No. _____

In the Supreme Court of the United States

NICOLE MALLIOTAKIS, ET AL.,
APPLICANTS,
v.
MICHAEL WILLIAMS, ET AL.,
RESPONDENTS.

On Application For Stay to the Court of Appeals of the State of New York to the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Second Circuit

EMERGENCY APPLICATION FOR STAY

BENNET J. MOSKOWITZ
ELIZABETH A. LOIZIDES
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
KAITLIN O'DONNELL
CARSON A. COX
LAUREN H. MILLER
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants

PARTIES TO THIS PROCEEDING

Applicants in this Court, who were Intervenors for Respondents below, are Congresswoman Nicole Malliotakis and Individual Voter Applicants Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba.

Respondents in this Court, who were Respondents below, are the Board of Elections of the State of New York; Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board of Elections of the State of New York; Raymond J. Riley, III, in his official capacity as Co-Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Anthony J. Casale, in his official capacity as Commissioner of the Board of Elections of the State of New York; Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York; Kathy Hochul, in her official capacity as Governor of New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President *Pro Tempore* of the New York State Senate; Carl E. Heastie, in his official capacity as Speaker of the New York State Assembly; and Letitia James, in her official capacity as Attorney General of New York.

Respondents in this Court also include the Petitioners below, who are Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty ("the *Williams* Respondents").

The proceedings below were:

1. *Williams v. Bd. of Elections of N.Y.*, No.164002/2025 (N.Y. Sup. Ct. N.Y. Cnty.). The trial court denied Applicants' motion to dismiss on January 21, 2025 and granted the *Williams* Respondents' petition on January 21, 2025. App.1a–18a.

2. *Williams v. Bd. of Elections of N.Y.*, No.2026-00384 (N.Y. App. Div. 1st Dep't 2026). Applicants filed an appeal and a motion for stay and permission to appeal to the Court of Appeals. As of the time of this filing, the New York Supreme Court, Appellate Division, has not acted on Applicants' motion. App.2036a–3656a.

3. *Williams v. Bd. of Elections of N.Y.*, No.APL-2026-00010 (N.Y. 2026). The New York State Court of Appeals dismissed Applicants' motion to stay the trial court's order for lack of jurisdiction and transferred Applicants' appeal to the Appellate Division on February 11, 2026. App.19a–21a.

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT:

Congresswoman Nicole Malliotakis and the Individual Voter Applicants (collectively, "Applicants") request a stay of the order of the Supreme Court of the State of New York enjoining state officials from conducting any election under the State's congressional map. The trial court's order has thrown New York's elections into chaos on the eve of the 2026 Congressional Election, which is set to begin on February 24, 2026. **Applicants respectfully request emergency relief from this Court by February 23, 2026, so that the election can begin on February 24, under the legislatively adopted congressional map.** Applicants presented this stay request to both the New York Appellate Division and Court of Appeals, asking for relief by February 10 so Applicants could give this Court a reasonable opportunity to grant them relief before February 24, if necessary. The New York Court of Appeals yesterday determined it lacks jurisdiction to give relief, and the Appellate Division has not yet acted. Petitioners are keenly aware of how seriously this Court takes the principle that "courts should ordinarily not alter the election rules on the eve of an election," *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (citation omitted), so they come to this Court before there is any suggestion that the election has begun, which is scheduled to occur on February 24.

This appeal involves a baseless challenge to New York's 11th congressional district ("CD11"), which has largely maintained the same boundaries since the 1980s. Congresswoman Malliotakis, the daughter of a Greek immigrant and a Cuban refugee, has represented CD11 since 2020, although both Democrats and Republicans

have won CD11 in the last decade. The New York State Legislature adopted CD11's current boundaries two years ago, with an overwhelming majority of the Legislature's Black and Latino members voting in favor of it, including Respondents Senator Andrea Stewart-Cousins and Speaker Carl E. Heastie. Nonetheless, the *Williams* Respondents brought this lawsuit less than four months ago under the theory that the votes of CD11's Black and Latino voters—who comprise about 23% of CD11—have been unconstitutionally diluted because their candidate of choice wins only 25% of the time according to the *Williams* Respondents' own expert, entitling them to an "influence district" under Article III, Section 4 of the New York Constitution.

The trial court rejected the *Williams* Respondents' sole theory—that the New York Constitution adopted the standards embedded in a later-enacted statute appliable to local elections—but then adopted an approach that is equally indefensible. The trial court held that New York could not carry out any elections under the congressional map until CD11 "add[ed] Black and Latino voters from elsewhere," such that Black and Latino voters are able control contested primary elections, and their candidates of choice win a majority of all elections in CD11. The court found this theory in an *amicus* brief submitted by two professors, although no party had briefed this approach and there was zero evidence before the trial court as to the test's key elements. The trial court's ruling was so indefensible that very *amici* Professors from whom it obtained its test said so to the New York appellate courts.

This Court is likely to reverse the trial court's order if it were upheld by the New York appellate courts on any of three grounds. First, the decision clearly violates

this Court's Equal Protection Clause case law by prohibiting New York from running any congressional elections until it racially gerrymanders CD11 by "adding [enough] Black and Latino voters from elsewhere," until the Black and Latino voters in CD11 control contested primaries and win most general elections. Although Applicants repeatedly told the trial court that racially reconfiguring CD11 would violate this Court's binding strict-scrutiny framework, the trial court ignored this argument. This Court summarily reversed in less egregious circumstances in *Wisconsin Legislature v. Wisconsin Elections Commission*, 595 U.S. 398 (2002) (per curiam). Second, the trial court's decision violated due process and related party-presentation principles by deciding the case based upon a theory that no party briefed, and that the *Williams* Respondents did not even present evidence to satisfy. Those are more extreme circumstances than those at issue in this Court's recent summary reversal in *Clark v. Sweeney*, 607 U.S. 7 (2025) (per curiam). Finally, the trial court violated the Elections Clause under *Moore v. Harper*, 600 U.S. 1 (2023), by adopting an unbriefed, atextual test to invalidate a legislatively-adopted congressional map.

All equitable considerations call out for an immediate stay. Under New York law, the 2026 Congressional Election begins on February 24, 2026, when nominating petitions can start circulating. Congresswoman Malliotakis and her individual voter supporters who make up the Applicants have a right to begin their election activity for this federal office on that date. Yet, under the trial court's order, the New York Board of Elections cannot take any steps to hold the election under the New York congressional map, unless and until CD11 is racial gerrymandered. At the same

time, the trial court's remedial mechanism—requiring New York's Independent Redistricting Commission ("IRC") to racially gerrymander CD11—is automatically stayed by operation of state law. That is a recipe for unconstitutional chaos, with no map in place and uncertainty as to whether nominating petitions can start circulating on February 24, with no end in sight. Applicants and the People of New York have the right to conduct their congressional elections under the lawful map that the New York Legislature adopted starting on February 24, free from a judicial mandate that violates multiple provisions of the United States Constitution. While Applicants had hoped—and still hope—that the New York appellate courts put an end to this unconstitutional mischief, they come to this Court now, so that this Court can provide relief before February 24, if the New York appellate courts do not do so.

DECISIONS BELOW

The trial court's order holding that the lines of CD11 are unconstitutional and ordering the IRC to redraw them by "adding Black and Latino voters from elsewhere" is unpublished but available at 2026 WL 275868 and reproduced at App.1a–18a. The New York Court of Appeals' order dismissing Applicants' motion to stay that order for lack of jurisdiction and transferring Applicants' appeal to the Appellate Division is unpublished but reproduced at App.19a–21a.

