

Court of Appeals
of the
State of New York

VITO J. FOSSELLA, NICHOLAS A. LANGWORTHY, JOSEPH BORRELLI,
NICOLE MALLIOTAKIS, ANDREW LANZA, MICHAEL REILLY,
MICHAEL TANNOUSIS, INNA VERNIKOV, DAVID CARR, JOANN
ARIOLA, VICKIE PALADINO, ROBERT HOLDEN, GERARD KASSAR,
VERALIA MALLIOTAKIS, MICHAEL PETROV, WAFIK HABIB, PHILLIP
YAN, HING WONG, NEW YORK REPUBLICAN STATE COMMITTEE,
and REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs-Respondents,

– against –

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

Defendants-Appellants,

(For Continuation of Caption See Inside Cover)

**BRIEF FOR *AMICUS CURIAE* PROFESSOR RON HAYDUK
IN SUPPORT OF APPELLANTS**

LAWYERS FOR CIVIL RIGHTS
Attorneys for Amicus Curiae
Professor Ron Hayduk
61 Batterymarch Street, 5th Floor
Boston, Massachusetts 02110
Tel.: (857) 264-0416
Fax: (617) 482-4392

– and –

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

Defendants-Intervenors-Appellants,

– and –

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Defendant.

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INTEREST OF AMICUS CURIAE

I am Professor of Political Science at San Francisco State University. I received my Ph.D. from the City University of New York (CUNY), and previously taught at the Borough of Manhattan Community College and Queens College of CUNY before joining the San Francisco State University faculty. I have published several books on the subjects of immigration policy and voting rights, and I have published many peer-reviewed articles in academic journals.

While I do not have a direct personal interest in this litigation, I have dedicated much of my professional career to the study of immigration, community organizing, and social movements, elections, and equality. I have an academic interest in explaining the long history and tradition of noncitizen voting in New York City, as well as other jurisdictions within the United States. My goal is to bring academic expertise to this matter, particularly regarding the practice of noncitizen voting both historically and during the contemporary period in New York and in the United States, which will help to inform the Court's decision in resolving this appeal.

PRELIMINARY STATEMENT

When the Supreme Court of Richmond County overturned Local Law 11, it overlooked the rich history and contemporary practice of noncitizen voting in both New York and the United States. Local Law 11 is far from an aberration in the historical record, or even in the modern day. Instead, it is a continuation of statutes

enacted in forty different states across American history that have enfranchised noncitizens. This statutory continuum demonstrates that noncitizen voting is not only consistent with the democratic notions underlying this country’s founding—like “government must rest on the consent of the governed,” “no taxation without representation,” and “good-enough-to-fight-good-enough-to-vote”—but also that it is essential to the ongoing pursuit of the American democratic ideal. The project of noncitizen voting is a means to forge immigrant inclusion and equitable democratic practice and has long produced positive policy outcomes for citizens and noncitizens alike. In New York City, renowned for its diversity and community engagement, the benefits of including noncitizens in the political process are well documented and cannot be overstated. As a political science and history scholar, I respectfully urge this Court to uphold Local Law 11.

ARGUMENT

Although the majority opinion below declined to review the relevant history of noncitizen voting, it is important for this Court to understand that Local Law 11 did not arise in a vacuum. Noncitizen voting is not only consistent with historical practice in New York and the country more broadly, but it is also harmonious with American democratic principles, crucial to ending discrimination and bias against marginalized groups, and proven to produce beneficial policy outcomes for both citizens and noncitizens of the United States.

I. LOCAL LAW 11 IS CONSISTENT WITH A LONG TRADITION OF NON-CITIZEN VOTING IN BOTH NEW YORK AND THE UNITED STATES.

Local Law 11 is part of a considerable history and tradition, in both the United States and New York specifically, of enfranchising noncitizens. Through various federal, state, and local laws—including some passed before the founding fathers signed the Declaration of Independence—legislatures have long been empowering noncitizens to vote.

A. Noncitizens Were Permitted to Vote in New York State as Early as the 1700s and in New York City as Recently as 2002.

During the colonial and early republican periods, noncitizen voting was a common and noncontroversial part of New York’s political life. Indeed, early debates over suffrage in New York centered on the highly contentious issues of property qualifications and race, not citizenship. New York’s original Constitution of 1777 provided suffrage to “every male inhabitant of full age” who met property qualifications, including noncitizens.¹ Before being allowed to vote, noncitizens would simply be required to take an oath or affirmation of allegiance to the state.²

¹ N.Y. Const. of 1777, Art. VII, reproduced in [history.nycourts.gov, https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1777-NY-Constitution-compressed.pdf](https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1777-NY-Constitution-compressed.pdf) (last visited Nov. 12, 2024).

