

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND

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

Plaintiffs,

Index No. 85007/2022

-against-

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

Defendants.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE

PRELIMINARY STATEMENT

Proposed Intervenor-Defendants are long-time New York City residents who have been granted the right to vote in local elections under Local Law No. 2022/011, a newly enacted municipal law that Plaintiffs seek to invalidate. Because Proposed Intervenor-Defendants are not named in the instant suit but would be bound by the outcome, they seek to intervene pursuant to C.P.L.R. §§1012 and 1013 to protect their right to vote in municipal elections.

On December 9, 2021, the New York City Council passed Local Law No. 2022/011 (hereinafter “Municipal Voting Law”). The Municipal Voting Law granted the right to vote in municipal elections to individuals who are either a lawful permanent resident or authorized to work in the United States and are a resident of New York City and will have been such a resident for 30 consecutive days or longer at the time of the election. The Municipal Voting Law was deemed adopted on January 9, 2022, when the newly-inaugurated mayor of New York City, Eric Adams, declined to veto it. As a result, over 800,000 New York City residents won the right to vote for municipal officials—specifically, City Council members, borough presidents, school board members, and the Mayor—who would make decisions that affected these voters’ daily lives.

Plaintiffs, politically motivated organizations, elected officials, and other individuals, filed the instant suit to stop implementation of the Municipal Voting Law, naming the Mayor, the City Council, and the New York City Board of Elections as defendants and alleging that the Municipal Voting Law violates the New York State Constitution as well as state election and municipal law. If Plaintiffs succeed, the Proposed Intervenor-Defendants would be stripped of their voting rights. Thus, Intervenor-Defendants have a real and substantial interest in the case and interests wholly distinct from the government officials named as defendants, and they have the right to advocate for their interests in court.

STATEMENT OF FACTS

For over a decade, a multi-racial coalition of civic engagement and immigrant rights groups in New York City fought for the expansion of municipal voting rights to certain non-citizen residents of New York City. Much like the efforts across cities in Maryland, Vermont and California,¹ these efforts resulted in the passage of legislation to include formerly disenfranchised community members. New York City Council Member Ydanis Rodriguez introduced the bill, known as Introduction 1867, on January 23, 2020.² The legislation expanded the right to vote in municipal elections to include any person “who is either a lawful permanent resident or authorized to work in the United States... and who is a resident of New York City and will have been such a resident for 30 consecutive days or longer.”³ The bill passed the City Council on December 9, 2021. Defendant Mayor Adams did not sign the bill into law. Instead, he declined to veto it, allowing it to pass into law as Local Law 2022/011 on January 9^h, 2022.⁴

Plaintiff individuals and organizations filed suit immediately thereafter, on January 10, 2022, challenging the legality of the Municipal Voting Law on constitutional and statutory grounds. Plaintiffs allege that the Municipal Voting Law (1) contradicts language in the New York State Constitution regarding eligibility to vote; (2) violates § 5-102(1) of Chapter 17 of the Laws of New

¹ Democracy Docket, *Understanding Voting Rights for Noncitizens*, Dec. 7th, 2021,

<https://www.democracymarket.com/news/understanding-voting-rights-for-non-citizens/>

² Kelly Mena, *NYC Councilman Renews Effort To Give Noncitizens the Right to Vote in Local Elections*, CNN, Jan. 23, 2020, <https://www.cnn.com/2020/01/23/politics/nyc-noncitizen-voting-rights-bill/index.html>

³ See Local Law 2022/011, *accessible at*:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62>

⁴ *Id.*; See also Julia Marsh, *Mayor Eric Adams Voices Concerns About NYC's Non-Citizen Voting Bill*, N. Y. POST Jan. 1, 2022, <https://nypost.com/2022/01/01/mayor-eric-adams-voices-concerns-about-nycs-non-citizen-voting-bill/>

York, the Election Law, which addresses eligibility to vote; and (3) was passed in contravention of Section 23(2)(e) of the Municipal Home Rule Law, which requires a public referendum to change the method of nominating, electing, or removing an elective officer. Plaintiffs seek to void the Municipal Voting Law and enjoin Defendants from registering individuals like Intervenor-Defendants to vote and prohibit Defendants from counting votes cast by non-citizens like Intervenor-Defendants.