JURISDICTION

This Court has jurisdiction over this application under 28 U.S.C. §§ 1257(a), 1651(a), and 2283. Under 28 U.S.C. § 1257(a), this Court may review the "[f]inal judgments or decrees rendered by the highest court of a State in which a decision

could be had," where "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." Under 28 U.S.C. § 1651(a), this Court "may issue all writs necessary or appropriate in aid of [its] jurisdiction[]." And under 28 U.S.C. § 2283, this Court may "grant an injunction to stay proceedings in a State court . . . where necessary in aid of its jurisdiction." As "this Court does have potential appellate jurisdiction over federal questions raised in state court proceedings" after a final judgment has issued, it has the "authority to issue injunctions" against state-court decisions prior to final judgment that are "necessary in aid of its jurisdiction." *Atl. Coast Line R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970). State-court litigants are thus free "in certain emergency circumstances [to] seek such relief from this Court." *Id.*; *see CBS, Inc. v. Davis*, 510 U.S. 1315, 1318 (1994) (Blackmun, J., in chambers); *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983) (O'Connor, J., in chambers); *accord N.J. Transit Corp. v. Colt*, No.25A287 (U.S. Sept. 19, 2025).

STATEMENT

A. Following the 2020 census, New York's 2012 congressional map became unconstitutional under the one-person, one-vote principal. *See Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022). This gave New York its "first opportunity" to have its "district lines [ ] drawn under the new IRC procedures established by the 2014 constitutional amendments" to the New York Constitution, *id.* (citation omitted); *see* N.Y. Const. art. III, §§ 4, 5-b. Those amendments articulate procedures for redistricting, with the IRC sending a map to the Legislature. *Id.* art. III, §§ 4, 5-b.

These amendments also include a ban on partisan gerrymandering and, most relevant here, a prohibition on racial vote dilution using language very similar to Section 2 of the federal Voting Rights Act ("VRA"). *See infra* pp.33–35.

After the IRC process deadlocked, the Legislature purported to adopt its own map outside of that process, and so the New York courts had to step in. *Harkenrider*, 38 N.Y.3d at 504–05. The Court of Appeals invalidated that unauthorized map as procedurally unconstitutional and substantively unconstitutional for being a partisan gerrymander. *Id.* at 508–20. The court concluded that because the "[t]he deadline in the Constitution for the IRC" to complete its process had "since passed," the trial court had to "adopt [a] constitutional map[ ]." *Id.* at 524. That remedial map ("the *Harkenrider* map") retained CD11's longstanding boundaries linking Staten Island and Southern Brooklyn, *see Harkenrider*, Index No.E2022-0116CV, NYSCEF Doc. No.670 at 25, which general boundaries have been included in a New York congressional district since 1982, App.2090a–93a.

This map governed the 2022 election, *see Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 354–55 (2023), and the People re-elected Congresswoman Malliotakis to CD11, App.2108a. The Congresswoman is the daughter of immigrants—her father is from Greece, and her mother is a Cuban refugee of the Castro dictatorship. She was first elected to represent CD11 in 2020, making her CD11's first minority representative. *Id.*

After the 2022 elections, the New York Court of Appeals ordered the IRC to reconvene to submit a new proposed map to the Legislature. *Hoffmann*, 41 N.Y.3d

at 355, 370. The IRC followed that mandate and proposed a map after 73 days that only made minor adjustments to the *Harkenrider* map, and no adjustments to CD11. *See* 2024 N.Y. Senate Bill S8639; 2024 N.Y. Assembly Bill A9304. Large bipartisan majorities in both houses of the Legislature (including Respondents Stewart-Cousins and Hestie) voted for the IRC's proposed map with only minor changes, with no changes to CD11. App.3601a. Respondent Hochul signed the map into law on February 28, 2024. N.Y. State Law §§ 110–12 (the "2024 Congressional Map").

B. On October 27, 2025—more than a year and a half after the Legislature adopted the 2024 Congressional Map—the *Williams* Respondents sued Respondents the New York Board of Elections (the "Board") and certain state officials. App.2153a. Their sole theory was that Article III, Section 4 of the New York Constitution—the vote-dilution provision worded almost identically to Section 2 of the VRA—secretly incorporates the lax "influence district" standards found in a later-enacted state statute, the New York Voting Rights Act of 2022 ("NYVRA"), N.Y. Election Law § 17-206, which applies only to localities like towns and counties. The *Williams* Respondents alleged that under those standards, CD11 is unconstitutional because it reduces the electoral "influence" of Black and Latino voters. App.2156a–58a. The *Williams* Respondents requested that CD11 be redrawn "to create a minority influence district that pairs Staten Island with lower Manhattan," App.2158a, replacing a bipartisan mix of Asian and White voters in CD11 with White voters from Lower Manhattan who favor Democrats, *see* App.3373a–74a.

Prior to trial, the parties filed memoranda focused on the *Williams* Respondents' Article-III-Section-4-equals-NYVRA theory. Applicants argued that Article III, Section 4, adopted in 2014, does not incorporate the NYVRA. Applicants also argued at length that redrawing CD11 for racial reasons would trigger and fail strict-scrutiny review under the Fourteenth Amendment's Equal Protection Clause and that the *Williams* Respondents' lawsuit violated the Elections Clause. App.2307a–18a. The *Williams* Respondents and Applicants each submitted expert reports tailored to the NYVRA's standards. *See infra* pp.10–13. Several respondents similarly submitted evidence under the NYVRA's standards. *See* App.3465a–3472a.[1]

After the parties submitted their opening briefs and expert reports, two sets of *amici* submitted briefs urging the trial court to adopt different approaches from that which the *Williams* Respondents put forward. *Amici* Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos filed a proposed *amicus* brief that urged the trial court to read the petition as raising a "coalition crossover" district claim. App.2406a, 2418a–19a. These Professors argued that proving such a claim would require the *Williams* Respondents to present evidence of an alternative map where "minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election" and "these candidates are

[1] Respondents Hochul, Stewart-Cousins, Heastie, and Attorney General Letitia James took no ultimate position on in this lawsuit, while noting their agreement with Applicants that the New York Constitution does not incorporate the NYVRA's standards. App.2262a–67a. Their non-position was remarkable, given that Respondent Hochul had signed the map into law, and Respondents Stewart-Cousins and Heastie voted for it.

ultimately victorious in the general election." App.2420a. A different set of *amici* put forward a different proposed standard. App.2369a–98a. In their reply, Applicants explained that adjudicating this case under either *amici*'s newly articulated standards would violate the Due Process Clause, as the parties did not have an opportunity to vet these theories in adversarial briefing and did not submit any expert evidence tailored to either standard. App.2440a–43a.

C. At trial, the parties presented evidence on the sole legal theory in the case: that Article III, Section 4 incorporates the NYVRA's standards. Under those standards, the plaintiff must first satisfy the NYVRA's threshold "that candidates or electoral choices preferred by members of the protected class would usually be defeated." N.Y. Election Law § 17-206(2)(b)(ii). If the plaintiff makes that showing, the plaintiff must then prove either that (a) "voting patterns of members of the protected class within the political subdivision are racially polarized" (the "racially-polarized-voting test"), or (b) "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired" (the "totality-of-the-circumstances test"). *Id.* The NYVRA additionally requires the plaintiff to show that "there is an alternative practice that would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 39 (2d Dep't 2025), *aff'd on other grounds* ___N.E.3d___, 2025 WL 3235042 (N.Y. Nov. 20, 2025).

