with the New York State Constitution or the New York Election Law by the Municipal Voting Law, the question before this Court then becomes whether the Municipal Voting Law "changes the method" of electing officers, such that it cannot be done without a referendum. This Court believes that it does.

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The Court of Appeals in the *McCabe* matter has explained that in New York, public policy is made by elected representatives and referenda are a limited exception that must be grounded in a particular constitutional or statutory source. "Government by representation is still the rule. Direct action by people is the exception." *McCabe v. Voorhis,* 243 NY 401, 413 (1926). However, here, in enacting the Municipal Voting Law, the City Council have effectively changed the suffrage requirements first implanted in the New York Constitution and the Election Law. By discounting the citizen requirement and increasing the number of individuals in the electorate by permitting non-citizens to vote, the method by which all municipal elective officers are elected has been fundamentally changed, requiring a referendum. The failure to conduct a referendum in this matter further invalidates the Municipal Voting Law.

CONCLUSION

The Municipal Voting Law is "impermissible simply and solely for the reason that the Constitution says that it cannot be done." See *Protect the Adirondacks! Inc. v. New York State Dep't of Env't Conservation,* 37 NY3d 73, 84 [2021].

The New York State Constitution expressly states that *citizens* meeting the age and residency requirements are entitled to register and vote in elections. The New York State Election Law reaffirms that *citizens* meeting the age and residency requirements are entitled to register and vote in elections. There is no statutory ability for the City of New York to issue inconsistent laws permitting non-citizens to vote and exceed the authority granted to it by the New York State Constitution. Though voting is a right that so many citizens take for granted, the City of New York cannot "obviate" the restrictions imposed by the Constitution. *See Protect the Adirondacks! Inc. v. New York State Dep't of Env't Conservation,* 37 NY3d 73, 84 [2021]. This Court finds that Municipal Voting Law violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law.

Based upon the foregoing, in summary, it is

ORDERED that Motion #004 by Defendants Mayor Eric Adams and the New York City Council seeking summary judgment pursuant to §CPLR 3212 is hereby denied.

ORDERED that Motion #005 by Plaintiffs seeking summary judgment declaring Local Law No. 11 of 2022 is illegal, null and void because it violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law and permanently enjoining the implementation of the law is hereby granted.

ORDERED that Motion #006 by Defendant-Intervenors seeking summary judgment pursuant to CPLR §3212, CPLR §3211(a)(3) dismissing the Complaint based on a lack of legal capacity to sue; CPLR §3211(a)(7) dismissing the Complaint for failure to state a cause of action is hereby denied.

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ORDERED that a declaratory judgment is hereby granted, declaring the Municipal Voting Law void as violative of the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law.

ORDERED that a permanent injunction prohibiting Defendants from registering non-citizens to vote is hereby granted.

This constitutes the Decision and Order of the Court.

Date: June 27, 2022

ENTER

Ralph J. Porzio

HON. RALPH J. PORZIO
J.S.C.

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