PROPOSED INTERVENOR-DEFENDANTS

Proposed Intervenor-Defendants are all long-time New York City residents who are authorized to work in the United States and thus eligible to vote under the Municipal Voting Law. They represent five boroughs, seven countries, and four continents. Many were active participants in the campaign to pass the Municipal Voting Law. All of them are active in their New York City communities and wish to participate in the political process that governs local policy and has direct effects on the lives of their families and communities.

Hina Naveed is a recipient of the Deferred Action for Childhood Arrivals (DACA), born in Pakistan, who has lived in New York City since 2008. Ms. Naveed resides in Richmond County, New York and is eligible to vote under the Municipal Voting Law. Ms. Naveed is a nurse and an attorney who was engaged in community activism to persuade the New York City Council to pass the law, including through participation in the “Our City, Our Vote” coalition.

Abraham Paulos is a lawful permanent resident, born in Sudan, who has lived in New York City since 2006. He resides in Kings County, New York and is eligible to vote under the Municipal Voting Law. Mr. Paulos is a journalist and movement leader who serves as Deputy Director for the Black Alliance for Just Immigration. In his role as Deputy Director, Mr. Paulos has served the

community as an advocate for racial, social, and economic justice on behalf of African Americans and Black immigrants for over 10 years.

Carlos Vargas-Galindo is a DACA Recipient, born in Mexico, who has lived in New York City since 1990. Mr. Vargas-Galindo resides in Richmond County, New York and is eligible to vote under the Municipal Voting Law. Mr. Vargas-Galindo has deep ties to New York City, having lived here for 32 years. Mr. Vargas-Galindo is a graduate of the New York City public school system and the College of Staten Island and now attends City University of New York School of Law. Mr. Vargas-Galindo plans to become a member of legal profession in New York and hopes to continue to be of service to his community in that role.

Emili Prado is a DACA recipient, born in Mexico, and has resided in New York City since 2001. Ms. Prado resides in Richmond County, New York and is eligible to vote under the Municipal Voting Law. Ms. Prado was active in the campaign to adopt local Law 2022/011 and is eager to continue empowering members of her community to be involved in local politics.

Eva Santos Veloz is a DACA recipient, born in the Dominican Republic, who has lived in New York City since 1999. She resides in Bronx County and is eligible to vote under the Municipal Voting Law. Ms. Santos Velez is a graduate of the New York City public school system and the mother of three children who attend public schools in the Bronx. She has been active in her community as an organizer for a non-profit organization working with immigrant youth and has been involved in several community projects including advocating for excluded workers, assisting Bronx fire victims, and advocating for a pathway to citizenship.

Melissa John is a lawful permanent resident, born in Trinidad and Tobago, who has lived in New York city since 2002. Ms. John resides in Manhattan and is eligible to vote under the Municipal Voting Law. Ms. John is a teacher in the New York City public school system. Outside of her

professional commitments she is heavily involved in her community. She has provided outreach and support to individuals and families impacted by the fire at the Twin Peaks apartment in the Bronx and is also the founder of RepresentWe, a people-powered initiative to raise public awareness of municipal voting particularly among the Caribbean community in New York City.

Angel Salazar is a DACA recipient, born in Mexico, and has resided in New York City since 2002. Mr. Salazar resides in Richmond County and is eligible to vote under the Municipal Voting Law. Mr. Salazar is a graduate of the New York City public school system and attended the College of Staten Island. Currently, Mr. Salazar serves his community as a Site Safety Training Associate at La Colmena, a community-based organization empowering day laborers and low-wage workers in Staten Island through organizing, education, culture, and equitable economic development.