Regarding the "usually be defeated" threshold and racially-polarized-voting test, the *Williams* Respondents offered Dr. Maxwell Palmer, who explained that Black and Latino voters' preferred candidates prevailed in five out of twenty (or 25%) of the elections in CD11 that he analyzed between 2017 and 2024. App.3241a–42a. Dr. Palmer omitted from his analysis CD11's 2018 congressional election, where the Black and Latino-preferred candidate won. App.2545a (197:11–198:18). Including that election increases the win percentage from 25% to 28% under his analysis. App.2545a (199:3–13). But putting that election aside, Black and Latino residents are less than 23% of CD11's voting-age population (or less than 30% of Staten Island), making a 25%- or 28%-win percentage near proportionality. App.2903a, 2970a.

On the totality-of-the-circumstances test, the *Williams* Respondents presented Dr. Thomas Sugrue, who "conducted research on historical and current patterns of racial discrimination, racial segregation, and racial disparities in socio-economic status in New York City, with a focus on [Staten Island]." App.2803a–04a.

To show an "alternative practice," *Clarke*, 237 A.D.3d at 39, the *Williams* Respondents' expert, William Cooper, "develop[ed] an illustrative plan that would join Staten Island with Manhattan in a reconfigured CD-11," App.2571a (302:10–14); App.2976a–77a. Mr. Cooper admitted that his illustrative CD11 "scores worse for compactness than the currently enacted map," App.2572a (305:7–20); App.2981a, and his testimony revealed that he was "not that familiar" with Staten Island and Lower Manhattan, *see* App.2560a (259:20–21). While Mr. Cooper explained that he "was under the assumption there would probably be petitioners here to testify" about the

relevant communities of interest "as there usually are in federal court," App.2578a (329:15–20), the *Williams* Respondents presented no such witnesses. Mr. Cooper testified that his plan "doesn't make Black or Latino voters a numerical population majority." App.2582a (347:22–24). These residents account for 22.70% of CD11's voting-age population, App.2970a, and would comprise just 24.71% the population in Mr. Cooper's proposed CD11—still less than a quarter of CD11, App.2979a. The White voting-age population would increase from 59.76% in the current CD11 to 62.31% in the illustrative CD11. App.2970a, 2979a. Under Mr. Cooper's map, White voters would support the Black and Latino-preferred candidate with 41.8% of the vote, App.3242a–43a; App.2549a (213:13–20), enabling that candidate to win the general election 88.89% of the time according to Dr. Palmer, App.3244a. Mr. Cooper achieved this newfound electoral dominance by moving politically diverse White and Asian voters out of CD11, and replacing them with White Democratic voters from Lower Manhattan. App.3370a–73a.

Turning to Applicants' experts on the NYVRA's "usually be defeated" prong, they presented Drs. Sean Trende and Stephen Voss. Dr. Trende explained that Black and Latino-preferred candidates (Democrats) regularly win in New York State and in New York City, including in CD11. App.2079a–80a. At the citywide level, Democrats routinely won the statewide elections that Dr. Palmer analyzed. App.2079a–80a. At the congressional district level, Black and Latino-preferred candidates win every district wholly within or around New York City other than CD11, constitute 73% of New York's total congressional delegation, and won more

votes in four of the eleven CD11 elections in Dr. Trende's dataset. App.2078a–80a. Dr. Trende's results for CD11 differ from Dr. Palmer's mainly because Dr. Palmer included local races held in odd-numbered years. App.2076a. Those elections are not as probative in this case because congressional elections are held in even-numbered years. *Id.* Dr. Voss, in turn, explained that Dr. Palmer's results "were inaccurate and not reliable based on the method and data he used." App.2704a.

On the totality-of-the-circumstances test, Applicants put forward Joseph Borelli, a lifelong Staten Island resident who has published two books on Staten Island's history as well as numerous articles on Staten Island. App.2897a–99a. Mr. Borelli explained that Dr. Sugrue's description of racial disparities in CD11 ignores Staten Island's significant progress in the areas of civil rights and racial equality, App.2899a–900a, and the success that racial and ethnic minorities have enjoyed in seeking public office on Staten Island recently—including Congresswoman Malliotakis, App.2925a–26a.

These experts also extensively criticized Dr. Cooper's map. Mr. Borelli explained that it makes no sense to group Staten Island and Lower Manhattan together because they have little in common, whereas Staten Island has much in common with Southwest Brooklyn as both are populated by house-owning commuters. App.2911a–15a. Dr. Trende explained that the illustrative map's low compactness scores were unjustified. App.2087a–89a. Dr. Voss pointed out that Mr. Cooper made the racial polarization lower in his illustrative district "not because [the illustrative map] groups protected minority populations who have been separated

from each other artificially by district lines," but rather because White Republicans "are cracked away from like-minded voters." App.3256a; *see* App.2711a.

D. On January 21, 2026, the trial court held that CD11 was unconstitutional under Article III, Section 4 and ordered the IRC to "reconvene to complete a new Congressional map . . . by February 6, 2026," but—shockingly—rested its holding on the *amici* Professors' theory, which no party had briefed or submitted evidence on. App.18a. The trial court first rejected the *Williams* Respondents' theory of adopting the NYVRA's standard for evaluating vote-dilution claims under Article III, Section 4. App.5a. Instead, the court "adopt[ed] a three-pronged standard for evaluating a proposed crossover district" based on the *amici* Professors' crossover-district theory. App.15a. Under this standard, "a proposed district should count as a crossover district if" (1) "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election," (2) "these candidates must usually be victorious in the general election," and (3) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates." *Id.* The court held that the "usually be victorious" requirement for the second prong "should only be interpreted to the extent that minority-preferred candidates win *more often than not*." *Id.* (emphasis added). As to the third prong, the trial court explained that minority voters must "be 'decisive' *in primary races* so that crossover districts cannot be used to achieve vote dilution in favor of a different political party." *Id.* (emphasis added); *see* App.2407a.

Remarkably, despite holding that the *Williams* Respondents "must" meet this three-pronged standard to succeed, *see* App.13a, the trial court never assessed whether the *Williams* Respondents' proposed illustrative map (or any other evidence they submitted) satisfied the trial court's new criteria. In fact, the *Williams* Respondents did not present any evidence on primary elections in their proposed illustrative CD11, meaning there was no evidence before the trial court showing whether minority voters "are able to select their candidates of choice in the primary election," whether these selected candidates are "usually [ ] victorious in the general election," or whether minority voters would "be 'decisive' in primary races." *See* App.15a. To the contrary, the trial court rejected the *Williams* Respondents' illustrative district approach—which rested on increasing CD11's White Democratic vote, *supra* p.7—explaining that the New York Constitution would require "adding Black and Latino voters from elsewhere" into CD11, so that Black and Hispanic voters in CD11 do not "remain a diluted population indefinitely," App.13a.

