

STATE OF NEW YORK  
SUPREME COURT 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-

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.*

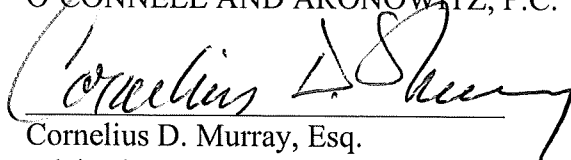
To the above-named Defendants

You are hereby summoned to answer the annexed complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: January 10, 2022  
Albany, New York

O'CONNELL AND ARONOWITZ, P.C.

By:



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**SUMMONS**

Index No.: \_\_\_\_\_  
Purchased On: \_\_\_\_\_

Plaintiff designates Richmond  
County as the place of trial.

The basis of venue is that several  
Plaintiffs reside in Richmond  
County and the cause of action  
arose in Richmond County as to  
those Plaintiffs.

STATE OF NEW YORK  
SUPREME COURT                      COUNTY OF RICHMOND

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PHILLIP YAN HING WONG, NEW YORK  
REPUBLICAN STATE COMMITTEE, and  
REPUBLICAN NATIONAL COMMITTEE,

**COMPLAINT**

Index No.: \_\_\_\_\_

*Plaintiffs,*

-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.*

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The above-named Plaintiffs, 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, by their attorneys, O’Connell & Aronowitz, P.C., for their Complaint herein allege as follows:

**NATURE OF THE CASE**

1. This lawsuit challenges the validity of a local law (the “Non-Citizen Voting Law”), a copy of which is annexed here as Exhibit A, passed by the New York City Council on December

9, 2021, and deemed adopted by operation of law on January 8, 2022, which purports to give non-citizens the right to vote in local New York City elections. Plaintiffs include state and national political parties, as well as United States citizens belonging to several different political parties who are either elected officials, qualified and registered voters in the City of New York, or state party officials.

2. Plaintiffs contend that the Non-Citizen Voting Law is unconstitutional and violates Articles II and IX of the New York State Constitution as well as the State Election Law and the Municipal Home Rule Law.

3. Plaintiffs seek a declaratory judgment that the Non-Citizen Voting Law is unconstitutional, violative of New York statutory law, and invalid, as well as an injunction permanently enjoining the Defendants, the Mayor and the New York City Board of Elections, from enforcing or implementing the law in any respect.

#### **PARTIES**

4. Plaintiff Vito J. Fossella is the Staten Island Borough President-Elect, and a former member of Congress and the New York City Council. Mr. Fossella is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

5. Plaintiff Nicholas A. Langworthy is the Chairman of the New York Republican State Committee.

6. Plaintiff Joseph Borrelli is a Member of the New York City Council from Staten Island and the Minority Leader. Mr. Borelli voted against the Non-Citizen Voting Law. Mr. Borelli is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

7. Plaintiff Nicole Malliotakis is a Member of Congress representing Staten Island and part of Brooklyn. Ms. Malliotakis is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

8. Plaintiff Andrew Lanza is a State Senator representing most of Staten Island. Mr. Lanza is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

9. Plaintiff Michael Reilly is a State Assemblymember representing part of Staten Island. Mr. Reilly is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

10. Plaintiff Michael Tannousis is a State Assemblymember representing parts of Staten Island and Brooklyn. Mr. Tannousis is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

11. Plaintiff Inna Vernikov is a Member of the New York City Council from Brooklyn. Ms. Vernikov voted against the Non-Citizen Voting Law. Ms. Vernikov is a naturalized citizen of the United States, a resident of Kings County, and a registered voter in Kings County and the City of New York.

12. Plaintiff David Carr is a Member of the New York City Council from Staten Island. Mr. Carr voted against the Non-Citizen Voting Law. Mr. Carr is a citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

13. Plaintiff Joann Ariola is a Member-Elect of the New York City Council from Queens. Ms. Ariola is a citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York.

14. Plaintiff Vickie Paladino is a Member-Elect of the New York City Council from Queens. Ms. Paladino is a citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York.

15. Plaintiff Robert Holden is a Member of the New York City Council from Queens. Mr. Holden is an enrolled Democrat who voted against the Non-Citizen Voting Law. Mr. Holden is a citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York.

16. Plaintiff Gerard Kassar is the Chairman of the New York State Conservative Party. Mr. Kassar is a citizen of the United States, a resident of Kings County, and a registered voter in Kings County and the City of New York.