Muhammad Shahidullah is a lawful permanent resident, born in Bangladesh, who has lived in New York City since 2015. He resides in Queens County, New York and is eligible to vote under the Municipal Voting Law. Mr. Shahidullah is a parent and business owner as well as an active member of his community. As a Director of Save the People, a non-profit organization based in Hillside/Jamaica Queens he focuses on providing counseling, food distribution, and financial support to community members in need.

Jan Ezra Undag is a lawful permanent resident, born in the Philippines, who has lived in New York City since 2017. Mr. Ezra Undag resides in Brooklyn and is eligible to vote under the Municipal Voting Law. Mr. Ezra Undag is currently employed by the City of New York as a civil servant. He plans to attend the City College of New York in the fall to pursue a master's degree.

All of the proposed intervenors have deep ties to the City of New York and are eligible to vote under the Municipal Voting Law. Under New York's C.P.L.R, they are entitled to the opportunity to advocate for their rights in this court.

ARGUMENT

PROPOSED INTERVENOR-DEFENDANTS' MOTION SHOULD BE GRANTED, AS THEY HAVE A REAL AND SUBSTANTIAL INTEREST IN THE OUTCOME OF THIS ACTION AND SATISFY THE REQUIREMENTS OF NY C.P.L.R. § § 1012 AND 1013.

Plaintiffs' action seeks to terminate proposed Intervenor-Defendants' right to vote in municipal elections. Naming government entities as defendants, Plaintiffs seek to strike down the law and thereby deprive voters like the proposed intervenors— authorized immigrants who have resided in New York City for more than thirty days— of the right to vote.

The Complaint rests on purely legal questions. It alleges that the Municipal Voting Law, by providing the right to vote to citizens of the state of New York who are authorized immigrants but not citizens of the United States, violates state election law and Articles II and IX of the state Constitution. The Complaint further alleges that the law violates the Municipal Home Rule Law because it was passed via City Council vote rather than popular referendum. Regardless of how Defendants respond to these questions, neither the Mayor, nor the City Council, nor the Board of Elections can fully represent the interests of the proposed Intervenor-Defendants in this matter.

These are exactly the kind of circumstances in which intervention as of right under C.P.L.R. § 1012 or by permission under C.P.L.R. §1013 is appropriate.

The intervention provisions are to be construed liberally. *Bay State Heating & Air Conditioning Co. v. American Ins. Co.*, 78 A.D.2d 147, 149; 434 N.Y.S.2d 66, 67 (4th Dep't 1980); *see also Town of Southold v. Cross Sound Ferry Servs., Inc.*, 256 A.D.2d 403, 403; 681 N.Y.S.2d 571, 572 (2d Dep't 1998). In *Berkoski v. Board of Trustees of Inc. Vil. of Southampton*, 67 A.D.3d 840 (2d Dep't 2009), the Appellate Division described the application of these provisions as follows:

[U]nder liberal rules of construction... whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013, is of little significance[.] [I]ntervention should be

permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.

67 A.D.3d at 843-44 (internal quotations and citations omitted). *See also County of Westchester v. Department of Health of State of N.Y.*, 229 A.D.2d 460, 461(2d. Dep. 1996); *Norstar Apartments, Inc. v. Clay*, 112 A.D.2d 750, 751 (4th Dep't 1985).

I. Proposed Intervenor-Defendants have a right to intervene pursuant to C.P.L.R. §1012 (a)(2).

Under N.Y. C.P.L.R. §1012(a)(2), “[u]pon timely motion, any person shall be permitted to intervene in any action [] when the representation of the person’s interest by the parties is or may be inadequate and the person is or may be bound by the judgment. CPLR §1012(a)(2). *See also Plantech Hous., Inc. v. Conlan*, 74 A.D.2d 920, 920-21, 426 N.Y.S.2d 81, 82 (2d Dep’t 1980). The Proposed Intervenor-Defendants easily meet this standard.

(i) The motion to intervene is timely.