The trial court also conducted a version of the totality-of-the-circumstances inquiry, similar to the second step of *Thornburg v. Gingles*, 478 U.S. 30 (1986). App.7a–13a. First, the court determined that "racially polarized voting has been clearly demonstrated" based on the analysis of the *Williams* Respondents' expert, Dr. Palmer, that showed that Black and Latino-preferred candidates won 5 of the "20 most recent elections in CD-11." App.8a–9a. Second, the court found a "history of discrimination against minority voters in CD-11 [that] still impacts those communities today," by effectively adopting wholesale the *Williams* Respondents'

expert Dr. Sugrue's opinions, without engaging—let alone mentioning—Applicants' expert's rebuttal testimony. App.9a–10a. Third, the court concluded this "discrimination" has "political" impacts in CD11 because Black, Latino, and Asian Staten Islanders had lower average turnout rates than White Staten Islanders in recent elections and minority "representation [is] still low"—although Staten Island often elects minority candidates, like Congresswoman Malliotakis. App.10a–11a. Fourth, the court found that "overt and subtle racial appeals" are "common in campaigns in CD11," App.11a, despite identifying only three purported examples in campaigns from "the 1960s" to "2017," App.11a–12a.

The trial court then held that the New York Constitution required the court "to reconvene the IRC to redraw the CD-11 map" under its adopted standard and ordered that "new congressional lines must be completed by February 6, 2026." App.15a–17a. The trial court enjoined all respondents "from conducting any election" under the 2024 Congressional Map "or otherwise giving any effect to [its] boundaries" and ordered that the case "shall not be deemed resolved until the successful implementation of a new Congressional Map." App.18a.

E. On January 26–28, 2026, Applicants and several state-official respondents appealed and sought emergency relief in both the Appellate Division and the New York Court of Appeals, filing stay motions in both courts. App.2036a–3656a; App.479a–2035a; *see* App.20a. Applicants explained that, because the trial court had enjoined use of the existing congressional map and the trial court's remedial order was subject to an automatic stay, there was no map in place to govern the 2026

Congressional Election. App.3644a–3647a. Further, Applicants explained that they have a statutory right to begin petitioning on February 24, and therefore requested that both courts act by February 10, so that Applicants could, if necessary, seek further relief from this Court in time to obtain an effective remedy before February 24. App.3596a.

The *amici* Professors filed a proposed brief that agreed that the trial court correctly "set[] forth the proper standard for" crossover-district claims, but that it had "made a serious mistake" by "not examin[ing] whether" the *Williams* Respondents' "demonstrative district" "was, in fact, a coalition crossover district (and otherwise lawful)." App.439a.

On February 11, 2026, the New York Court of Appeals issued an order transferring the case to the Appellate Division, where Applicants already have an appeal and motion for stay and permission to appeal to the Court of Appeals pending. App.19a–21a. In light of this transfer and the constitutional provisions in New York, if the Appellate Division were to deny Applicants' pending motion already filed there, they would have no ability to seek a stay from the Court of Appeals. N.Y. C.P.L.R. 5601; N.Y. Const. art. VI, § 3(b); *Lumsby v. Donovan*, 10 N.Y.3d 951 (2008). The Court of Appeals does not have a state-law equivalent of the All Writs Act authority that this Court has, and the New York Court of Appeals' authority is strictly limited by the New York Constitution, N.Y. Const. art. VI, § 3(a); *Ocean Accident & Guarantee Corp., Ltd v. Otis Elevator Co.*, 291 N.Y. 254, 255 (1943) (per curiam).

REASONS FOR GRANTING THE APPLICATION

"In deciding whether to issue a stay," this Court considers: "(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Ohio v. EPA*, 603 U.S. 279, 291 (2024); *see Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *West Virginia v. EPA*, 577 U.S. 1126, 1126 (2016); *see also Nken v. Holder*, 556 U.S. 418, 428–29 (2009). Some Justices also understand the likelihood-of-success-on-the-merits factor as "encompass[ing] not only an assessment of the underlying merits but also a discretionary judgment about whether the Court should grant review in the case." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). Applicants here satisfy these standards, and this Court should thus stay the trial court's order.

I. This Court Would Likely Grant Review And Reverse

A. The Trial Court Violated The Equal Protection Clause By Prohibiting New York From Running Congressional Elections Until The State Racially Gerrymanders CD11

1. The Equal Protection Clause prohibits a State from "separat[ing] its citizens into different voting districts on the basis of race" without "sufficient justification." *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017)). When "race was the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district," that decision violates the Equal Protection Clause unless the State can satisfy strict-scrutiny review. *Id.* (citation omitted); *see also*

Miller v. Johnson, 515 U.S. 900, 916 (1995). This ensures that redistricting does not reinforce "impermissible racial stereotypes" that all members of a racial group have the same political interests, *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw I*"), or result in a district "being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group," *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (citation omitted).

When a mapmaker draws a district based on race, it follows that "race furnished the predominant rationale for that district's redesign," triggering strict-scrutiny review. *Cooper*, 581 U.S. at 299–301. In such a circumstance, a mapdrawer is not merely "aware of racial considerations," but instead is "motivated by them," pursuing "race for its own sake." *Allen v. Milligan*, 599 U.S. 1, 30–31 (2023) (plurality op.) (citations omitted). As Applicants repeatedly explained to the trial court, App.2307a–14a; App.2445a–59a; App.2471a, this Court's case law could not be clearer on this point, holding over and over again that drawing district lines with race as the "predominant motive for the design of the district as a whole" triggers strict scrutiny, *see, e.g.*, *Bethune-Hill*, 580 U.S. at 192–93; *Wis. Legislature*, 595 U.S. at 402–03; *Cooper*, 581 U.S. at 299–301.

When strict scrutiny applies, the proponents of the district must show that a racial redraw is "narrowly tailored to achieving a compelling state interest." *Wis. Legislature*, 595 U.S. at 401. States have a compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*,

600 U.S. 181, 207 (2023) ("*SFFA*"). "[G]eneralized assertion[s] of past discrimination" are insufficient. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*"). Further, as this Court held in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469 (1989), States lack a compelling interest in "redress[ing] the effects of society-wide discrimination." *Id.* at 490 (plurality op. of O'Connor, J.); *see id.* at 518 (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 520–23 (Scalia, J., concurring in the judgment). This Court has also "long assumed" that compliance with Section 2 of the VRA is a "compelling interest" that may justify drawing district lines with predominately racial motives. *Cooper*, 581 U.S. at 292; *Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02. This Court made that assumption because Section 2 has "exacting requirements" and safeguards. *Milligan*, 599 U.S. at 30.[2] And even if there were a compelling interest, any race-based redistricting must be "narrowly tailored," such that the government's use of race is "necessary" to "achiev[ing] [the action's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted).

This Court's recent decision in *Wisconsin Legislature*, 595 U.S. 398, demonstrates the operation of these standards. There, the Wisconsin Supreme Court had held that its remedial map that intentionally added a "seventh majority-black district" satisfied strict scrutiny because "there were 'good reasons' to think that the VRA 'may' require the additional majority-black district." *Id.* at 400–03 (citations omitted). After the Wisconsin Legislature filed an emergency application with this

[2] In *Louisiana v. Callais*, 145 S. Ct. 2608 (2025), this Court heard reargument on the question of whether a State's drawing of a majority-minority district under Section 2 satisfies the Equal Protection Clause.

Court, this Court summarily reversed. *Id.* at 400–01. This Court first concluded that strict scrutiny applied because the "intentional addition of a seventh majority-black district" alone established that "race [was] the predominant factor motivating the placement of voters in or out of [that] particular district." *Id.* at 401–03. This Court reached that result without regard to contentions from the map's proponents that the map followed traditional redistricting principles. *See* Opp'n To Appl. From Resp't Governor Tony Evers at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022). This Court then rejected the Wisconsin Supreme Court's conclusion that this remedial map satisfied strict scrutiny, explaining that the determination that Section 2 "may" require the additional district was insufficient. *Id.* at 403–06.