17. Plaintiff Veralia Malliotakis is a naturalized citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

18. Plaintiff Michael Petrov is a naturalized citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

19. Plaintiff Wafik Habib is a naturalized citizen of the United States, a resident of Richmond County, and a registered voter in Richmond County and the City of New York.

20. Plaintiff Phillip Yan Hing Wong is a naturalized citizen of the United States, a resident of Queens County, and a registered voter in Queens County and the City of New York.

21. Plaintiff New York Republican State Committee is a New York State political committee, as defined by New York State Election Law § 2-102, that manages the New York State Republican Party's business at the state level, supports Republican candidates for public office at all levels in New York State elections, coordinates fundraising and election strategy, and develops and promotes the state Republican platform. The New York Republican State Committee engages

in various activities to help elect Republicans in New York, including to municipal office in New York City.

22. Plaintiff Republican National Committee is a national political committee, as defined by 52 U.S.C. § 30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform. The Republican National Committee engages in various activities to help elect Republicans in New York, including to municipal office in New York City.

23. Defendant Eric Adams is the Mayor of New York City and is sued in his official capacity.

24. Defendant Board of Elections in the City of New York is a public agency of the City of New York responsible for voter registration and election administration.

25. Defendant City Council of the City of New York is the legislative body of the City of New York, which enacted the Non-Citizen Voting Law.

#### **VENUE**

26. Venue is proper in this Court under CPLR § 503(a) because several of the Plaintiffs reside in Richmond County and under CPLR § 504(3) because the cause of action arose in Richmond County for those Plaintiffs.

#### **FACTUAL ALLEGATIONS**

##### **A. State Constitutional Background**

27. Article II, Section 1 of the New York State Constitution provides that “[e]very 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.”

28. Article II, Section 1 establishes the basic qualifications for voters in the State of New York and expressly connects the right to vote with citizenship.

29. Article II, Section 5 of the New York State Constitution provides, in relevant part, that “[l]aws 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.”

30. Article IX, Section 1 of the New York State Constitution provides that “[e]very local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof,” and “[a]ll officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.”

31. Under these provisions, officers and city council members of New York City must be elected by “the people” of the City of New York.

32. Article IX, Section 3(d)(3) of the New York State Constitution defines the term “People” to mean “Persons entitled to vote as provided in section one of article two of this constitution.”

33. As a result, under the New York State Constitution, the people of the City of New York, consists of those citizens eighteen years of age or over who have resided in the City for thirty days preceding the election.

**B. State Election Law**

34. Section 5-102(1) of Chapter 17 of the Laws of New York, the Election Law, states: “No person shall be qualified to register for and vote at any election unless he is a citizen of the United States.”

35. Section 1-102 states that the chapter applies to “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.” *See also Castine v. Zurlo*, 4 N.Y.S.3d 469, 473 (N.Y. Sup. Ct. 2014) (cities cannot pass election measures that conflict with Section 1-102).

**C. Municipal Home Rule Law**

36. Section 23(2)(e) of Chapter 36-a of the Laws of New York, the Municipal Home Rule Law, states that a public referendum is required to pass any law that “changes the method of nominating, electing, or removing an elective officer.”

**D. Enactment of the Non-Citizen Voting Law**

37. On December 9, 2021, the New York City Council, the legislative body for the City of New York, passed a bill, referred to as Intro 1867-A and entitled “A Local Law to amend the New York city charter, in relation to allowing lawful permanent residents and persons authorized to work in the United States in New York city to participate in municipal elections.” The bill was sent to the Mayor the same day.

38. Pursuant to the New York City Charter § 37, because the law was neither approved nor returned within thirty days of its presentation to the Mayor it was “deemed to have been adopted in like manner as if the mayor had signed it”.



39. This law creates a new class of persons called “municipal voters” who are non-citizens who are either lawful permanent residents or persons authorized to work in the United States, who except for their lack of United States citizenship would be qualified to register to vote.

40. Under the law, “eligible municipal voters shall have the right to vote in municipal elections and shall be entitled to the same rights and privileges as U.S. citizen voters with regard to municipal elections.”

**E. Impact of the Non-Citizen Voting Law**

41. Approximately 1 million adult noncitizens live in New York City. Estimates place the number of newly eligible non-citizen voters at approximately 800,000.

42. New York City has approximately 5 million active registered voters. Noncitizens could potentially make up 15 percent or more of the electorate in future New York City elections.

43. This is greater than the margin of victory in many municipal elections.

44. By dramatically increasing the pool of eligible voters, the Non-Citizen Voting Law will dilute the votes of United States citizens, including the Plaintiffs in this action.