² N.Y. Const. of 1777, Art. VIII, reproduced in [history.nycourts.gov, https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1777-NY-Constitution-compressed.pdf](https://history.nycourts.gov/wp-content/uploads/2019/01/Publications_1777-NY-Constitution-compressed.pdf) (last visited Nov. 12, 2024).

Over forty years later, during New York’s Constitutional Convention of 1821, delegates debated the inclusion of a racial qualification for suffrage and the removal of the requirement that only landowners could vote in senatorial elections. While some delegates asserted that democratic principles mandated suffrage for Black people and laborers, other delegates claimed that allowing Black people and non-landowners to vote would lead to irresponsible government and insecure property rights.³ The revised Constitution of 1821 embodied a compromise.

Article II Section I allowed “every male citizen of the age of twenty-one years” who met either a property ownership, rental payment, militia service, or public labor qualification, to vote for “officers ... elective by the people.”⁴ Men of color were permitted to vote but they had to meet stricter residency and property qualifications than applied to white men, including a requirement of being “three years a citizen of this State.”⁵ Some delegates referred to noncitizen voting when discussing their opposition to a proposal to grant Black people voting rights, but New York’s 1821 Constitution did not explicitly limit voting to U.S. citizens.⁶ In fact, none of New York’s constitutions have expressly required *United States*

³ See DEMOCRACY, LIBERTY, AND PROPERTY: THE STATE CONSTITUTIONAL CONVENTIONS OF THE 1820s 125-26 (Merrill D. Peterson, ed. 2010).

⁴ N.Y. Const. of 1821, Art. II, §1, reproduced in history.nycourts.gov, https://history.nycourts.gov/wp-content/uploads/2018/11/Publications_1821-NY-Constitution.pdf (last visited Nov. 12, 2024).

⁵ *Id.*

⁶ DEMOCRACY LIBERTY AND PROPERTY: THE STATE CONSTITUTIONAL CONVENTIONS OF THE 1820s, *supra* note 3 at 193.

citizenship for suffrage, generating a strong textual argument that the term “citizen” in Article II Section I refers to New York citizens not citizens of the United States.⁷

Even more relevant here, as one legal scholar has explained, “no iteration of the New York Constitution explicitly supports or prohibits noncitizen voting in local elections.”⁸ Such neutrality indicates that New York’s current Constitution permits such voting. This is especially true considering that various groups explicitly disenfranchised in state-level elections by previous iterations of New York’s Constitution have nevertheless been allowed to vote in local elections. For example, even though the 1777 New York Constitution limited voting rights in New York State Assembly elections to those who either owned freeholds worth “twenty pounds” or rented tenements worth “forty shillings”,⁹ a 1787 state law enfranchised all New York City freeholders in city elections.¹⁰ Similarly, despite that Article II Section I of New York’s operative Constitution in 1880 only granted suffrage to “male

⁷ See Maya Kammourieh, *Expanding Democracy: The Case for Enfranchising Noncitizens in Local Elections*, 110 VA. L. REV. ONLINE 119, 125-128, 133-138, 155 (2024). Although New York’s Constitution has never explicitly required *U.S. citizenship* for suffrage, from a relatively early date New York passed electoral laws requiring voters to have U.S. citizenship to participate in certain elections. See Ron Hayduk, *DEMOCRACY FOR ALL: RESTORING IMMIGRANT VOTING RIGHTS IN THE UNITED STATES* 21-22 (2006).

⁸ Kammourieh, *supra* note 7 at 126.

⁹ N.Y. Const. of 1777, Art. VII, *supra* note 2.

¹⁰ Laura Eve-Moss, *Democracy, Citizenship and Constitution-Making in New York, 1777-1894*, at 55-56 (1999) (Ph.D. dissertation, University of Connecticut) (on file with author).

citizen[s]” in state elections, the state legislature passed a law that year allowing women to vote in local school elections.¹¹

In a similar vein, and more recently, New York City explicitly extended the franchise to noncitizens in local school board elections from 1969 to 2002.¹² During that period, noncitizen parents of children in the public school system—regardless of legal status (*i.e.*, both “documented” and “undocumented” parents)—could both vote in school board elections and hold office on community school boards.¹³ Noncitizen voting in these elections ceased because New York City phased out community school boards, not due to a change directed at noncitizens.¹⁴ This put a temporary end to noncitizen voting in New York—until passage of Local Law 11.

B. The United States Has a Rich History and Tradition of Democratic Participation by Noncitizens, including in New York.

New York is not alone in its historical incorporation of noncitizens into political life. Historians and social scientists have long acknowledged the significant place of “alien suffrage” laws—as laws allowing noncitizen voting were originally called—in American electoral history.¹⁵ This extensive history demonstrates that

¹¹ See Kammourieh, *supra* note 7 at 127; Eve-Moss, *supra* note 10 at 77-78.