2. The trial court's order here violates this Court's Equal Protection Clause precedent, such that this Court would likely grant certiorari and reverse a decision upholding that order, *see* Rule 10(c). That is what this Court did just a few years ago in *Wisconsin Legislature*, summarily reversing the adoption of a race-based state-legislative map. 595 U.S. at 400–01. The trial court's order here is far more egregious than the Wisconsin Supreme Court's opinion that this Court summarily reversed in *Wisconsin Legislature*. There, the Wisconsin Supreme Court *attempted* to identify a compelling interest recognized by this Court's precedents and expressly addressed the Equal Protection Clause arguments raised before it. *See* 595 U.S. at 402–06. Not so with the trial court here, which—notwithstanding Applicants' extensive equal-protection briefing and argument, *supra* p.18—did not even attempt to explain why it thought it could "disregard" this Court's Equal Protection Clause precedent, *see*

James v. City of Boise, 577 U.S. 306, 307 (2016) (per curiam); indeed, it did not even mention the Equal Protection Clause at all. This is particularly notable given this Court's warning in the controlling plurality in *Bartlett v. Strickland*, 556 U.S. 1 (2009), about the serious constitutional concerns that a crossover mandate would have, and doubly so, as the trial court's decision does not incorporate the safeguards that the *Bartlett* dissenters argued for, *see infra* pp.23–24.

The trial court's order here clearly triggers strict scrutiny. The trial court enjoined New York from holding any congressional elections until the IRC redraws CD11 as a "crossover district" by "adding Black and Latino voters from elsewhere" into CD11, so that Black and Latino voters will control any contested primary and their preferred candidates will win more than half of general elections in the new CD11. App.13a, 15a. Then, the trial court ordered the IRC to redraw CD11 in this way, mandating that the IRC "reconvene to complete a new Congressional Map in compliance with this [o]rder," App.18a—meaning that the IRC must racially gerrymander CD11 by "adding Black and Latino voters from elsewhere" into CD11, App.13a. The "predominant"—and, indeed, sole—"motive for the design of the district" that the trial court mandated, *Bethune-Hill*, 580 U.S. at 192–93, is "race for its own sake," *Milligan*, 599 U.S. at 31 (plurality op.) (citations omitted); *see also Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03. That is, under the trial court's order, the IRC must shift a significant number of voters in or out of CD11 based on race, *see Cooper*, 581 U.S. at 291, until Black and Latino voters (who currently comprise 23% of CD11) can control the primary elections and their

preferred candidates will win more than half of the general elections, App.15a. The trial court's order inflicts the very harms that the Equal Protection Clause prohibits: stereotypically assuming that members of the same racial group share political preferences and creating a district that exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

Racially redrawing CD11 furthers no compelling interest. The *Williams* Respondents did not present any evidence—let alone a "strong" evidentiary basis—showing that race-based action is "necessary" to remediate "*identified* discrimination." *Shaw II*, 517 U.S. at 909–10 (emphasis added; citation omitted). The trial court simply declared that minority groups who comprise 23% of the population and were already expected to win 25% of elections in CD11 (under the *Williams* Respondents' own expert's analysis) were, for some reason, not experiencing enough electoral success. *See supra* pp.13–15. The trial court also referenced long-discontinued practices, such as redlining and the fact that "New York state"—like many other States—required "literacy tests to vote" beginning "[i]n the 1920s." App.10a. Those are "generalized assertion[s] of past discrimination" that do not constitute a compelling interest to engage in race-based action now. *Shaw II*, 517 U.S. at 909–10. The trial court's reliance on "overt and subtle racial appeals . . . in campaigns in CD-11," App.11a, fails to establish a compelling interest that would justify race-based action here. Three unrelated, isolated instances in campaigns over a *50-year* period, *see id.*, do not constitute a "strong" evidentiary basis establishing

that the insidious practice of race-based redistricting is "necessary" to achieve any legitimate interest *today*, *Shaw II*, 517 U.S. at 909–10; *see SFFA*, 600 U.S. at 207.

Any suggestion that compliance with the New York Constitution could provide a compelling interest for the trial court's race-based redrawing of CD11 also fails. As an initial matter, nothing in the New York Constitution requires or even suggests the coalition-crossover mandate the trial court adopted in its order, as Applicants explain more fully below in their discussion of the Elections Clause violation at issue here. *See infra* pp.33–36. But even if the New York Constitution can be judicially rewritten to contain such a race-based redistricting mandate, complying with that state-law provision could not supply a compelling interest for purposes of the Equal Protection Clause to the Fourteenth Amendment under *Croson*, where that interest is tied to purported concerns about societal discrimination. *See Croson*, 488 U.S. at 490 (plurality op.); *see id.* at 518 (Kennedy, J., concurring in part and concurring in the judgment); *id.* at 520–23 (Scalia, J., concurring in the judgment).

And even if there were some compelling interests here, no evidence suggests that prohibiting New York from running congressional elections until it adopts a race-based redrawing of CD11 would be narrowly tailored to achieve that interest. For such a race-based crossover district to be "*necessary*," *SFFA*, 600 U.S. at 206–07 (emphasis added; citations omitted), that new district must be narrowly tailored to remedy the problem that crossover claims are designed to target, if such claims were recognized. The controlling plurality decision in *Bartlett* expressed grave constitutional reservations about adopting any crossover district mandate, noting

that "requir[ing] crossover districts . . . would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." 556 U.S. at 21 (plurality op.) (citations omitted). And even the Justices who favored race-based crossover claims in dissent explained that these claims must "look[ ] at the *overall* effect of a multidistrict plan." *Id.* at 28–30 (Souter, J., dissenting, joined by Stevens, Ginsburg, and Breyer, JJ.) (emphasis added). Under those Justice's view, a crossover claim necessarily addresses the problem of "the entire districting plan (normally, statewide) . . . creat[ing] an insufficient number of minority-opportunity districts in the territory as a whole." *Id.* at 30. Further, Justice O'Connor has explained that *every* vote-dilution claim must consider "proportionality"—that is, the "measure of minority voting strength" in "reference to the proportion between the minority group and the electorate at large"—given that the "lack of proportionality is probative evidence of vote dilution." *Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O'Connor, J., concurring) (citations omitted).

The trial court's trial order fails to account for (or even consider) these principles, so it is not necessary to further any compelling interest for that reason alone. In New York, Black and Latino-preferred candidates—*i.e.*, Democrats—very regularly win elections across the State and in New York City. *Supra* pp.10–12. Thus, New York's "entire districting plan" does *not* "create an insufficient number of minority opportunity districts" for Black and Latino voters in the "territory as a whole." *Bartlett*, 556 U.S. at 28–30 (Souter, J., dissenting). Indeed, even the *amici* Professors who proposed the test the trial court adopted agreed that "vote dilution

occurs across multiple districts," such that the trial court erred in "focus[ing] on minority voters' lack of representation in [CD11] alone." App.440a. Further, Black and Latino voters also enjoy proportionate success in CD11 itself—they comprise approximately 23% of the population and their preferred candidates win a proportionate 25% of the time, even under the *Williams* Respondents' lead expert's analysis, *supra* pp.10–11—which is "probative evidence" that they are not suffering from "vote dilution," *De Grandy*, 512 U.S. at 1025 (O'Connor, J., concurring). Given Black and Latino voters' electoral success across New York and their proportionate success in CD11, the trial court's order that CD11 be racially redrawn is not necessary to remedy the problems that crossover-district claims are designed to solve.