In considering whether a motion to intervene is timely, “courts do not engage in mere mechanical measurements of time but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party.” *Deutsche Bank National Trust Company v. Allenstein*, 201 A.D.3d 783, 785 (2d. Dep’t 2022) (internal citations omitted). Here, the Proposed Intervenor-Defendants’ motion to intervene is timely. Plaintiffs filed their complaint on January 10, 2022. While the Mayor of the City of New York and the City Council of the City of New York filed answers to the complaint on February 25, 2022, the Board of Elections for the City of New York was granted an extension to file their answer by April 11, 2022. Proposed Intervenor-Defendants’ filing is thus contemporaneous with the answer of at least one of the Defendants and has been filed prior to the first status conference in this matter.

(ii) ***Proposed Intervenor-Defendants will be bound by the judgment.***

Proposed Intervenor-Defendants are all New York City residents who have been granted the right to vote in municipal elections because of the passage of the Municipal Voting Law. They will be bound by a decision by the court in the instant action. Indeed, if Plaintiffs succeed, proposed Intervenor-Defendants will lose their right to vote before even having a chance to exercise it.

Plaintiffs' case hinges on interpretation of state election law as well as the constitutionality of the Municipal Voting Law, and proposed Intervenor-Defendants' rights will be either vindicated or curtailed by the Court's decision. They are thus bound by any determination this Court makes, and this prong of §1012 is clearly met. *Village of Spring Valley v. Village of Spring Valley Hous. Auth.*, 308 N.Y.S.2d 736, 738 (2d Dep't 1970) (reversing denial of motion to intervene as of right because movants' interests "would or may be bound by the judgment which will be rendered in this proceeding"); *Plantech Hous., Inc.*, 426 N.Y.S.2d at 82 (intervention granted where school district bound by tax assessment).

(iii) ***Proposed Intervenor-Defendants' interests may not be adequately represented by Defendants.***

Finally, the named defendants— Mayor Adams, the New York City Council, and the New York State Board of Elections— are elected officials or representatives of government bodies. While the named Defendants may defend the law, they do not represent or stand in the shoes of newly enfranchised voters whose rights may be dissolved by an adverse decision. *See Village of Spring Valley*, 33 A.D.2d at 1037, 308 N.Y.S.2d at 738 (reversing denial of motion to intervene as of right because movants' interests "may not be adequately represented" by respondent). It is proposed Intervenor-Defendants, not Defendants, who will bear the brunt of the loss of the right to vote should the court decide in favor of Plaintiffs. Proposed Intervenor-Defendants' interests are therefore distinct and not adequately protected.

Further, Mayor Adams and the members of the New York City Council are elected officials, that is, political actors who represent numerous, varied interests of constituents that may diverge from those of proposed Intervenor-Defendants. Indeed, Mayor Adams did not affirmatively sign the City Council’s bill into law, but rather merely declined to veto it.⁵

In such cases, courts have held that persons such as proposed Intervenor-Defendants meet the requirements of C.P.L.R. §1012(a)(2) and grant intervention as of right. In an action challenging the governmental decisions or enactments, those directly affected may not be adequately represented by governmental bodies tasked with the defense. *See Village of Spring Valley.*, 33 A.D.2d at 1037. *See also, e.g., In re Romeo v. New York State Dep’t of Educ.*, 833 N.Y.S.2d 298, 300 (3d Dep’t 2007) (school district granted intervention in case brought against New York State Education department where Commissioner could “force the district to comply with the court’s judgment”); *Empire State Ass’n of Adult Homes v. Perales*, 530 N.Y.S.2d 682, 685 (3d Dep’t 1988) (resident of adult care facility granted intervention in action brought by care facilities’ trade association to invalidate statutes and regulations prohibiting use of residents’ personal funds to compensate facilities for provision of services).

Because Proposed Intervenor-Defendants will be bound by a judgment in this action, and because their interests are not adequately represented in this action, intervention should be granted as of right pursuant to C.P.L.R. §1012 (a)(2).