¹² See Kammourieh, *supra* note 7 at 127 (citing Matthew H. Frame, *Noncitizen Voting*, CONN. OFF. LEGIS. RSCH., (Oct. 25, 2022), <https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0231.pdf>).

¹³ Hayduk, *supra* note 7 at 101–102.

¹⁴ Kammourieh, *supra* note 7 at 127.

¹⁵ See Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141, no. 4 U. PA. L. REV. 1390, 1395, 1397-1406 (1993). Although different terms are used to describe immigrant voting, including “noncitizen voting,” “alien suffrage,” “resident voting,” and “local citizenship,” they all mean essentially the same thing: voting legally by residents who are not formally citizens of the United States.

noncitizen voting is as American as apple pie and older than our national pastime, baseball. In fact, noncitizens were able to legally vote in forty states at some point in time between 1776 and 1926 when voting rights were tied to race, gender, and property.¹⁶ Local Law 11 is thus just one iteration in a long, almost nationwide tradition of enfranchising noncitizen voters. While not widely known, these facts are now well documented.¹⁷ At the time of the founding, “alien voting occupied a logical place in a self-defined immigrant republic of propertied white men.”¹⁸ Indeed, eleven of the thirteen original states, including New York, provided voting rights to noncitizens before 1800.¹⁹

Figure 1: Non-Citizen Voting in the Original States Before 1800²⁰

<u>State</u>	<u>Beginning Date of Alien Suffrage</u>
Connecticut	1715
Delaware	1734
Maryland	1776
Massachusetts	1780
New Hampshire	1792

¹⁶ Initial scholarship on this topic uncovered historical noncitizen voting laws in “at least twenty-two states and territories,” *id.* at 1393, and subsequent research demonstrated the number was considerably higher—over 40 states have allowed noncitizens or “declarant citizens” to vote. Hayduk, *supra* note 7 at 19-20.

¹⁷ See, e.g., Marta Tienda, *Demography and the Social Contract* 39, no. 4 DEMOGRAPHY, 587–616, (2002); Hayduk, *supra* note 7 at 19-20.

¹⁸ Raskin, *supra* note 15 at 1395.

¹⁹ Hayduk, *supra* note 7 at 19-20.

²⁰ See *id.*

New Jersey	1776
New York	1777
North Carolina	1704
Pennsylvania	1790
Rhode Island	1762
Virginia	1762

i. Expansion of Noncitizen Suffrage

As the fledgling nation expanded westward, the practice of noncitizen suffrage also spread, often affirmatively by the federal government. In 1787, for example, when the Confederation Congress created the Northwest Territory, it provided in the Northwest Ordinance that individuals would qualify as voters if they: (1) had “a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district”; or (2) owned “the like freehold and [had] two years residence in the district.”²¹ Politicians supported noncitizen voting as they were eager to either to capitalize on the votes of immigrants already present in their jurisdiction or to encourage future immigration.²² By the 1880s, noncitizen suffrage reached its zenith, being practiced in 23 states, fueled by a growing

²¹ Northwest Ordinance of 1787, §9, available at: <https://www.archives.gov/milestone-documents/northwest-ordinance> (last visited Nov. 13, 2024).

²² Sara Egge, WOMAN SUFFRAGE AND CITIZENSHIP IN THE MIDWEST, 1870–1920, 75-110 (2018).

economy that needed new labor, and spurred increased immigration and settlement of the Midwest and West.²³

Research shows that noncitizens took advantage of the franchise, impacting election outcomes in American territories and states throughout the nineteenth century. In that period, noncitizen voters factored into considerations by political factions on salient issues—from anti-slavery causes and anti-temperance initiatives, to labor rights and economic regulation—affecting party dynamics, electoral outcomes, and policy.²⁴ As such, noncitizen suffrage played a role in facilitating immigrant incorporation and American progress.²⁵ The following figure shows which states (highlighted in orange) allowed noncitizen suffrage during various periods of United States history:

²³ Hayduk, *supra* note 7 at 19–24.

²⁴ See Ron Hayduk, Marcela Garcia-Castañon, & Vedika Bhaumik, *Exploiting the Complexities of “Alien Suffrage” in American Political History*, 43 J. AM. ETHNIC HIST. 70, 71, 74-78, 84-108 (2024); see generally Gary Gerstle & John Mollenkopf, *The Political Incorporation of Immigrants, Then and Now*, E PLURIBUS UNUM?: CONTEMPORARY AND HISTORICAL PERSPECTIVES ON IMMIGRANT POLITICAL INCORPORATION (Gary Gerstle & John Mollenkopf eds., 2001); David Montgomery, *THE FALL OF THE HOUSE OF LABOR: THE WORKPLACE, THE STATE, AND AMERICAN LABOR ACTIVISM, 1865–1925* (1987); Ruth Milkman, *IMMIGRANT LABOR AND THE NEW PRECARIAT* (2020).