Separately, the *Williams* Respondents did not even attempt to explain—and the trial court did not even address—why alternative, race-neutral measures would fail to adequately increase Black and Latino voters' electoral influence in CD11 from its present baseline (winning 25% of elections even under the *Williams* Respondents' own experts' hand-picked dataset with less than 25% of the population), if such an increase were necessary for some reason under the trial court's rewrite of the New York Constitution. *See* App.4a–16a. That failing too shows that the trial court's race-based redrawing of CD11 is not necessary to further any compelling interest.

B. The Trial Court's Adjudication Of This Case Under A Test That No Party Proposed Or Submitted Required Evidence On Violates The Fourteenth Amendment's Due Process Clause

1. The Due Process Clause "centrally concerns the fundamental fairness of governmental activity," *N.C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019) (citation omitted), and "imposes on the States the

standards necessary to ensure that judicial proceedings are fundamentally fair," *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981). Those standards mandate "notice and opportunity for hearing appropriate to the nature of the case," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950), requiring procedures "reasonably calculated, under all the circumstances, to . . . afford [parties] an opportunity to present their objections," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (citation omitted). Courts impermissibly deny litigants "the right of fair warning," *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), if they "reconfigure" the applicable "scheme, unfairly, in *midcourse* [ ] to 'bait and switch'" the responding party, *Reich v. Collins*, 513 U.S. 106, 111 (1994).

To effectuate these due process principles, courts must issue decisions based "solely on the legal rules and evidence adduced at the hearing," *see Goldberg v. Kelly*, 397 U.S. 254, 271 (1970), and cannot "surprise[ ]" litigants with "final decision[s] [ ] of issues upon which they have had no opportunity to introduce evidence," *Hormel v. Helvering*, 312 U.S. 552, 556 (1941). A court cannot make a "*sua sponte*" decision without providing the party "notice" and an opportunity "to come forward with all of her evidence" to refute that determination. *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986) (citations omitted). Rather, pursuant to the "principle of party presentation," courts must "rely on the parties to frame the issues for decision." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (citation omitted). Adhering to this principle is key to preserving due process in "our adversarial system of adjudication." *Clark*, 607 U.S. at 9 (per curiam) (citations omitted). This Court

recently summarily reversed an appellate court's failure to adhere to this principle where the court "devised a new theory" instead of "ruling on th[e] claim" that the parties presented. *Id.* at 9–10.

2. Here, the trial court violated the Due Process Clause by adjudicating this case under a standard that the *Williams* Respondents "never asserted," *id.*; *see Sineneng-Smith*, 590 U.S. at 375, depriving the parties of the "right of fair warning" and transgressing basic fairness principles, *Bouie*, 378 U.S. at 352. This Court is likely to reverse this violation of the due-process and party-presentation principle, just as it summarily did in *Clark*, 607 U.S. at 9–10 (per curiam).

The parties "frame[d] the issues for decision" by litigating a single legal theory. *Sineneng-Smith*, 590 U.S. at 375 (citation omitted). The petition alleged that the trial court should "apply the same standards set forth under the NY VRA to adjudicate" the sole Article III, Section 4 claim, App.2166a, and decide whether "[a] minority influence district is both possible and required" in CD11 under that NYVRA standard, App.2178a–79a. Given that "fram[ing]," *Sineneng-Smith*, 590 U.S. at 375 (citation omitted), Applicants presented expert reports and testimony refuting the *Williams* Respondents' claim under the NYVRA's standards. App.3440a–65a. While non-party *amici* submitted briefs urging the trial court to adopt different standards, *see* App.2418a–22a; App.2377a–78a, no party briefed those standards' constitutionality or presented any evidence tailored to either of those standards.

Instead of "rely[ing] on the parties to frame the issues for decision," *Sineneng-Smith*, 590 U.S. at 375 (citation omitted), the trial court adopted an *amici*-suggested

standard after the close of evidence, which the *Williams* Respondents "never asserted" and Applicants "never had the chance to address," *Clark*, 607 U.S. at 9. The trial court held that "Article III, Section 4(c)(1)'s language indicate[s]" that "crossover claims" "are allowed in actions in the state of New York," and then "adopt[ed]" a "standard for evaluating a proposed crossover district" based on dissenting opinions from this Court and "legal scholarship" from *amici*. App.14a–15a. To prove a claim under that standard, a plaintiff must show that there is an alternative district where "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election," those candidates win the general election "more often than not," and minority voters' preference in the primary election is "decisive," meaning that minority voters are not merely "grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not." App.15a.

The standard that the trial court adopted differs substantially from the NYVRA-based approach that the *Williams* Respondents urged and that the parties litigated. Under the NYVRA, a plaintiff must show either racially polarized voting or an all-things-considered inquiry akin to step two of *Gingles*, and that "there is an alternative practice that would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Clarke*, 237 A.D.3d at 39 (quoting N.Y. Election Law § 17-206(5)(a)). But under the standard that the trial court adopted, the plaintiff must satisfy not only an all-things-considered inquiry, but must also present specific evidence showing that there is a reasonable alternative district where

"minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election," those candidates are "usually [ ] victorious in the general election" (meaning that they "win more often than not"), and "the influence of minority voters" is increased "such that they are decisive in the selection of candidates." App.15a. This data—*especially data from primary elections*—is absolutely essential under the *amici*-derived crossover-district standard that the trial court adopted. In a crossover district, where minority voters do not constitute a majority of the population, primary election data is indispensable to establishing an undiluted benchmark because that data is necessary to demonstrate that "minority voters, not majority voters, [ ] effectively determine which candidates prevail." App.2407a. The NYVRA, in contrast, says nothing about assessing primary election data, let alone about determining whether minority voters will be decisive in primary elections. *See Clarke*, 237 A.D.3d at 39; N.Y. Election Law § 17-206(5)(a).

The trial court's decision to adopt its new crossover-district standard after the close of evidence violates due process, *Reich*, 513 U.S. at 111, including as to the party-presentation principle, *Sineneng-Smith*, 590 U.S. at 375. The *Williams* Respondents did not propose anything like the approach that the trial court adopted; the suggestion came only from the *amici* Professors. The trial court's standard was thus not subject to adversarial testing, and Applicants were deprived of any opportunity to present their objections. *See United Student Aid Funds*, 559 U.S. at 272. Had they been permitted to do so, Applicants would have, for example, had their expert conduct the analysis of primary elections that the test calls for.

The trial court's due-process error is made even worse by the fact the *Williams* Respondents never submitted evidence under the trial court's belated theory as to the crucial issue of primary elections. As explained, under the trial court's crossover-district standard, a plaintiff must demonstrate both that minority voters are able to select their preferred candidates in the primary and that they are "decisive" in the selection of these candidates. App.15a. The *Williams* Respondents presented no data regarding primary elections, either in the current CD11 or in their proposed illustrative CD11. They did not show that Black and Latino voters would be able to select their preferred candidates in contested primaries in the illustrative districts, or that these voters would be "decisive" in the selection of these candidates. *Id.* Nor did they show that these candidates would "usually be victorious in the general election" in their proposed CD11. *Id.* The trial court conducted *no analysis whatsoever* as to whether the *Williams* Respondents had presented evidence under its new test, and yet still held in their favor. *See* App.13a–16a.