45. The Non-Citizen Voting Law is intended to, and will, cause an abrupt and sizeable change to the makeup of the electorate, which will force the elective-officeholder Plaintiffs to change the way that they campaign for office and will materially affect their likelihood of future electoral victory. It will also cause the political party Plaintiffs to adjust their strategies and how they allocate their resources to help elect Republicans in New York.

**AS AND FOR A FIRST CAUSE OF ACTION  
Violation of the New York State Constitution**

46. Plaintiffs repeat and reallege the allegations set forth above as if more fully set forth herein.

47. The New York State Constitution expressly provides that local government officers and legislative representatives must be elected by “the People,” which is in turn defined to consist only of citizens.

48. Specifically, Article IX, Section 3(d)(3) provides that, as used throughout Article IX, the word “People” means “Persons entitled to vote as provided in section one of article two of this constitution.”

49. Section 1 of Article II, in turn, says that someone is entitled to vote only if he or she is eighteen years of age, a resident of the relevant jurisdiction for thirty days, and a “citizen.” N.Y. Const., Art. II, §1. “The qualifications of voters are prescribed by section 1 of article 2 of the Constitution, and those qualifications are exclusive.” *Hopper v. Britt*, 203 N.Y. 144, 150 (1911).

50. Article IX further provides that every “local government” shall have a legislature elected “by the *people* thereof.” N.Y. Const., Art. IX, §1 (emphasis added). Unless their appointment or election is not governed by the State Constitution itself, “[a]ll officers of every local government” must “be elected by *the people* of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.” *Id.* (emphasis added).

51. By purporting to allow non-citizens to vote in municipal elections on the same basis as United States Citizens, the Non-Citizen Voting Law directly conflicts with the voting qualifications enshrined in the New York State Constitution.

52. The Non-Citizen Voting Law is therefore void as unconstitutional under the New York State Constitution.

**AS AND FOR A SECOND CAUSE OF ACTION  
Violation of State Election Law**

53. Plaintiffs repeat and reallege the allegations set forth above as if more fully set for the herein.

54. State Election Law Sections 1-102 & 5-102(1) provide that no person shall be qualified to register for and vote in an election for any federal, state, county, city, town, or village office unless that person is a citizen of the United States.

55. By purporting to allow non-citizens to vote in municipal elections on the same basis as United States Citizens, the Non-Citizen Voting Law directly conflicts with State Election Law.

56. The Non-Citizen Voting Law is therefore invalid to the extent that it conflicts with State Law.

**AS AND FOR A THIRD CAUSE OF ACTION  
Violation of Municipal Home Rule Law**

57. Plaintiffs repeat and reallege the allegations set forth above as if more fully set for the herein.

58. Section 23(2)(e) of the Municipal Home Rule Law requires a public referendum to pass any law that changes the method of nominating, electing, or removing an elective officer.

59. By purporting to expand the electorate to a large class of non-citizen voters, the Non-Citizen Voting Law significantly changes the method of electing officers of the City of New York.

60. Because the Non-Citizen Voting Law was not enacted or approved via a public referendum, it is invalid under the Municipal Home Rule Law.

**PRAYER FOR RELIEF**

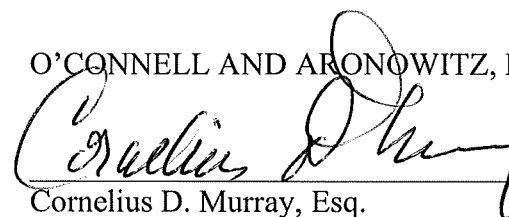
**WHEREFORE**, Plaintiffs respectfully request:

- a. A declaratory judgment pursuant to CPLR 3001 declaring that the Non-Citizen Voting Law is void as violative of the New York State Constitution, State Election Law, and the Municipal Home Rule Law; and
- b. A permanent injunction pursuant to Article 63 of the CPLR prohibiting Defendants from registering non-citizens to vote and prohibiting Defendants from counting votes cast by non-citizens; and
- c. A judgment awarding Plaintiffs such other and further relief that the Court deems just, proper, and equitable, including but not limited to reasonable attorneys' fees and other relief pursuant to Article 86 of the CPLR, and costs, disbursements, and other allowances of this proceeding.

Dated: January 10, 2022  
Albany, New York

O'CONNELL AND ARONOWITZ, P.C.

By:



Cornelius D. Murray, Esq.

Michael Y. Hawrylchak, Esq.

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