²⁵ See generally Gerstle & Mollenkopf, *supra* note 24.

popular. Congress passed a law with similar provisions for the Territories of Minnesota, Kansas, Nebraska, Oklahoma, Dakota, Nevada, Wyoming, Oregon, and Washington.²⁹ After achieving statehood, some states kept up the practice of enfranchising “declarant aliens.”³⁰ In this formulation, noncitizen suffrage was seen as a means to facilitate citizenship.³¹ The following figure shows the periods within which the above-mentioned territories/states allowed noncitizen voting:

Figure 3: Noncitizen Voting in Newly Added States/Territories³²

<u>Territory/State</u>	<u>Period of Noncitizen Suffrage</u>
Kansas	1854–1918
Minnesota	1849–1896
Nebraska	1854–1918
Nevada	1848–1864
North Dakota	1861–1913
Oklahoma	1850–1907
Oregon	1848–1914
South Dakota	1850–1918
Washington	1850–1889
Wisconsin	1848–1908
Wyoming	1850–1899

²⁹ Raskin, *supra* note 15 at 1407. Many of these states, between 1848 and 1859, also maintained the residency period requirement for declarants to become eligible to vote. *See* Hayduk, Garcia-Castañon, & Bhaumik, *supra* note 24 at 74-75.

³⁰ *See* Raskin, *supra* note 15 at 1408, 1408 n.91.

³¹ *See id.* at 1407.

³² *See* Hayduk, *supra* note 7 at 19-20; Raskin, *supra* note 15 at 1408, 1408 n.91.

As the number of immigrants grew in the United States—first from Germany, Ireland, and China during the mid-19th century and later from Southern and Eastern Europe between 1880 and 1920—the immigrant vote helped elect German, Irish, Italian, Polish, Scandinavian and Jewish representatives and affected political dynamics.³³ Yet, rising nativism and xenophobia led to a reduction of noncitizen voting during the decades surrounding the twentieth century and, by 1900, only 11 states retained noncitizen voting rights.³⁴

Over approximately the next two decades, from 1901 to 1926, these remaining states moved to end noncitizen suffrage, usually by constitutional amendment.³⁵ During this period, citizen groups and public officials scapegoated or targeted immigrants, contributing to immigrants' marginalization.³⁶ Other restrictive electoral reforms were also imposed in this period, including poll taxes and literacy tests among others, which depressed voter turnout and limited American democratic development for decades.³⁷

C. In the Contemporary Period, Many Jurisdictions Have Restored

³³ Hayduk, Garcia-Castañon, & Bhaumik, *supra* note 24 at 70, 71, 74-78, 84-108.

³⁴ Hayduk, *supra* note 7 at 19-20, 25-26.

³⁵ *Id.* at 26-27.

³⁶ See Hayduk, *supra* note 7 at 26-29; see generally Higham, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925 (2002).

³⁷ Hayduk, *supra* note 7 at 29-30. Turnout ranged from 70 to 80% during presidential elections from 1840 to 1896 and dropped to 49% by 1924. *Id.* at 29.

Voting Rights to Noncitizens in Local Elections.

Although distinctive, New York City’s innovative immigrant voting program is not unique. Local Law 11 is part of a movement toward restoring voting rights to noncitizens at the local level. Today, at least seventeen jurisdictions allow immigrants to vote in local elections, some having done so for decades. Those jurisdictions include: eleven towns in Maryland (most since the 1990s); three towns in Vermont (2021 and 2023); San Francisco and Oakland, California (2022); and Washington D.C. (2022).³⁸

The exact nature and origin of these noncitizen voting laws varies. In some cases, noncitizens can only vote in school board elections (SF, Oakland), while in others they can vote for all local offices (VT, MD, D.C.).³⁹ Similarly, whereas some jurisdictions grant suffrage to all residents—including both documented and

³⁸ See Ron Hayduk, Megan Dias, & Olivia Marti, IMMIGRANT VOTING AND THE MOVEMENT FOR INCLUSION IN SAN FRANCISCO, 9 (2023), <https://caasf.org/wp-content/uploads/2023/09/23-CAA-ImmigrationVotingReport-F2.pdf>; Joseph, Olmo, *Frederick leaders approve letting noncitizens vote in local elections*, NBCWASHINGTON.COM (Sept. 20, 2024 (discussing recent approval of noncitizen voting in Frederick, Maryland), <https://www.nbcwashington.com/news/local/frederick-leaders-approve-letting-noncitizens-vote-in-local-elections/3722495/>. Noncitizen voting laws in Vermont, San Francisco, and D.C. have survived legal challenges in recent years. See Marisa Lati, *Judge throws out challenge to D.C.’s noncitizen voting law*, WASH. POST. (Mar. 21, 2024), <https://www.washingtonpost.com/dc-md-va/2024/03/21/dc-noncitizen-voting-lawsuit/>; Salvador Hernandez, *Noncitizen parents will again be able to vote in S.F. school board elections after group drops legal fight*, L.A. TIMES (Oct. 11, 2023), <https://www.latimes.com/california/story/2023-10-11/noncitizen-parents-will-be-able-to-vote-in-s-f-school-board-elections-after-group-drops-legal-challenge>; Eric Blaisdell, *Vt. Supreme Court affirms dismissal of non-citizen voting lawsuit in Montpelier*, BARRE MONTPELIER TIMES ARGUS (Jan. 20, 2023), https://www.timesargus.com/news/local/vt-supreme-court-affirms-dismissal-of-non-citizen-voting-lawsuit-in-montpelier/article_8341a7d9-4d13-5676-ae12-d6134971f60d.html.

³⁹ Hayduk, Dias, & Marti, *supra* note 39 at 9-10.

undocumented individuals (MD, SF, Oakland, D.C.)—others enfranchise only Legal Permanent Residents (VT).⁴⁰ Localities have also passed these laws through different means, including ballot proposals (SF, VT) and legislative processes (MD, Oakland, D.C.).⁴¹ Though these laws diverge in some ways, each recognizes that noncitizens are legitimate stakeholders and deserve a say in public affairs. Given the salience of this principle, more than a dozen other jurisdictions have considered immigrant voting laws in recent years, including five localities in Massachusetts, six in California, and one in Maine.⁴²

Figure 4: Contemporary Immigrant Voting Laws in the U.S.

Jurisdiction	How Enacted	Year Enacted	Coverage
San Francisco Oakland	Ballot proposal Ballot proposal	2016 2022	All residents in School Board Elections
NYC	Statute	2021	Lawful residents in Local Elections
Maryland	11 Local Statutes	1980s - 2024	All residents in Local Elections
Montpelier, VT Winooski, VT Burlington, VT	Ballot proposal Ballot proposal Ballot proposal	2021 2021 2023	LPRs in Local Elections

⁴⁰ *Id.* at 9.

⁴¹ *Id.* at 10.

⁴² *Id.* at 9.

Washington D.C.	Statute	2022	All residents in Local Elections
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In sum, Local Law 11 is an extension of a long tradition of noncitizen voting in New York and across the country. Efforts to restore immigrant voting rights in New York City and elsewhere draw on this tradition as well as the historical enfranchisement struggles of other groups.⁴³

II. LOCAL LAW 11 ALIGNS WITH FOUNDATIONAL DEMOCRATIC PRINCIPLES AND BOLSTERS THE IDEALS OF EQUALITY AND INCLUSION.

Local Law 11 is compatible with traditional American notions of democracy and serves tangible goals of equality, diversity, and increased political participation.

A. Local Law 11 is Consistent with Fundamental Democratic Principles.

Voting is the bedrock of democracy. It is the central mechanism by which the governed can influence the public officials and policies that affect their daily lives. Suffrage is thus widely recognized as a fundamental right, without which other rights cannot be achieved or maintained.⁴⁴ As Congressman Jamin Raskin wrote in an article on noncitizen voting during his time in the legal academy, “[t]he traditional

⁴³ Ron Hayduk & Kathleen Coll, *Urban Citizenship: Campaigns to Restore Immigrant Voting Rights in the US*, 40, no.2 NEW POL. SCI. 1, 3, 8-12 (2018), available at: https://www.researchgate.net/publication/323989260_Urban_Citizenship_Campaigns_to_Restore_Immigrant_Voting_Rights_in_the_US (last visited Nov. 12, 2024).

⁴⁴ See, e.g., Richard H. Pildes, *What Kind of Right is “The Right to Vote”?*, 93 VA. L. REV. IN BRIEF 45, 45 (2007) (noting that the right to vote “is considered a ‘fundamental’ constitutional right ... or the right ‘preservative of all other rights’”) (internal citations omitted).

democratic argument for suffrage rights ... is second nature to Americans, [and] reducible to a few familiar maxims: government must rest on the consent of the governed, no taxation without representation, and good-enough-to-fight-good-enough-to-vote.”⁴⁵ Suffrage laws like Local Law 11 align with those principles.

Consent of the Governed: One of the basic tenets of democratic theory is that the legitimacy of government rests on the consent of the governed. Under this “social contract,” citizens consent to governmental authority in exchange for the power to select their representatives and hold them accountable.⁴⁶ Without this built-in accountability mechanism, the specter of oppression looms. Benjamin Franklin once observed that “[t]hose who have no voice nor vote in the election of representatives do not enjoy liberty, but are absolutely enslaved to those who have votes and to their representatives.”⁴⁷

It follows that when the law excludes a group of people from the franchise—thereby depriving them of the capacity to keep representatives in check—governmental authority can lead to discriminatory outcomes. Indeed, scholars have studied numerous examples of the subordination of minority groups in democratic systems and concluded that extensive voter participation makes representative

⁴⁵ Raskin, *supra* note 15 at 1441–42.

⁴⁶ See Hayduk & Coll, *supra* note 43 at 8.

⁴⁷ Ida Husted Harper, *Suffrage, A Right*, 183, no. 599 THE N. AM. REV. 484, 487 (Sep. 21, 1906), available at: <https://www.jstor.org/stable/25105637?seq=4>.

political systems more robust—inclusive and active electorates keep officials responsive and accountable to all constituents.⁴⁸

Alex Aleinikoff and Douglas Klusmeyer, for example, note that “[a]ny discussion of the franchise for immigrants must consider the basic democratic premise that what concerns all should be decided by all. . . . [L]aws of democratic states apply not only to their citizens, but to all who live in the territory.”⁴⁹ Similarly, Professor Lisa García Bedolla argues for granting political rights to noncitizens based on a broader notion of membership in a society, so as to move toward more integration, incorporation, and equal treatment.⁵⁰ Local Law 11 takes a step in that direction by allowing noncitizens to vote in local elections that may impact their day-to-day lives as residents of New York City.

No Taxation Without Representation: Noncitizen voting is also consistent with the maxim of “no taxation without representation”—an idea so foundational to American democracy that school children can recite it. Federal, state, and local governments already require all residents to pay taxes regardless of their

⁴⁸ See generally Ferris et al., *Noncitizen voting rights in the global era: A literature review and analysis*, 21 *J. of Int’l Migration & Integration* 949 (2020).

⁴⁹ T. Alexander Aleinikoff & Douglas Klusmeyer, *CITIZENSHIP POLICIES FOR AN AGE OF MIGRATION* 46 (2002).

⁵⁰ Lisa García Bedolla, *Rethinking Citizenship: Noncitizen Voting and Immigrant Political Engagement in the United States*, *TRANSFORMING POLITICS, TRANSFORMING AMERICA: THE POLITICAL AND CIVIC INCORPORATION OF IMMIGRANTS IN THE UNITED STATES* 51–70 (Taeku Lee et al. eds. 2006).

immigration status.⁵¹ In fact, noncitizens pay taxes that fund federal programs like Social Security, Medicare, and Unemployment Insurance, even though they are ineligible to receive many of those benefits.⁵² A 1998 study conducted by the National Immigration Forum and the Cato Institute found that “immigrant households and businesses provide \$162 billion per year in tax revenue to federal, state, and local governments.”⁵³ Moreover, New York is one of six states that collected more than \$1 billion in tax revenue from undocumented immigrants in 2022.⁵⁴ Local Law 11 comports with the rallying cry of the American Revolution by granting noncitizen taxpayers a say in how their hard-earned tax dollars are spent.

Good Enough to Fight, Good Enough to Vote: Immigrants have served in all branches of the U.S. military, beginning with the Revolutionary War. By the 1840s, immigrants comprised half of all military recruits and 20 percent of the 1.5 million service members in the Union Army during the Civil War.⁵⁵ As of 2019, the number of foreign-born veterans in the United States was approximately 530,000,

⁵¹ Carl Davis et al., TAX PAYMENTS BY UNDOCUMENTED IMMIGRANTS, 5 (2024), <https://sfo2.digitaloceanspaces.com/itep/ITEP-Tax-Payments-by-Undocumented-Immigrants-2024.pdf>.

⁵² *Id.* at 6.

⁵³ Elise Brozovich, *Prospects for Democratic Change: Non-Citizen Suffrage in America*, 23 HAMLIN J. PUB. L. & POL’Y 403, 438 (2002), https://southerncalifornialawreview.com/wp-content/uploads/2018/01/77_151.pdf.

⁵⁴ Davis et al., *supra* note 51 at 3.

⁵⁵ Jie Zong & Jeanne Batalova, *Immigrant Veterans in the United States*, MIGRATION POL’Y INST. (May 16, 2019), <https://www.migrationpolicy.org/article/immigrant-veterans-united-states-2018>.

representing three percent of all 18.6 million veterans nationwide.⁵⁶ Additionally, according to the Migration Policy Institute, close to 8,000 enlisted noncitizens were in the active-duty Army in 2015.⁵⁷ Local Law 11 would give New York’s noncitizen soldiers and veterans a well-deserved voice in local elections.

American judges and courts have frequently cited these or similar ideas in upholding noncitizen voting rights. Two such cases discussed in Congressman Raskin’s article are *Stewart v. Foster*, decided by the Pennsylvania Supreme Court in 1809, and *Spragins v. Houghton*, decided by the Illinois Supreme Court in 1840.⁵⁸ The *Stewart* Court upheld a provision allowing noncitizens to vote in Pittsburgh municipal elections. In a concurrence, Justice Blackenridge wrote that being a municipal inhabitant and taxpayer creates a right to influence local policy that is “founded in natural justice.”⁵⁹ He continued that “[t]o reject this voice, or even to restrain it unnecessarily, would be wrong. It would be as unjust as it would be impolitic.”⁶⁰ Similarly, in upholding alien suffrage in Illinois, the *Spragins* Court wrote that the Illinois Constitution “intended to extend the right of suffrage to those who, having by habitation and residence identified their interests and feelings with

⁵⁶ *See id.*

⁵⁷ Muzaffar Chishti, Austin Rose, & Stephen Yale-Loehr, NONCITIZENS IN THE US MILITARY, 5 (2019), <https://www.migrationpolicy.org/sites/default/files/publications/MPI-Noncitizens-Military-Final.pdf>.

⁵⁸ *See* Raskin, *supra* note 15 at 1404-1406, 1442-1444.

⁵⁹ *Stewart v. Foster*, 2 Binn. 110, 122 (Pa. 1809) (Blackenridge, J., concurring).

⁶⁰ *Id.*

the citizen, are upon the just principles of reciprocity between the governed and governing, entitled to a voice in the choice of the officers of the government.”⁶¹ It elaborated that “[i]f the right of suffrage be a natural, and not a conventional one, *there can be no just cause for abridging it, unless by way of punishment for crime, and under very peculiar circumstances, and for peculiar causes.*”⁶²

B. Suffrage Is Paramount to Overcoming Discrimination and Bias Against Marginalized Groups.

The acquisition of political rights—including voting rights—has been a vital tool for every disempowered group in America’s history to achieve economic, social, and civil rights and equality.⁶³ Because legislative bodies confer rights and make public policy, it is critical for every member of a polity to possess the capacity to influence and select representatives. Voting is an effective means to keep representatives responsive and government accountable to all stakeholders. Statutes like Local Law 11 acknowledge that noncitizens, who contribute to their communities culturally, economically, and socially, are as worthy of rights and representation as any of their neighbors.

Studies show increased civic engagement is correlated with greater individual and societal outcomes, including a stronger sense of community belonging, better

⁶¹ *Spragins v. Houghton*, 3 Ill. 377, 408 (Ill. 1840).

⁶² *Id.* (emphasis added).

⁶³ See generally Chilton Williamson, *AMERICAN SUFFRAGE FROM PROPERTY TO DEMOCRACY, 1760–1860* (1960).

health outcomes, and lower crime rates, among other social indicators.⁶⁴ Excluding New York City’s large noncitizen population from the political process marginalizes that population in economic, social and political terms, and undermines the ideal of New York as a multicultural egalitarian democracy.⁶⁵ Indeed, legal and procedural impediments to political participation are historically correlated with biased policy contributing to the marginalization of ethnic and racial groups.⁶⁶

Some critics of noncitizen voting argue that it dilutes the concept of citizenship, but historical practice shows the opposite. Experiments with noncitizen voting in places like Wisconsin show that it can enrich citizenship by encouraging and allowing immigrants to participate in the political life of their communities.⁶⁷ In that sense, noncitizen voting is an effective pathway to promote civic education, integration, and citizenship.

Restoring immigrant voting rights through noncitizen voting laws—like Local Law 11—would amplify the visibility and voices of immigrants, which in turn would make government more representative, responsive, and accountable.

⁶⁴ See Peter Levine, *The Civic Engagement of Young Immigrants: Why Does it Matter?*, 12, no. 2 APPLIED DEV. SCI. 102–104 (2008); Constance Flanagan & Peter Levine, *Civic Engagement and the Transition to Adulthood*, 20 no. 1 THE FUTURE OF CHILDREN 159-179 (2010).

⁶⁵ See IMMIGRANT CROSSROADS: GLOBALIZATION, INCORPORATION, AND PLACEMAKING IN QUEENS, NEW YORK, vii-xi (Terry Hum et al., eds., 1st ed. 2021); MING HSU CHEN, PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA 21-39 (2020).

⁶⁶ See Hayduk, *supra* note 7 at 25-30; Higham, *supra* note 36 at 35-45.

⁶⁷ See Hayduk, Garcia-Castañon, & Bhaumik, *supra* note 24 at 86-108.

C. Policy considerations Are Particularly Important in New York City Due to its Large Immigrant Population.

Local Law 11 embraces the reality that: (1) New York’s population includes approximately three million immigrants; (2) more than 35% of New Yorkers are foreign-born; and (3) within that foreign born population, slightly less than half are noncitizens.⁶⁸ Although those noncitizens are counted in redistricting, pay billions of dollars in taxes annually, and contribute in countless ways the life of the city,⁶⁹ they would be prohibited from voting if Local Law 11 is struck down.