The *amici* Professors who suggested the test that the trial court unlawfully adopted agreed on appeal that the trial court made a "***serious mistake***" by failing to assess whether the *Williams* Respondents' illustrative CD11 "was, in fact, a coalition crossover district (and otherwise lawful)." App.439a (emphasis added). The Professors reiterated that, under their test, "before *liability* may be imposed," App.429a, a crossover-district plaintiff *must* present evidence that a minority groups' alleged "underrepresentation could be *ameliorated* by a reasonable alternative policy: here, a new coalition crossover district that complies with all federal and state legal

requirements," App.440a. Without "proof that, under some lawful alternative electoral system," the minority group "would have the potential . . . to elect its preferred candidate," in other words, there can be no liability for a vote-dilution claim via a crossover-district theory. App.430a (citation omitted).

C. The Trial Court Violated The Elections Clause By Impermissibly Distorting State Law In A Congressional Redistricting Case

1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*." U.S. Const. art. I, § 4, cl. 1 (emphasis added). When "state court[s] interpret[ ] [ ] state law in cases implicating the Elections Clause"—including cases adjudicating state-law challenges to congressional maps—they must "not transgress the ordinary bounds of judicial review" and "arrogate to themselves the power vested in state legislatures to regulate federal elections." *Moore*, 600 U.S. at 36. Although "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law," it also does not give "state courts . . . free rein" to decide whether a congressional map complies with state law. *Id.* at 34. Rather, state courts must "ensure that [their] interpretations of [state] law do not evade federal law," *id.*, by "read[ing] state law in such a manner as to circumvent federal constitutional provisions," *id.* at 35. Otherwise, courts may "transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

In his concurring opinion, Justice Kavanaugh addressed the "standard" that "federal court[s] should employ to review a state court's interpretation of state law in

a case implicating the Elections Clause," explaining that state courts may not "'impermissibly distort' state law 'beyond what a fair reading require[s].'" *Id.* at 38 (Kavanaugh, J., concurring) (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring)). This ensures "respect for the constitutionally prescribed role of state *legislatures*," because affording "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate [the Court's] responsibility to enforce the [the Constitution's] explicit requirements." *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring). When evaluating state-court interpretations of state law, federal courts "necessarily must examine the law of the State as it existed prior to the action of the state court." *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted). Applying this "straightforward standard," *id.*, "ensure[s] that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op.).

2. The trial court's decisions to (a) read a crossover-district mandate into the New York Constitution, and (b) throw out New York's legislatively adopted congressional map based upon a standard that no party raised or submitted evidence is an "impermissibl[e] distort[ion]" of state law "in a federal election case," *id.* at 38–39 & n.1 (Kavanaugh, J., concurring) (citation omitted), that "[dis]respect[s] . . . the constitutionally prescribed role of state *legislatures*," *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring). This Court is therefore likely to grant certiorari and reverse any New York appellate court decision upholding that order. *See* Rule 10(c).

a. The trial court's interpretation of Article III, Section 4 to include a crossover-district mandate "impermissibly distorts" state law. *Moore*, 600 U.S. at 38–39 & n.1 (Kavanaugh, J., concurring) (citation omitted). Well-established principles of New York law provide that when a state-law provision is "modeled after a federal statute," *Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (N.Y. Sup. Ct. Yates Cnty. 1938), or is "substantively and textually similar to [its] federal counterpart[ ]," the New York courts construe that state-law provision "consistently with federal precedent" interpreting the federal law, "striv[ing] to resolve federal and state" claims in the same way, *Zakrzewska v. New Sch.*, 14 N.Y.3d 469, 479 (2010) (citation modified); *see also Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25–26 (2002). This interpretive principle is grounded in New York's "fundamental rule of construction" that "presume[s]" that the Legislature "does not act in a vacuum" and is "aware of the law existing at th[e] time" it enacts a state-law provision. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep't 1983). This applies with special force where the "state and local provisions overlap with federal" provisions that involve "civil rights," because "these statutes serve the same remedial purpose . . . to combat discrimination." *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429 (2004).

Here, the question that implicates the Election Clause is whether it "impermissibly distort[s] state law beyond what a fair reading requires," *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citations omitted), to interpret Article III, Section 4 of the New York Constitution to contain a crossover-district mandate, when that provision is materially indistinguishable from Section 2 of the VRA. The answer

to that question under established New York law is obviously "no," given that Article III, Section 4 was adopted *after* this Court held that Section 2 does not require crossover districts, and New York chose to use extremely similar language in Article III, Section 4 as Congress used in Section 2. If New Yorkers wished to depart so substantially from this Court's Section 2 precedent by mandating crossover districts, they would have made that intention clear in Article III, Section 4.

When the People of New York adopted the vote-dilution provisions of Article III, Section 4 in 2014, this Court had already determined in *Bartlett* that Section 2 of the VRA does *not* contain a crossover-district mandate. As the controlling *Bartlett* plurality opinion explained, requiring "crossover districts" would "disregard[ ] the majority-minority rule" in Section 2; "unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions"; and pull "the law and courts in a perilous enterprise" of "relying on a combination of race and party to presume an effective majority," along with "predictions" that they "would hold together as an effective majority over time" rather than considering only "objective" redistricting criteria. 556 U.S. at 21–23 (plurality op.).

Article III, Section 4 and Section 2 are substantively identical in multiple material ways, so New York's constitutional-interpretation principles require them to be read "consistently." *Zakrzewska*, 14 N.Y.3d at 479; *McGrath*, 3 N.Y.3d at 429. Section 2 provides that no "practice," including the drawing of district lines, "shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on

account of race or color, or" "because he is a member of a language minority group." 52 U.S.C. §§ 10301(a), 10303(f)(2) . Article III, Section 4 likewise states that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of" "racial or language minority voting rights." N.Y. Const. art. III, § 4(c)(1). Section 2 then provides that, "based on the totality of circumstances," districts cannot be drawn such that, racial or language minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). Article III, Section 4 mirrors that provision, stating that districts "shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." N.Y. Const. art. III, § 4(c)(1).

Because Article III, Section 4's language is "modeled after" Section 2 of the VRA, *Bicknell*, 6 N.Y.S.2d at 453–54, and given that the *Bartlett* controlling plurality concluded that Section 2 does not require creation of crossover districts, 556 U.S. at 21–23 (plurality op.), the law of New York "as it existed prior to the action" here, *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted), required the trial court to conclude that Article III, Section 4 likewise does not mandate crossover districts, *see Zakrzewska*, 14 N.Y.3d at 479; *Aurecchione*, 98 N.Y.2d at 25–26; *McGrath*, 3 N.Y.3d at 429; *Thomas*, 95 A.D.2d at 120.