II. Alternatively, Proposed Intervenor-Defendants Should Be Permitted to Intervene Pursuant to C.P.L.R. §1013

Section 1013 of the C.P.L.R. provides that “upon timely motion, any person may be

⁵ Local law 2022/011 (Bill details noting “returned unsigned by mayor”) *Accessible at:* <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4313327&GUID=DF600BDA-B675-41D8-A8BD-282C38DC4C62>

permitted to intervene in any action when a statute of the state confers a right to intervene in the discretion of the court, or when the person's claim or defense and the main action have a common question of law or fact. In exercising its discretion, the court shall consider whether the intervention will unduly delay the determination of the action or prejudice the substantial rights of any party.” CPLR §1013. Because the Intervenors have a real and substantial interest in the outcome of the litigation and share common questions of law and fact with Defendants, they should be permitted to intervene pursuant to §1013.

The “only requirement for obtaining an order permitting intervention via this section is the existence of a common question of law or fact.” *Pier v. Board of Assessment Rev. of Town of Niskayuna*, 209 A.D.2d 788, 789; 617 N.Y.S.2d 1004 (3d Dep’t 1994). As a practical matter, “intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings.” *Berkoski*, 67 A.D.3d at 843 (internal quotations and citations omitted).

It is clear from the Complaint as well as from Defendants’ answers that common questions of law and fact exist here. The core issues raised in the “main action” are identical to those that would be raised by the proposed Intervenor-Defendants: 1) whether the New York State Constitution ties the right to vote explicitly to U.S. citizenship rather than state citizenship; 2) whether the Municipal Voting Law conflicts with § 5-102(1) of New York State Election Law; and 3) whether the provisions of Local Law No. 2022/011 were lawfully enacted by the City Council under §23(2)(e) of Municipal Home Rule Law. These questions, purely legal, are the only ones at issue in this lawsuit and the only ones proposed Intervenor-Defendants seek to address.

Moreover, proposed Intervenor-Defendants are the intended beneficiaries of the Municipal Voting Law. *See Kaplen v. Town of Haverstraw*, 105 A.D.2d 690, 690; 481 N.Y.S.2d 384, 385 (2d Dep’t 1984) (“Where the gravamen of an action for a declaratory judgment is the alleged invalidity

of a governmental enactment, it is appropriate . . . to permit intervention of persons for whose benefit the enactment was made”); *Berkoski*, 889 N.Y.S. 2d at 626 (laborers who would be “permanently barred” from assembling in the park for purposes of soliciting employment should have been granted leave to intervene). The purpose of the Municipal Voting Law is to enable authorized immigrants to participate in the decision-making that affects their communities through the voting process, and it is these individuals at whom this litigation is truly targeted. They have an undeniably real and substantial interest in the outcome of this litigation, because their right to vote would be extinguished should Plaintiffs succeed. Intervention is to be permitted here because the interest of the proposed intervenor “in the legislation under scrutiny . . . is not speculative but indeed real.” *Seawall Associates v. New York*, 134 Misc.2d 187, 192, 510 N.Y.S.2d 435, 439-40 (N.Y. Sup. 1986).

Finally, granting intervention will not cause any undue delay to the resolution of this action, as the instant motion and proposed answer was filed contemporaneously with the answer by Defendant New York City Board of Elections.

The right to vote cannot be characterized as anything but real and substantial. It is a fundamental right in federal law, and it is the subject of frequent challenge, litigation, and debate in New York State and around the country. Having fought for the enactment of the right to vote and facing the possibility of losing that right, Proposed Intervenor-Defendants have an enormous stake in the outcome of this litigation. New York C.P.L.R. requires that they be granted the ability to defend the Municipal Voting Law.

CONCLUSION

For the reasons set forth above, this Court should grant Proposed Intervenors Ms. Naveed, Mr. Paulos, Mr. Vargas-Galindo Ms. Prado, Ms. Santos Velez, Ms. John, Mr. Salazar, Mr. Shahidullah, and Mr. Undag the right to intervene to defend the Municipal Voting Law.

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April 11, 2022

Respectfully submitted,

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