Conversely, if Local Law 11 is allowed to take effect, between 825,000 and one million noncitizen New Yorkers would be enfranchised.⁷⁰ These newest New Yorkers are central to the vitality of New York City. Former Mayor Rudy Giuliani once said, “Immigrants constantly infuse new life in economy and culture. As any of the elected officials here today can attest, their cities and counties thrive precisely because of their vibrant immigrant communities.”⁷¹ Indeed, immigrants in New York City own 52% of local businesses and contribute over \$100 billion to the

⁶⁸ See *Quick Facts: New York City, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> (last visted Nov. 13, 2024); NYC Mayor’s Office for Economic Opportunity, AN ECONOMIC PROFILE OF IMMIGRANTS IN NEW YORK CITY 2017, 1-6 (2020), <https://www.nyc.gov/assets/opportunity/pdf/immigrant-poverty-report-2017.pdf>.

⁶⁹ Record on Appeal at 1444-1445.

⁷⁰ Record on Appeal at 396–397, 430, 511.

⁷¹ Brozovich, *supra* note 53 at 436-437.

citywide GDP.⁷² Excluding so many non-citizen immigrants from the ballot box undermines the health, representativeness, and legitimacy of our public policies.

When noncitizens in New York cannot vote, elected officials have little incentive to be responsive to noncitizen input on policies that directly affect noncitizens. For example, without Local Law 11, noncitizen parents with school-age children have little recourse to ensure that Department of Education funds are directed to appropriate programs to meet their children's needs. Noncitizens have similar interests at stake regarding other agencies and policies, from policing to housing to transportation. All New Yorkers have a common interest in good public services and accessible, affordable public goods. Upholding Local Law 11 would empower noncitizens to exercise their voices in the electoral process, preserve their rights, and protect their interests.

D. Noncitizen Voting Has Historically Led to Positive Outcomes, Both in New York and Nationally.

As explained above, noncitizen voting helps to achieve parity in representation for long-marginalized groups. This is particularly true in a city as vibrantly diverse as New York. But the benefits of noncitizen voting go beyond representation as a good in itself; history shows that noncitizen voting laws like

⁷² Record on Appeal at 396.

Local Law 11 promote policy outcomes that benefit all Americans regardless of their citizenship status.

New York’s experience with noncitizen voting in school board elections demonstrates that broader suffrage results in the election of government bodies that better reflect the communities they represent. During the 1980s, when New York City allowed all parents of public school children to vote in community school board elections, immigrant parents conducted voter registration and mobilization drives.⁷³ This movement began in the predominantly Dominican neighborhood of Washington Heights—where noncitizen voters elected the first Dominican-born person to any U.S. public office—and spread to other areas, leading to “the election of a larger number and proportion of people of color on school boards.”⁷⁴

In turn, the increased community representation pushed the City to devote more funds to schools in Washington Heights and other neighborhoods, and spurred the development multicultural curriculum and bilingual language programs.⁷⁵ All residents, not just Dominicans, benefitted from these increased educational opportunities.⁷⁶ And the improved community mobilization had “spillover effects,”

⁷³ Hayduk & Coll, *supra* note 43 at 10.

⁷⁴ *Id.* at 10-11.

⁷⁵ *Id.* at 11.

⁷⁶ *Id.*

including affordable housing advocacy that helped launch a city program to rehabilitate low-and-moderate-income housing units.⁷⁷

Academic studies identify additional benefits of noncitizen voting. For example, research shows that increased minority school board representation correlates with improved outcomes for minority students, including a positive effect on college attendance and a negative effect on dropout rates.⁷⁸ Moreover, empirical analysis demonstrates noncitizen voting can play a role in producing effective school governing arrangements that support improved student achievement and incorporation by building stronger, more supportive school-parent relations.⁷⁹

In sum, history shows that noncitizen voting laws like Local Law 11 have concrete, real-world social benefits, including increased political participation, equitable allocation of resources, and elected bodies that better serve those whom they represent.

CONCLUSION

For the foregoing reasons, I respectfully submit that this Court should reverse the ruling below and uphold Local Law 11.

⁷⁷ *Id.*

⁷⁸ See Tara Kini, *Sharing the Vote: Noncitizen Voting Rights in Local School Board Elections*, 93 CALIF. L. REV. 312 (2005) (citing research).

⁷⁹ *Id.* at 309-310.

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Respectfully submitted,

PROFESSOR RON HAYDUK

By his attorneys,

Jacob M. Love

Jacob M. Love, Esq.

Lawyers for Civil Rights

61 Batterymarch St., 5th fl.

Boston, MA 02110

Tel: 857-264-0416

jlove@lawyersforcivilrights.org