The trial court grounded its contrary conclusion in a single difference between Article III, Section 4 and Section 2: Article III, Section 4 uses plural language,

requiring districts to "be drawn so that, based on the totality of the circumstances, racial or minority language *groups* do not have less [political] opportunity," N.Y. Const. art. III, § 4(c)(1), whereas Section 2 uses slightly different verbiage, App.6a–7a. This difference in no way suggests that New York intended to inject a crossover-district mandate into Article III, Section 4 where Section 2 contains none, and this Court has already rejected any such mandate in *Bartlett*. Contrary to the trial court, even if some difference in meaning existed due Article III, Section 4's use of a plural noun, that "mousehole[ ]"-sized difference cannot possibly house the "elephant[ ]"-sized divergence from this Court's well-established interpretation of Section 2. *See Haar v. Nationwide Mut. Fire Ins. Co.*, 34 N.Y.3d 224, 231 (2019).[3]

b. The trial court's decision to require a redraw of New York's legislatively adopted congressional map based upon a crossover-district standard that no party raised or submitted evidence on similarly fails to "respect" the Elections Clause's "deliberate choice" to "vest[ ] power to carry out its provisions in 'the Legislature' of each State," *Moore*, 600 U.S. at 34 (citation omitted), and so likewise establishes a violation of that Clause, *see id.* at 34–36. The trial court first announced its new crossover-district test in its post-trial opinion invalidating the State's legislatively adopted congressional map, without any adversarial briefing on that test, *see supra*

[3] At most, Article III, Section 4's plural language could arguably support coalition claims—that is, two minority groups that vote together adding up to 50% of a district—under the Sixth Circuit's reasoning in *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc). When the People adopted Article III, Section 4, there was a circuit split over whether Section 2 recognized coalition claims, with (at that time) only the Sixth Circuit rejecting such claims under Section 2, using the plural-versus-singular language rationale as part of its decision. *See id.* at 1386.

pp.28–29, and then declared this new standard satisfied despite the parties presenting no evidence on several of its critical aspects, *supra* p.30. All of this is clearly contrary to New York law as it existed before the trial court's order here. *See Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009); *People v. Apple Health & Sports Club*, 80 N.Y.2d 803, 806 (1992). By retroactively constitutionalizing a novel crossover-district theory and then using that theory to strike down a legislatively adopted congressional map without even requiring the *Williams* Respondents to meet their burden of proof under that theory, the trial court "transgress[ed] the ordinary bounds of judicial review." *Moore*, 600 U.S. at 36.

II. A Stay Pending Appeal Is The Only Way To Prevent Substantial And Irreparable Harm To Applicants And Ensure That A Congressional Map Is In Place For The Upcoming Election Cycle

A. A stay is appropriate if Applicants will "suffer irreparable injury without a stay." *Ohio*, 603 U.S. at 291. This Court considers evidence of a State's inability to conduct elections "pursuant to [a constitutional] statute enacted by the Legislature" "serious[ ] and irreparabl[e] harm." *Abbott*, 585 U.S. at 602–03. This Court "balance[s] the equities [ ] to explore the relative harms to applicant and respondent, as well as the interests of the public at large." *Barnes v. E-Systems, Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1305 (1991) (Scalia, J., in chambers) (citation omitted); *Hollingsworth*, 558 U.S. at 196.

B. Applicants and the public will suffer "serious[ ] and irreparabl[e] harm," *Abbott*, 585 U.S. at 602–03, absent a stay pending appeal, *Ohio*, 603 U.S. at 291. As things currently stand, the trial court's order has left New York with no congressional map for the impending election cycle, throwing New York's upcoming election into

chaos. The trial court's decision: (1) enjoined the state-official respondents from giving any effect to the 2024 Congressional Map, including by conducting any election pursuant to that map, and (2) ordered the IRC to draw a new congressional map by no later than February 6, 2026. App.18a. On January 26, 2026, several of the state-official respondents appealed, *see supra* p.15, triggering New York's automatic stay provision, *see* N.Y. C.P.L.R. § 5519(a)(1). But that applies only to the "executory directions of the judgment or order appealed from which command a person to do an act," and so stayed only the portion of the trial court's order compelling the IRC to draw a new map, not the prohibition on using the 2024 Congressional Map. *Pokoik v. Dep't of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 15 (2d Dep't 1996). As a result, New York is currently without a map for the 2026 Congressional Election pending appeal—the existing, lawful map is enjoined; the IRC is under no obligation to draw a new map (even if it could in such a condensed period); and there is no other map under which the State can administer the election.

The 2026 Congressional Election is just around the corner. Petitioning for the primary begins on February 24. *See* App.3553a. Without a stay, the trial court's unlawful order will prevent the election from beginning on time, inflicting "serious[ ] and irreparabl[e] harm," *Abbott*, 585 U.S. at 602–03, on both Applicants and the public, including New York voters. And even if the Appellate Division lifts the automatic stay, the IRC would then need to adopt an unconstitutional racial gerrymander. Such a racial gerrymander obviously could not survive appellate review, *see supra* Part I.A, and imposing it would harm Applicants, who submitted

affidavits below explaining that they do not want to live in a racially gerrymandered district, App.3559a, 3564a, 3573a, 3577a; *see United States v. Hays*, 515 U.S. 737, 744–45 (1995).

Applicants will suffer irreparable harm without a stay. Congresswoman Malliotakis has served as CD11's Representative since 2020 and has invested substantial time and resources into fostering meaningful relationships with CD11's voters. App.2108a. Further, she intends to run for reelection in the 2026 Congressional Election, *id.*, including by gathering petition signatures, which can begin on February 24, as state law provides, N.Y. Election Law § 6-134(4); App.1976a. But right now, there is uncertainty as to what will happen on February 24, as the trial court's order blocks the use of the current map and there is no chance a new map will be in place by February 24. For example, it took the IRC 73 days to propose a new map after the New York Court of Appeals' decision in *Hoffmann* three years ago. *See supra* p.7. The Individual Voter Applicants will likewise suffer "serious[ ] and irreparabl[e] harm," *Abbott*, 585 U.S. at 602–03, absent a stay, *Ohio*, 603 U.S. at 291, as they too have devoted significant time and resources to campaigning on Congresswoman Malliotakis's behalf and intend to do so again for her reelection beginning on February 24, 2026. App.3559a, 3564a, 3569a, 3573a, 3577a. They will thus suffer irreparable, constitutional injuries if the only reason they are prevented from beginning petitioning on February 24, is that their current congressional district is not racially gerrymandered in the manner the trial court's order demands. App.3559a, 3564a, 3569a, 3573a, 3577a.

A stay is also necessary to prevent substantial harm to the public. *Ohio*, 603 U.S. at 291. Again, the trial court's order prevents the State and its officials from conducting the 2026 Congressional Election "pursuant to [a constitutional] statute enacted by [its] Legislature," which is a "serious[ ] and irreparabl[e] harm." *Abbott*, 585 U.S. at 602. The trial court enjoined state officials from "giving any effect to the boundaries of the [2024 Congressional Map] as drawn," App.18a, meaning that the entire congressional election for every district in New York cannot proceed. And because the IRC must "add[ ] Black and Latino voters from elsewhere," App.13a, into CD11, the IRC's redrawing of CD11 will necessarily impact other adjacent districts. Election officials, candidates, and voters across the State thus have no way of knowing the governing district lines for the 2026 Congressional Election, preventing them from petitioning, preparing ballots, and the like.

These harms outweigh any effect that the Court's stay may have on respondents. The *Williams* Respondents alone are to blame for any harm that they may feel from having to vote in another election under the 2024 Congressional Map that they did not challenge for at least 18 months after the legislative adoption of that map. The *Williams* Respondents have offered no explanation for their egregious delay in bringing this challenge.

CONCLUSION

This Court should stay the Order of the Supreme Court of the State Of New York, New York County.

Respectfully submitted,

BENNET J. MOSKOWITZ
ELIZABETH A. LOIZIDES
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

February 2026

/s/ Misha Tseytlin
MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
KAITLIN O'DONNELL
CARSON A. COX
LAUREN H. MILLER
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants