No. A25-

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

APPENDIX TO EMERGENCY APPLICATION FOR STAY
VOLUME I OF X (PAGES 1a - 400a)

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 South Wacker Drive, Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants

390244

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JEFFREY H. PEARLMAN** **PART** **44M**

Justice

----------X

INDEX NO. 164002/2025

MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO, AIXA TORRES, MELISSA CARTY,

Petitioner,

MOTION DATE 10/27/2025, 12/08/2025, 12/08/2025

MOTION SEQ. NO. 001 006 007

- v -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN ZEBROWSKI STAVISKY, RAYMOND J. RILEY, PETER S. KOSINSKI, HENRY T. BERGER, ANTHONY J. CASALE, ESSMA BAGNUOLA, KATHY HOCHUL, ANDREA STEWART-COUSINS, CARL E. HEASTIE, LETITIA JAMES,

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 52, 53, 56, 59, 60, 61, 62, 63, 95, 98, 142, 143, 144, 145, 154, 167, 168, 175, 186, 187

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 128, 130, 146, 147, 148, 149, 155, 157, 159, 160, 161, 169, 170, 188, 189

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 116, 117, 118, 119, 120, 121, 122, 129, 131, 150, 151, 152, 153, 156, 158, 171, 172, 173, 174, 176, 190, 191

were read on this motion to/for DISMISSAL.

This election case was heard on an expedited basis, beginning with a hearing on November 7, 2025. The parties submitted briefings on the motions addressed in this Order, including reply memoranda, as well as exhibits including reports from expert witnesses. Additional briefing was provided by Amici Curiae. A trial was held from January 5, 2026 through January 8, 2026, during which Petitioners and Respondents were provided with equal

time to make their cases. After the completion of trial, parties provided additional briefing regarding the remedy in this case, as well as post-trial memoranda.

Background

On October 24, 2025, Petitioner Michael Williams, an elector of the state of New York, residing in Richmond County, Petitioner José Ramírez-Garofalo, an elector of the state of New York, residing in Richmond County, Petitioner Aixa Torres, an elector of the state of New York, residing in New York County, and Melissa Carty, an elector of the state of New York, residing in New York County (Collectively, "Petitioners"), filed a petition pursuant to Article III, Sections 4 and 5 of the New York Constitution, Unconsolidated Laws § 4221 (L 1911, ch. 773, § 1), and Civil Practice Law and Rules 3001, requesting: (1) that the Court declare "that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York Constitution by unlawfully diluting the votes of Black and Latino voters in CD-11;" (2) "Pursuant to Art. III, Section 5 of the New York Constitution, ordering the Legislature to adopt a valid congressional redistricting plan in which Staten Island is paired with voters in lower Manhattan to create a minority influence district in CD-11 that complies with traditional redistricting criteria;" (3) that the Court issue "a permanent injunction enjoining [Respondents] and their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in the 2024 Congressional Map, including an injunction barring [Respondents] from conducting any further congressional elections under the current map;" and (4) that the Court "[hold] hearings, [consider] briefing and evidence, and otherwise tak[e] actions necessary to order a valid plan for new congressional districts in New York that comports with Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 2.* On December 8, 2025 Intervenor-Respondents Congresswoman Nicole Malliotakis' and Individual Voters Edward L. Lai, Joel Medina, Solomon

B. Reeves, Angela Sisto, and Faith Togba ("Intervenor-Respondents") filed a Cross-Motion, seeking to dismiss this matter. *NYSCEF Doc. No. 97.*

On December 8, 2025, Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III ("BOE Respondents", in his official capacity as Co-Executive Director of the BOE filed an additional Cross-Motion, also seeking dismissal. *NYSCEF Doc. No. 116.*

Article III § 4(c) of the New York State Constitution governs redistricting of the state legislative districts and congressional districts, "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Article III § 4(c)(1) states:

> When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. 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.

This case arises out of and relates to Petitioners' claim that that in New York's 11th Congressional District ("CD-11"), "Black and Latino Staten Islanders have less opportunity than other members of the electorate to elect a representative of their choice and influence elections… in violation of the prohibition against racial vote dilution in Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 1.* CD-11 contains the entirety of Staten Island and extends into a portion of southern Brooklyn, reflecting district boundaries that have existed since 1980. *Pet. Exh. C., NYSCEF Doc. No. 62.* In the same period, the racial demographics have shifted drastically, from "85.3 percent white, 7 percent Black, 5.4 percent Latino, and 1.9 percent Asian"

to "56.6 percent white, 19.5 percent Latino,...9 percent Black," and 12 percent Asian, with "[t]he remaining 2.9 percent" largely comprised of "people who consider themselves members of two or more races." *NYSCEF Doc. No. 61*. Petitioners' proposed remedy would move the boundaries of CD-11, grouping Staten Island with a portion of southern Manhattan.

This is an issue of first impression; New York courts have yet to determine the appropriate legal standard to evaluate a vote dilution claim under Article III, Section 4 of the New York State Constitution. Petitioners assert that in evaluating this claim, the Court should utilize the vote dilution framework provided in the 2022 John R. Lewis New York Voting Rights Act ("NY VRA"). Intervenor-Respondents and BOE Respondents both argue that consideration of the NY VRA is impermissible under the state constitution and that the case should be dismissed as a result. *NYSCEF Docs. No 115, 122*. Respondents Kathy Hochul, in her official capacity as Governor of the State 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 the State of New York (collectively, "State Respondents"), for their part, claim that a "totality of the circumstances" standard is appropriate pursuant to the text of Article III Section 4(c)(1) but make no argument as to the result that would be reached under such a standard. *NYSCEF Doc. No. 95*.

Analysis

Article III, Section 4(c)(1) was part of a series of 2014 constitutional amendments regarding redistricting approved by the voters of New York State. As stated by State Respondents, it calls for a totality of the circumstances standard, reading in relevant part: "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." *New York State Constitution, Article III, Section 4(c)(1)* (Emphasis Added). The state constitution provides no guidance as to how to evaluate the totality of the circumstances, nor does the legislative history of the redistricting amendments. Petitioners point to the NY VRA, which bans vote dilution in local subdivisions based on the protections provided by Article III, Section 4, while providing detailed guidance on evaluating the totality of the circumstances. *NYSCEF Doc. No. 1.*

Utilizing the NY VRA, however convenient, is impermissible. Article III, Section 4 specifically states that the redistricting of congressional districts is "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Here, the text of the state constitution directly contradicts the notion that the Court can use the NY VRA, a state statute, to interpret a constitutional vote dilution claim. Not only was the NY VRA passed years after the redistricting amendments were ratified, the provision names "the federal constitution and statutes" and "state constitutional requirements," with no mention of state statutes. *Id.* That the phrase "the federal constitution" is paralleled "state constitutional requirements" while federal statutes receive no such mirror implies that state legislation was excluded on purpose and it should not be used to interpret Article III, Section 4. Moreover, there is no legislative history that provides any evidence that Article III, Section 4(c)(1) should be influenced by legislation that would be passed after the amendment took effect, even if that legislation is meant to bolster efforts against vote dilution.

That conclusion, however, does not end the inquiry, as Petitioners *are* correct in their assertion that the New York State Constitution provides greater protections against racial vote dilution than the federal constitution or the federal Voting Rights Act. That the protections of

Article III, Section 4 are broader than those provided by the federal constitution and federal statutes can be gleaned from the text itself and from case law regarding state legislation. Assertions that the federal Voting Rights Act controls simply do not hold up under a basic logical analysis. Article III, Section 4(c) says "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements," that under Section 4(c)(1), "[d]istricts 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." These provisions, taken in conjunction, simply imply that the protections provided by the redistricting amendments should not violate federal or state constitutional requirements or the state constitution, not that these protections cannot expand on those provided by the federal government. *See Harkenrider v. Hochul,* 38 N.Y.3d 494, 509 (2022) ("In construing the language of the Constitution as in construing the language of a statute, ... [we] look for the intention of the People and give to the language used its ordinary meaning"). Were the redistricting amendments simply meant to establish that the federal constitution and federal statutes should be used to protect voting rights in New York, the amendments would have no purpose. *See People v. Galindo,* 38 N.Y.3d 199, 205–206 (2022) (a statute should not be read in a way that "hold[s] it a legal nullity.") Moreover, under *People v. P.J. Video, Inc.*, "[i]f the language of the State Constitution differs from that of its Federal counterpart, then the court may conclude that there is a basis for a different interpretation of it." 68 N.Y.2d 296, 302 (1986). As pointed out by State Respondents, there are differences between the Voting Rights Act (52 U.S.C. § 10301(b)), which uses phrases referring to particularized groups including "a class of citizens" and "its members" and Article III, Section 4(c)(1), which protects the ability of "racial or minority groups [from having] less opportunity to participate in the political process than other members of the

electorate and to elect representatives of their choice." Here, the state's expansion on federal protections can be observed in language that literally expands on that included in the Voting Rights Act.

As a case of first impression, it falls on the Court to establish a standard for evaluating the totality of the circumstances. The Court notes that Article III, Section 4(c)(1) states "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" (emphasis added). This language is key, as it does not demand that a district suppress minority voters who could make up a majority under different lines in order to find that opportunity has been denied. Instead, it must be shown that the lines unfairly reduce their impact on electoral outcomes as drawn. While Article III, Section (4)(c) goes beyond the scope of the federal Voting Rights Act, the VRA is still instructive. As such, the Court turns to case law regarding the VRA to establish factors that can be evaluated in this analysis. In *Thornburg v. Gingles*, the United States Supreme Court utilized factors laid out by the United States Senate during the passage of the VRA to evaluate a vote dilution claim. 478 U.S. 30, 44-45. Those factors included "the extent to which voting in the elections of the State or political subdivision is racially polarized;…the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction." *Id.* This list is not intended to encompass the entirety of what factors should be considered in a vote dilution claim, nor is there any specific threshold that must be met to establish that a totality of the

circumstances has been met. *Id.* The Court elects to follow these principles in evaluating a vote dilution claim under Article III, Section 4(c)(1).

Fundamental to this claim is the extent of racially polarized voting in CD-11. As a racial vote dilution claim is predicated on the notion that minority voters cannot elect their candidate of choice, it is vital that Petitioners show that there is, in fact, a predominant choice among minority voters in a congressional district. Not only that, but it must also be demonstrated that White voters vote as a bloc that usually defeats minority-preferred candidates. *See Gingles* 478 U.S. at 56. Racially polarized voting must be observed as a pattern; a single election is not a sufficient basis to satisfy this portion of the claim. *Id.* This allows room for elections that break from the general pattern (such as a minority-preferred candidate winning or racially-polarized voting blocs breaking from one another) without reading these exceptions as negating said general pattern. *Id.* That voting is racially polarized can be proven through mere correlation between the race(s) of a voting bloc and need not rise to the level of causation. *Id.*

Here, racially polarized voting has been clearly demonstrated. Dr. Maxwell Palmer, an expert witness from New York University who testified in this case, showed in his report and shared on the record that across federal, state, and city elections from 2017 to 2024, Black voters in CD-11 voted together an average 90.5 percent of the time, while Latino voters voted together 87.7 percent of the time.[1] *NYSCEF Doc. No. 60.* Asian voters voted for the Black and Latino-preferred candidates 58.93 percent of the time, displaying less cohesion than Black or Latino voters but still demonstrating a consistent preference. *Id.* White voters, meanwhile, voted against the candidates preferred by Black and Latino 73.7 percent of the time. *Id.* Across the 20 most recent elections in CD-11 used in the analysis, the Black and Latino-preferred candidates won merely

[1] The Court notes that the expert witness' analysis does not include either state Assembly or state Senate races.

five (5) races. Respondents raised doubts as to the significance of this number on the record, asserting that roughly 30 percent of the population saw its preferred candidate win roughly 25 percent of the time. The Court does not read a racial vote dilution claim so simply. Vote dilution claims do not turn on whether minority-preferred candidates win elections at a rate that matches the relative population of minority groups in a district. A demonstration of racially polarized voting shows that the minority groups at issue vote as a bloc, as do White voters, and that the minority-preferred candidates "usually" lose. *See Gingles* 478 U.S. at 56. Petitioners have demonstrated that here.

Petitioners have also shown through testimony and by empirical data that the history of discrimination against minority voters in CD-11 still impacts those communities today. Staten Island has a long history of racial discrimination. Expert witness Dr. Thomas J. Sugrue reports that "Staten Island has a long history of racial segregation, discrimination, and disparate treatment against Blacks and Latinos." *NYSCEF Doc. No. 61.* Staten Island was the subject of intense redlining, a process in which the federal government enforced segregation by drawing race-based lines around different neighborhoods and ensured that Black people would not be allowed to obtain loans or mortgages. *Id.* This process largely confined Black people to neighborhoods north of the Staten Island Expressway with low property values and lowered the property values in areas where Black people resided, even majority-White neighborhoods. *Id.* These neighborhoods also had significant environmental hazards, leading to long-term health issues for residents over time. *Id.* Black and Latino people were often excluded from public housing in predominantly White neighborhoods and the real estate industry worked to keep them away from private property in White neighborhoods. *NYSCEF Doc. No. 61*. Even as racial protections were codified at a federal

level, Black and Latino Staten Islanders experienced harsh racial intimidation, violence, and hate-crimes. *Id.*

In the 1920s, New York state began requiring literacy tests to vote, a practice specifically designed to target immigrants and non-English speakers and prevent them from voting; this practice had a particularly negative impact on Black and Latino New Yorkers. *NYSCEF Doc. No. 61.* The long-term effects of this history has resulted in significant gaps in the lives of Black and Latino populations of Staten Island and the White population to this day, impacting "housing, education, [and] socioeconomic status…—all of which are known to have a negative impact on political participation and the ability to influence elections." *Id.* White Staten Islanders enjoy notably higher education rates than Black and Latino residents; "[m]ore than 1 in 5 Latinos and 1 out of 9 Blacks but only 1 in 14 Whites are not high school graduates" and "[a] little less than a quarter of Latinos and a little more than a quarter of Blacks, but more than one-third of Whites, have obtained at least a bachelors' degree." *Id.* White Staten Islanders have a per capita income of $52,273.00, Black Staten Islanders' per capita income is $31,647.00 and Latinos' is $30,748.00. *Id.* Moreover, where the White poverty rate on Staten Island is 6.8 percent, the Latino poverty rate is 16.3 percent, and the Black poverty rate is 24.6 percent. *NYSCEF Doc. No. 61.* Over 75 percent of White Staten Island residents own homes while only 43.7 percent of Latino residents, and 35.8 percent of Black residents do. *Id.* According to Dr. Sugrue's testimony on the record, de facto segregation remains the norm, with moderate segregation rates between Hispanic and White residents and significant segregation between Black and White residents.

The impact of discrimination is not only social and economic, political, as Black, Latino, and Asian Staten Islanders' political representation and participation in politics still lags behind White Staten Islanders. Expert witness Dr. Palmer's report analyzes voter turnout on Staten Island

the 2020, 2022, and 2024 elections, showing that while White voter turnout averaged 65.3 percent across those races, Black voter turnout averaged 48.7 percent, Latino turnout averaged 51.3 percent, and Asian turnout averaged 47.7 percent. *NYSCEF Doc. No. 60.* In the same years, the average voter turnout was 58.7 percent. The election of minority candidates in CD-11 presents more complexity, though representation still low.[2] Staten Island has elected a minority candidate to represent the district in Congress: Intervenor-Respondent Representative Nicole Malliotakis, became the first elected official of Latin American descent elected in Staten Island when she won a race for the New York State Assembly in 2010. *NYSCEF Doc. No. 61.* The first Black elected official in Staten Island, won a North Shore council race in 2009. *Id.*. Petitioners have shown that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" to a noteworthy extent. *Gingles*, 478 U.S at 44-45.

Petitioners have additionally shown that both overt and subtle racial appeals are common in campaigns in CD-11. The Court lends this less relative weight than other factors given the prevalence of racial appeals in political campaigns across the country. However, as a part of the broader suite of factors considered in a totality of the circumstances analysis, it is still meaningful. Dr. Palmer's report provides strong examples of racial appeals in Staten Island politics. For instance, in the 1960s, there was strong opposition to minorities moving to the island, with one popular political cartoon decrying "ghetto areas" being delivered by Mayor John Lindsay. *NYSCEF Doc. No. 61.* In the 1990s, a movement advocating for the secession of Staten Island from New York City rose, driven in part by frustration at minority New Yorkers moving from other boroughs into public housing on Staten Island. *Id.* More recently, the first Black elected

[2] It is important to note that the election of minority candidates is distinct from the election of minority-preferred candidates. Here, the Court analyzes the former factor.

official on Staten Island was the subject of racially charged political attacks during her 2017 reelection campaign. *Id.* One Facebook page critical of her campaign accused her of supporting "a 'welfare hotel full of criminals and addicts' and turning a property into 'a heroin/methadone den.'" *Id.* This follows common trends linking Black candidates to negative stereotypes associated with Black people. *Id.*

Based on the facts presented by the expert witness reports and on the record, it is clear to the Court that the current district lines of CD-11 are a contributing factor in the lack of representation for minority voters. In state and local races, Staten Island is allowed be divided in a way that has enabled Black and Latino voters to show some political power, however insufficient. *See Sugrue Report, NYSCEF Doc. No.* 61. In the redistricting process, a county can only be broken up to draw congressional districts if that country has a population greater than the "ideal population size" for a district. *Cooper Report, NYSCEF Doc. No.* 62. Because "the ideal population size for a congressional district in New York is 776,971" and Staten Island's population is 495,747, "[Staten Island] must be joined with a neighboring portion of another New York City borough." *Id.* Under the historic makeup of CD-11, which links Staten Island to southern Brooklyn, however, Black and Latino voters, who are already affected by a history of discrimination in the political process, education, housing, and more, are essentially guaranteed to have their votes diluted. *Id; Sugrue Report, NYSCEF Doc. No. 61.*

In this case, a totality of the circumstances analysis indicates that as drawn, the district lines for CD-11 "result in the denial or abridgement of racial or language minority voting rights minority voters," particularly Black and Latino voters, violating Article III, Section 4(c)(1) of the New York State Constitution. Petitioners have shown strong evidence of racially polarized voting bloc (including preferences from Asian voters that align with Black and Latino voters, though the latter

two are the subject of Petitioners' arguments), they have demonstrated a history of discrimination that impacts current day political participation and representation, and they have shown that racial appeals are still made in political campaigns today. Taken together, these circumstances provide strong support for the claim that Black and Latino votes are being diluted in the current CD-11. Moreover, it is evident that without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely.

The Court must next determine, then, the proper remedy for unlawful vote dilution. Although Petitioners have shown a violation of the state constitution, their remedy must align with the law. Petitioners request that the Court mandate a new set of district lines for CD-11, shifting the boundaries from the entirety of Staten Island and a portion of Brooklyn to the entirety of Staten Island and a portion of Southern Manhattan; this map would redraw Congressional District 10 so that it would retain the Chinatown neighborhood and the portion of Brooklyn it currently holds while extending down into the portions of Southern Brooklyn currently contained in CD-11. *NYSCEF Doc. No. 62.*

To determine whether ordering a redrawing of the congressional lines is a proper remedy, Petitioners must first show that minority voters make up a sufficient portion of the district's population. Under *Gingles*, the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. at 51. Because the New York State Constitution is more sweeping that the VRA, such a high bar need not be cleared under a vote dilution claim in this state. *See supra.* Still, minority voters must comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes. However, the Court can still find guidance from the federal jurisprudence. In *Bartlett v. Strickland*, the United States Supreme Court differentiated between

"majority-minority" districts, where minority voters make up a majority of the electorate and "crossover" districts, where "members of the majority help a 'large enough' minority to elect its candidate of choice."[3] 556 U.S. 1, 13 (2009); Cooper v. Harris, 581 U.S. 285, 303 (2017) (quoting Bartlett, 556 U.S. at 13). Nowhere in their papers do Petitioners assert that a majority-minority district can or should be drawn here; as such, the Court sees this as a crossover claim.

While crossover claims were rejected under the VRA in *Bartlett*, the Article III, Section 4(c)(1)'s language indicated that they are allowed in actions in the state of New York. In *LULAC v. Perry*, Justice David Souter proposed a bar for crossover claims as establishing a district where "minority voters . . . constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election." 548 U.S. 399, 485-86 (2006) (Souter, J., concurring in part and dissenting in part). Based on this opinion, and on legal scholarship, Amici Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos propose the following standard for a crossover claim: "a proposed district should count as a crossover district if minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election." *NYSCEF Doc. No. 135*. Also in *LULAC,* Justice Stephen Breyer went a step beyond Justice Souter's proposed definition, arguing that a crossover claim should "show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election" (*LULAC*, 548 US at 485-86) (Breyer, J., dissenting in part). Based on Justice Breyer's opinion, Amici New York Civil Liberties Union, NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and Center for Law and Social Justice propose that the Court follow a similar

[3] A majority-minority district may come in the form of a simple majority or a "coalition" district, where multiple minority voting groups form a majority of voters. *Bartlett*, 556 U.S. 1, 13 (2009).

logic so that "crossover claims [are not] easily…distorted for partisan maximization." *NYSCEF Doc. No. 139*

The Court adopts a three-pronged standard for evaluating a proposed crossover district in a vote dilution case pursuant to Article III, Section 4(c)(1) of the New York State Constitution. First, a proposed district should count as a crossover district if minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election. Second, these candidates must usually be victorious in the general election. Third, the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates.

The Court emphasizes two aspects of this standard for clarity. First, the minority-preferred candidates must "usually" win the general election so that the standard for establishing a crossover district closely mirrors the standard for establishing vote dilution, which says that minority-preferred candidates must "usually" fail. *See Gingles* 478 U.S. at 56. "Usually be victorious" should only be interpreted to the extent that minority-preferred candidates win more often than not. Second, that prong three requires minority voters to be "decisive" in primary races so that crossover districts cannot be used to achieve vote dilution in favor of a different political party. As stated above, racial vote dilution claims should not be used for the purpose of simply bolstering a political party's power and influence. Otherwise, it would be relatively simple to use vote dilution claims to establish districts in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not.

While Petitioners offer new district lines for the Court to adopt, the New York State Constitution points the Court in a different direction. Under Article III, Section 5 of the New York

State Constitution, "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities," should the Court find a congressional map invalid. In *Harkenrider v Hochul*, the New York State Court of Appeals found that, where the election calendar's start was imminent and the Independent Redistrict Commission ("IRC") process was in disarray, it was appropriate to appoint a special master to draw new congressional maps, as the redistricting plan was unconstitutional and "incapable of a legislative cure." 38 NY3d 494, 523 (2022). In *Hoffmann v New York State Ind. Redistricting Commn*, the Court of Appeals built on this, stating that "[c]ourt-drawn judicial districts are generally disfavored because redistricting is predominantly legislative." 41 NY3d 341, 361 (2023). Instead, the Court pointed to Article III, Section 5(b), which states that "at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." *Hoffman*, 41 NY3d 341, 360 (2023). Under a Court-ordered IRC redistricting process, the redrawing of the maps is considered "adopted by the IRC and legislature." *Id.*

As in *Harkenrider*, time is of the essence to fix congressional lines in this case. *Harkenrider v. Hochul,* 38 NY3d 494, 523. Respondent New York State Board of Elections has stated that to properly implement a new congressional map, a multiagency process including county boards, borough staff, central New York City staff, the New York City Department of Planning, and the Board itself, would need to be completed. *NYSCEF Doc. No. 204*. This includes the redrawing of election districts, which is a city-wide process, and requires as much time as possible before the election calendar begins on February 24, 2026. *Id.* Unlike *Harkenrider*, though, the IRC has not had the chance to redraw maps, meaning that constitutionally, they should receive an opportunity to do so. *Harkenrider*, 38 NY3d at 523. Therefore, in keeping with the precedent established

Hoffman, and following the requirements of Article III, Section 5(b) of the New York State Constitution, the proper remedy in this case is to reconvene the IRC to redraw the CD-11 map so that it comports with the standard described above. 41 NY3d 341, 360. Per the request of the Board of Elections, new congressional lines must be completed by February 6, 2026. The Court has considered Respondents additional arguments, including regarding the Elections clause and laches, and finds them unavailing.

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Based on the reasoning above, the parties' arguments on the record, and the documents submitted to the Court, it is hereby **ORDERED** that the configuration of New York State's 11th Congressional District under the 2024 Congressional Map is deemed unconstitutional under Article III, Section 4(c)(1) of the New York State Constitution; and it is further

ORDERED that Respondents are hereby enjoined from conducting any election thereunder or otherwise giving any effect to the boundaries of the map as drawn; and it is further

ORDERED that the Independent Redistricting Commission shall reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026; and it is further

ORDERED that this case shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order.

1/21/2026
DATE

HON. JEFFREY H. PEARLMAN J.S.C.
JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION	
	☐	GRANTED	☐ DENIED	☒	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE

State of New York
Court of Appeals

Heather Davis, Esq.
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095
518-455-7700

February 11, 2026

Cullen and Dykman LLP
Attn: Nicholas J. Faso, Esq.
80 State Street, Suite 900
Albany, NY 12207-2541

Troutman Pepper Locke LLP
Attn: Bennet J. Moskowitz, Esq.
875 3rd Avenue
New York, NY 10022-6225

Re: Williams v Board of Elections
Mo. No. 2026-89

Dear Counselors:

Enclosed is this Court's order concerning the appeals and motions in the above title. The transfer of the appeals does not relieve appellants and intervenors-appellants of the responsibility to timely pursue the appeals, if desired, to the Appellate Division. You may wish to contact the Clerk of the Appellate Division, First Department, regarding the appropriate procedure to follow in that court.

Very truly yours

Heather Davis

HD/RMM/mht:
encl.
cc: Appellate Division, First Department
Christopher D. Dodge, Esq.
Brian L. Quail, Esq.
Andrea Trento, Esq.

State of New York
Court of Appeals

Decided and Entered on the eleventh day of February, 2026

Present, Hon. Rowan D. Wilson, *Chief Judge,* ***presiding.***

Mo. No. 2026-89
Michael Williams, et al.,
Respondents,
v.
Board of Elections of the State of New York, et al.,
Respondents,
Peter S. Kosinski, et al.,
Appellants,
Nicole Malliotakis, et al.,
Intervenors-Appellants.

Appellants Peter S. Kosinski, et al. and Intervenors-Appellants Nicole Malliotakis, et al. having appealed to the Court of Appeals and moved for a stay and Respondents Michael Williams, et al. having cross-moved to vacate any automatic stay in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeals are transferred, without costs, to the Appellate Division, First Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (*see* NY Const, art VI, §§ 3 [b] [2], 5 [b]; CPLR 5601 [b] [2]);

and it is further

ORDERED, that the motions for a stay are dismissed as academic; and it is further

ORDERED, that the cross-motion to vacate any automatic stay is dismissed as academic.

Heather Davis
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

-against-

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,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenor-Respondents.

Appellate Division Case No.: 26-00384

NY County Index No.: 164002/2025

APPELLANTS-RESPONDENTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR A DISCRETIONARY STAY AND LEAVE TO APPEAL, AND IN OPPOSITION TO CROSS-MOTION TO VACATE AUTOMATIC STAY

[*counsel for Appellants-Respondents are listed on the following page*]

Of Counsel:
Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.

CULLEN AND DYKMAN LLP
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440

Counsel to Appellants-Respondents Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III

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PRELIMINARY STATEMENT

Appellants respectfully submit this reply memorandum of law in further support of their motion for a stay pending appeal and for leave to appeal, and in opposition to Petitioners' cross-motion seeking to lift the automatic stay pursuant to CPLR 5519(c). Appellants adopt and expressly incorporate herein the arguments made by the Intervenor-Respondents in their reply and opposition to the cross-motion.

As Appellants explained in their moving papers, Supreme Court's Order is so deeply and irremediably flawed that it cannot possibly be affirmed. Among the many independent reasons for reversal, its cart-before-the-horse approach of finding liability without proof of a viable, undiluted alternative is one of its most fundamentally egregious errors. Even the *amici* who proposed Supreme Court's adopted standard, Harvard Law School Professors Nicholas Stephanopoulos and Ruth Greenwood, and who "support the development of racial vote dilution claims under the New York Constitution," felt compelled to advise this Court that Supreme Court's Order is erroneous. As they explain, Supreme Court "*went astray*," "*made a serious mistake in its decision*," and "*failed to apply its own standard* before imposing liability."[1] This is because Supreme Court incorrectly "believed that vote

[1] NYSCEF Doc. No. 31, Amicus Brief of Ruth Greenwood and Nicholas Stephanopoulos, dated February 4, 2026 ("Harvard Profs' Amici Brief"), at 3, 12, 19 (emphasis added).

dilution liability could be proven solely based on racially polarized voting, historical and ongoing discrimination, and a lack of current representation for minority voters—without determining whether a coalition crossover district could actually be drawn."[2] Supreme Court's approach, they add, "*is at odds with both the concept of, and the case law on, vote dilution*" because "a group's representation can be deemed diluted only if a showing has been made that a reasonable alternative policy would improve the group's representation."[3] Appellants made this same point in their moving papers.[4] For this reason, Professors Greenwood and Stephanopoulos agree that "*Congressional District 11 should not be invalidated* unless and until a court concludes that this standard has been met."[5]

This error is so bungling that another set of *amici*—"national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims," including the New York Civil Liberties Union, the NAACP Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Asian American Legal Defense and Education Fund—also argue that Supreme Court's Order is fundamentally flawed.[6] These civil rights and racial justice Amici agree with

[2] *Id.* at 3.
[3] *Id.* at 3 (emphasis added).
[4] Appellants' Mem. at 20-23.
[5] Harvard Profs' Amici Brief at 4 (emphasis added).
[6] NYSCEF Doc. No. 36, Amicus Brief of New York Civil Liberties Union, the NAACP Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Asian American Legal Defense and Education Fund, dated February 4, 2026 ("Civil Rights and Racial Justice Groups' Amici Brief"), at 1.

Appellants and Professors Greenwood and Stephanopoulos that Supreme Court "*ignored an essential prerequisite to proving vote dilution: evidence that there is an effective remedy for the alleged dilution.*"[7] They likewise explain that a crossover vote dilution claim "requires proof from a petitioner that it is possible to draw a reasonable crossover district that would enable the minority group to elect their candidates of choice."[8] "But Supreme Court skipped this necessary step in its liability analysis."[9]

Petitioners do not seriously contend with this fatal error in their sixty-page brief. Instead, in a footnote, they wave away the critiques of Professors Greenwood and Stephanopoulos as mere "scholarly concerns."[10] And they do not offer any argument or authority opposing Appellants' showing that they cannot establish a *prima facie* case without proof that an alternative, undiluted practice is reasonably available.

For these reasons, set forth in detail below, this Court should deny Petitioners' cross-motion and grant Appellants' motion seeking a stay of those portions of the Order not automatically stayed by CPLR 5519(a)(1).

[7] Civil Rights and Racial Justice Groups' Amici Brief at 2 (emphasis added).
[8] *Id.* at 3.
[9] *Id.* at 3.
[10] Petitioners' Mem. at 21 n 11.

ARGUMENT

I. Appellants are likely to prevail on the merits

As demonstrated in Appellants' memorandum of law in support of their motion for a stay, Petitioners are not likely to succeed on the merits.

A. Supreme Court very clearly violated due process in adopting an entirely new, unbriefed standard

Petitioners do not dispute that Supreme Court rejected the only legal standard they advanced—the New York Voting Rights Act ("NYVRA"). Instead of then dismissing this proceeding, and without notice or supplemental briefing, Supreme Court concocted an entirely new, explicitly race-based standard for which no party had advocated and that Appellants were denied any opportunity to litigate. This radical departure from the party presentation principle constitutes reversible error.

Petitioners exclusively argued throughout this proceeding that the NYVRA's standards should govern Article III, § 4(c)(1) vote dilution claims. Petitioners structured their entire case—their pleadings, proof, expert testimony, and requested remedy—around the NYVRA's relaxed analytical framework. In turn, Appellants and Intervenors tailored their motions to dismiss, constitutional arguments, expert submissions, and trial strategies to that theory.

Supreme Court expressly rejected Petitioners' proposed standard. It found that applying the NYVRA's framework to Article III, § 4(c)(1) "is impermissible" because the NYVRA "was passed years after the redistricting amendments were

ratified" and the constitutional text specifically subjects redistricting to "the federal constitution and statutes" with "no mention of state statutes" (Order at 5). Supreme Court further agreed with Appellants that the exclusion of state legislation from Article III, § 4(c)(1)'s text was intentional.

At that point, having rejected the only standard Petitioners advanced and briefed, due process and the party presentation principle required dismissal. Instead, without any notice to the parties and without requesting supplemental briefing, Supreme Court fabricated from whole cloth an entirely new, explicitly race-based three-pronged standard for Article III, § 4(c)(1) claims. This novel standard requires: (1) that "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election"; (2) that "these candidates must usually be victorious in the general election"; and (3) that "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates" (Order at 15).

This "radical transformation" of the case went "well beyond the pale" (*United States v Sineneng-Smith*, 590 US 371, 380 [2020]). Appellants submitted expert reports on the NYVRA standards that Petitioners put in their petition and Appellants submitted detailed briefing on how the court should interpret Article III, § 4(c)(1). Appellants had no notice—let alone an opportunity to be heard—regarding the novel three-pronged crossover district standard Supreme Court ultimately adopted.

Petitioners attempt to deflect this fundamental due process error by arguing that courts have "an independent duty to construe the meaning of a constitution or statute, regardless of party argument."[11] While it is true, of course, that "the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law," (*Kamen v Kemper Fin. Services, Inc.*, 500 US 90, 99 [1991]), Petitioners' reliance on this proposition conflates a court's authority to interpret governing law with its obligation to decide cases based on the claims and defenses the parties actually present. Petitioners cite no authority for the proposition that due process permits a court to fabricate a new standard after trial and impose liability based on that standard, particularly in the absence of any trial evidence satisfying that standard.

Tellingly, Petitioners effectively concede that they failed to offer proof that satisfies Supreme Court's standard focused on primary elections. Petitioners' evidence addressed only general elections. Dr. Palmer, Petitioners' principal expert, analyzed twenty general elections from 2017 to 2024—but did not analyze any primary elections.[12] Mr. Cooper, Petitioners' map-drawer, did not analyze any election results.[13] There is no record evidence on whether minority voters could

[11] Petitioners' Mem. at 22.
[12] Faso Aff. Exs. H, I.
[13] Faso Aff. Ex. C, Tr. 363:33-364:6.

select their candidates of choice in primaries or whether minority voters would be decisive in primary outcomes. Appellants had no reason to address these issues because Petitioners never raised them and never offered evidence concerning them. Thus, Supreme Court's surprise adoption of a standard that turns on primary-election decisiveness is the antithesis of due process.

Recognizing this major problem, Petitioners are left with few options to defend Supreme Court's decision. This forces Petitioners to take the unbelievable position that Supreme Court's standard is merely "*guidance* to the IRC on how to craft a remedial crossover district."[14] As detailed in the following section, this is utterly nonsensical, violates settled state and federal precedents requiring proof of an available remedy, and, tellingly, the *amici* who proposed the standard sharply disagree with Petitioners' position.

B. Petitioners failed to establish a *prima facie* case of vote dilution

It is well-settled that, in vote dilution cases, the inquiries into liability and remedy are inseparable (*Thornburg v Gingles*, 478 US 30, 51 n 17 [1986]; *Nipper v Smith*, 39 F3d 1494, 1530-31 [11th Cir 1994] ["The inquiries into remedy and liability, therefore, cannot be separated . . . ."]). A plaintiff must, therefore, demonstrate the existence of a workable remedy to establish a *prima facie* case (*Nipper*, 39 F3d at 1530). Without such a showing, the challenged voting practice

[14] Petitioners' Mem. at 20 (emphasis added).

cannot be deemed responsible for the alleged dilution (*Gingles*, 478 US at 51 n 17; *Nipper*, 39 F3d at 1530-1531).

Supreme Court's decision upends this entire framework and has drawn sharp criticism from election law experts and civil rights groups alike. For example, Amici Professors Greenwood and Stephanopoulos, as well as the New York Civil Liberties Union, NAACP and allied organizations, agree that this was a serious legal error. And it's not even close. Neither Petitioners nor Supreme Court has identified any vote dilution case where liability was established without first establishing the existence of a reasonable alternative.

Petitioners strain to defend this mess. They argue that all they "had to show was that another permissible configuration *could* be drawn that would remedy the vote dilution the Supreme Court decisively concluded Petitioners had already proven," citing *Clarke v Town of Newburgh* (237 AD3d 14, 39 [2d Dept 2025]) (Petitioners' Mem. at 43). But this entirely misses the point. "[T]he very concept of vote dilution implies—and, indeed, necessitates—the existence of an undiluted practice against which the fact of dilution may be measured," and a plaintiff establishes this element through an illustrative, "reasonable alternative voting practice to serve as the benchmark undiluted practice" (*Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] [internal citation omitted] *affd sub nom.*, 601 Fed Appx 255 [5th Cir 2015]). As *Clarke* explains, plaintiffs are required

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*, 237 AD3d at 39, quoting Elec. Law § 17-206 [5] [a] [emphasis added]; *see also Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167, 1172 [Sup Ct 2025] [finding there is no NYVRA violation unless petitioners can show a viable alternative map]). Under Supreme Court's standard, that "alternative practice" requires minority voters to be "decisive" in primary races, which is something Petitioners' map indisputably did not show (Order at 15). Instead, they proffered a map that purported to remedy vote dilution by joining minority voters with politically aligned white voters—a standard that Supreme Court did not adopt and, in fact, expressly rejected.

Significantly, and notwithstanding their present attempts to downplay the necessity of a viable alternative map, at every step of this litigation until now, Petitioners recognized that an illustrative map is necessary to prove their case. Before trial, Petitioners expressly argued that their "Illustrative Map is submitted for the sole purpose of showing that the racial vote dilution in CD-11 *can be remedied*."[15] Likewise, in their opening statement at trial, Petitioners admitted that they offered the Illustrative Map to "show[] that it is entirely possible *to remedy* the racial vote dilution in Congressional District 11."[16] Again, in their briefing on

[15] Petitioners' Reply Mem. in Support of Petition at 16 (NYSCEF Doc. No. 154) (emphasis added).
[16] Faso Aff. Ex. B, Tr. 9:2-6 (emphasis added)

available remedies, Petitioners quoted *Clarke* to argue they "offered the Illustrative Map for the limited purpose of showing that 'vote' dilution has occurred and that there is an alternative map that would allow Black and Latino voters to have equitable access to fully participate in the electoral process."[17] Petitioners further argued that they "met their constitutional burden because the Illustrative Map *would* remedy the unconstitutional dilution of Black and Latino voting strength in CD-11."[18] And, in their post-trial submission, under the heading "Relevant legal principles," Petitioners argued that they "established that it is feasible to enact an 'alternative map' that 'would allow the minority group to 'have equitable access to fully participate in the electoral process.'"[19] Petitioners further admitted that presenting an alternative map is their "burden" and argued that they satisfied that burden by "show[ing] that such an alternative map *could* be drawn in a way that remedies the challenged racial vote dilution . . . and that adheres to the other traditional redistricting criteria prescribed by New York law."[20]

Thus, Petitioners have already conceded that it was their burden to prove the existence of viable alternative as part of their *prima facie* case. Since it is undisputed that the map they offered does not establish an alternative that complies with

[17] Petitioners' Remedy Mem. at 4 (brackets in original) (NYSCEF Doc No. 203).
[18] Petitioners' Remedy Mem. at 4 (emphasis in original).
[19] Petitioners' Post-Trial Mem. at 44 (NYSCEF Doc. No. 208).
[20] Petitioners' Post-Trial Mem. at 44 (emphasis added).

Supreme Court's standard, Petitioners failed to meet their burden as a matter of law.[21]

Petitioners attempt to sidestep this fatal defect by characterizing Supreme Court's standard as merely a set of "guardrails for the IRC and the Legislature to consider."[22] This characterization cannot be squared with the plain language of Supreme Court's Order, which directs "that the Independent Redistricting Commission *shall* reconvene to complete a new Congressional Map *in compliance with* this Order"(Order at 18 [emphasis added]). "Compliance with this Order" can only be understood to mean that the IRC must draw a map that remedies the alleged vote dilution according to Supreme Court's three-pronged standard.

For the same reasons, Supreme Court erred by imposing liability without finding that the Illustrative Map, or some other map, meets its own test. Despite adopting a standard that turns on whether a lawful crossover district can be drawn, Supreme Court declared the current plan unconstitutional without making that required finding.

[21] Petitioners respond that the Illustrative Map is "just one way" to grant relief and that "the IRC and Legislature would have a range of options at their disposal to correct the defects plaguing the 2024 map" (Petitioners' Mem. at 12). But this misses the point. The question is not whether some district can be drawn, but whether a district satisfying Supreme Court's standard can be drawn. Petitioners bore the burden of proving that is possible (*see Nipper*, 39 F3d at 1530–31). They cannot shift that burden to the IRC.

[22] Petitioners' Mem. at 21 n 11.

This error is not merely a "scholarly concern[]."[23] The rule that plaintiffs must prove a viable alternative at the liability stage serves critical purposes. As the Amici explain, "a viable remedy confirms the congressional map is the actual cause of the racial dilution, ensures the voter dilution can be adequately redressed in a manner that comports with state and federal laws, and prevents partisan manipulation."[24] This is why voter dilution claims require proof a viable alternative before liability may be established (*see e.g.*, *Gingles*, 478 US at 51 n 17; *Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] *affd sub nom.*, 601 Fed Appx 255 [5th Cir 2015]; *Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167, 1173 [Sup Ct 2025] [finding the NYVRA only "allows the court to implement an appropriate remedy" after the petitioners have established a viable alternative]).

C. Supreme Court's Order violates the Equal Protection Clause

Petitioners cannot demonstrate a likelihood of success on the merits because Supreme Court's remedy is an unconstitutional racial classification that triggers strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

According to Petitioners, this argument is "premature" because this Court "must wait to see what the remedial district actually looks like before rushing to

[23] Petitioners' Mem. at 21 n 11.
[24] Civil Rights and Racial Justice Groups' Amici Brief at 1-2.

declare it unlawful."[25] But this is nonsensical. By its express terms, the Order makes race the predominant consideration for at least three independent reasons.

First, Supreme Court's own words establish that race is not merely a consideration but the determinative criterion governing any remedial map. The Order expressly contemplates "adding Black and Latino voters from elsewhere" (Order at 13). This language does not reflect neutral awareness of demographics—it establishes an explicit racial mandate. Supreme Court further directed that the remedy "must" include "a sufficiently large portion of the [minority] population of the district's voting population that they would be able to influence electoral outcomes" (Order at 13). Any map that fails to meet this racial requirement will, by definition, fail to comply with the Order. Race is therefore not one factor among many—it is the *sine qua non* of compliance.

Second, Supreme Court's three-pronged standard for crossover districts is facially race-based. Under that standard: (1) "minority voters (including from two or more ethnic groups)" must be "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" (Order at 15). Each prong turns entirely on the racial composition of the electorate. The

[25] Petitioners' Mem. at 47.

standard mandates that district lines be drawn to ensure that certain racial groups achieve a specified level of electoral influence. These explicit racial classifications trigger strict scrutiny under established precedent (*Shaw v Hunt*, 517 US 899, 907 [1996] ["[S]trict scrutiny applies when race is the 'predominant' consideration in drawing the district lines"] [internal citation omitted]).

And, third, Supreme Court expressly directed the IRC to achieve racial outcomes. Any map-drawer attempting to comply with the Order must consult racial data, determine how many "Black and Latino voters from elsewhere" to add, and configure district lines to ensure that minority voters are "decisive" in primary elections and that minority-preferred candidates "usually" win general elections. There is no way to comply with this mandate without using race as the predominant—indeed, the sole—criterion for line-drawing. And, tellingly, Supreme Court's Order *did not* discuss whether such a district must be drawn in compliance with traditional redistricting principles *nor* did it direct IRC to comply with these requirements. That is the very definition of racial predominance (*see Miller v Johnson*, 515 US 900, 917 [1995]).

Petitioners invoke *Allen v Milligan* (599 US 1 [2023]) and related precedent for the proposition that map-drawers need not be "entirely 'blind' to race" when remedying vote dilution.[26] But this argument conflates awareness of race with

[26] Petitioners' Mem. at 48-50.

predominance of race (*Allen*, 599 US at 33 ["The line that we have long drawn is between consciousness and predominance [of race]."]). The question is not whether a map-drawer may consider race at all. It is whether race has become the "criterion that . . . could not be compromised," such that "race-neutral considerations came into play only after the race-based decision had been made" (*Bethune-Hill v Virginia State Bd. of Elections*, 580 US 178, 189 [2017] [internal citation and punctuation omitted]).

Here, Supreme Court's order leaves no room for doubt. Supreme Court has not merely permitted race-consciousness—it has commanded a specific racial outcome. Any map that does not "add[] Black and Latino voters from elsewhere" and ensure that minority voters are "decisive" in primaries will fail to comply (Order at 13, 15). Thus, race is not one consideration among many, but the only consideration that matters for purposes of compliance with the Order. That racial predominance triggers strict scrutiny (*Cooper v Harris*, 581 US 285, 300-01, 137 S Ct 1455, 1469, 197 L Ed 2d 837 [2017] ["Faced with this body of evidence—showing an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites—the District Court did not clearly err in finding that race predominated in drawing District 1. Indeed, as all three judges recognized, the court could hardly have concluded anything but."]).

Petitioners also argue that compliance with traditional redistricting criteria can "defeat a claim that a district has been gerrymandered on racial lines."[27] But that principle applies where race is one factor among several in a holistic redistricting process, not where a court has issued a racial mandate that controls the entire enterprise (*Bethune-Hill*, 580 US at 189–90). Indeed, "[r]ace may predominate even when a reapportionment plan respects traditional principles" if "race was the criterion that . . . could not be compromised" (*id.* at 189 [internal citation omitted]).

That is precisely the situation here. No matter how compact or respectful of communities of interest a proposed map might be, it will fail to comply with Supreme Court's Order unless it achieves the court's racial mandate.

For this reason, Petitioners' contention that this Court must presume that the IRC and Legislature will not allow race to predominate is misplaced.[28] That presumption applies when assessing a legislature's own redistricting decisions. It does not insulate a court's explicit racial mandate from constitutional scrutiny. And the Supreme Court has not given the IRC or the Legislature any leeway to avoid subordinating race-neutral districting criteria to race. It has told the IRC exactly what racial outcome it must achieve. In the event the IRC complies with the Order, there will be no ambiguity about legislative intent because the court's intent is stated on

[27] Petitioners' Mem. at 49.
[28] Petitioners' Mem. at 50-51.

the face of its Order. Simply put, the presumption of good faith cannot shield a judicially compelled racial classification from strict scrutiny.

Petitioners also fail to establish that Supreme Court's remedy satisfies strict scrutiny. They assert that compliance with the NY Constitution is a compelling interest analogous to compliance with the federal Voting Rights Act.[29] But even if that were so, there must be a "strong basis in evidence" for concluding that race-based action is necessary (*Cooper v Harris*, 581 US 285, 292 [2017]; *see also Shaw v Hunt*, 517 US 899, 915 [1996]).

Here, Supreme Court imposed liability without finding that any compliant crossover district can be drawn, and Petitioners offered no evidence that minority voters would be "decisive" in primary elections under any proposed map. Without a determination that a lawful alternative district exists, there is no strong basis in evidence for race-based redistricting.

Moreover, Supreme Court's reliance on "generalized assertion[s] of past discrimination" is insufficient (*Shaw*, 517 US at 909). A state "must identify that discrimination, public or private, with some specificity before [it] may use race-conscious relief" (*id.* at 909 [internal citation and punctuation omitted]). While Petitioners offered evidence of historical discrimination in Staten Island, they offered no evidence, much less "strong evidence," linking that discrimination to the

[29] Petitioners' Mem. at 51.

specific district lines at issue or demonstrating that race-based redistricting is necessary to remedy it.

Even assuming a compelling interest exists, the trial court's remedy is not narrowly tailored. Narrow tailoring requires that the use of race not go "beyond what was reasonably necessary" (*Shaw v Reno*, 509 US 630, 655 [1993]; *see also Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 207 [2023] [narrow tailoring means that the use of race is "necessary" to achieve a compelling interest]).

Petitioners failed to submit any evidence showing that race-based redistricting is "necessary" to achieve any interest, and Supreme Court did not make any such finding. Moreover, Supreme Court's standard is untethered to any limiting principle. It demands that minority voters be "decisive" in primary elections and that minority-preferred candidates "usually" win general elections without regard to whether such a drastic remedy is necessary to cure any purported constitutional violation, (Order at 15), and neither Petitioners nor Supreme Court examined whether a race-neutral alternative could address the alleged vote dilution (*see Alabama Legislative Black Caucus v. Alabama*, 575 US 254, 279 [2015] [holding that asking the "wrong question"—how to maintain minority percentages rather than what is necessary to preserve minority electoral opportunity—"may well have led to the wrong answer"

and rejecting the district court's "'compelling interest/narrow tailoring' conclusion"]).

II. There is no basis to vacate the automatic stay

Under CPLR 5519(a)(1), an appeal by "the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state" automatically stays enforcement of the order or judgment appealed from. This automatic stay "expresses a public policy designed to protect a 'political subdivision of the state,' and such a stay is not lightly to be vacated" (*DeLury v City of New York*, 48 AD2d 405 [1st Dept 1975]).

An automatic stay may be vacated only upon a showing of "[a] reasonable probability of ultimate success in the action, as well as the prospect of irreparable harm" (*id.*). Where, as here, the stay is triggered by an appeal by an "officer or agency of the state" under CPLR 5519(a)(1), the movant must also overcome the presumption that "the public interest and welfare require that the affairs of the . . . [government] be conducted in a normal and orderly manner" (*Freeman v Lamb*, 33 AD2d 974, 975 [4th Dept 1970]).

As set forth above, *supra* Point I, Petitioners cannot establish a reasonable probability of ultimate success. And as explained below, Petitioners cannot establish irreparable harm or that the equities weigh in favor of lifting the stay. For these reasons, Petitioners' cross-motion should be denied.

A. Petitioners' nineteen-month delay defeats any claim of irreparable harm

Supreme Court's Order is so badly flawed that the analysis should end here. But even if this Court were to determine somehow that Petitioners are likely to succeed on the merits, vacating the stay is not warranted because Petitioners' delay in bringing this proceeding negates their claim of irreparable harm.

Petitioners inexplicably waited nineteen months after the 2024 Congressional Map was enacted before filing this proceeding. Courts routinely hold that a plaintiff's delay in seeking relief undercuts the urgency of the alleged harm. Injunctive relief is "generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights" (*Citibank, N.A. v Citytrust*, 756 F2d 273, 276 [2d Cir 1985]). "Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action" (*id.*). The Second Circuit has emphasized that a party's "failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury" (*id.* at 277 [internal citation and punctuation omitted]). Indeed, delay, "standing alone, . . . suggests that there is, in fact, no irreparable injury" (*Tough Traveler, Ltd. v Outbound Products*, 60 F3d 964, 968 [2d Cir 1995] [internal citation and punctuation omitted]).

Courts have found that even modest delays defeat claims of irreparable harm. Even where there is a presumption of irreparable harm, "delays of as little as ten

weeks [are] sufficient to defeat the presumption of irreparable harm" (*Weight Watchers Intern., Inc. v Luigino's, Inc.*, 423 F3d 137, 144 [2d Cir 2005]). In *Citibank*, the Second Circuit found that a mere ten-week delay—combined with knowledge of the defendant's conduct for nine months prior—negated the presumption of irreparable harm (756 F2d at 276). Thus, even if Petitioners were entitled to a presumption that their purported voting rights injury constitutes irreparable harm, their inexplicable and unexplained delay in bringing this proceeding negates any claim of irreparable harm.

B. The equities weigh in favor maintaining the status quo by keeping the automatic stay in place and allowing elections to proceed

Petitioners cross-motion to lift the automatic stay of the IRC directive rests on a fundamental misunderstanding of what the "status quo" means in this context and which course of action will actually avoid disruption to New York's 2026 elections. Petitioners argue that the solution is to lift the automatic stay of the IRC directive so that the IRC can craft a map pursuant to Supreme Court's new, untested, and dubious standard. But this argument ignores the reality that the IRC cannot produce a valid remedial map—either on the timeline required to meet the February 24, 2026 election start date or under the legally deficient standard Supreme Court announced. The only path that preserves the status quo, avoids guaranteed electoral disruption, and protects the rights of voters and candidates statewide is to (1) maintain the automatic stay of the IRC directive and (2) stay the prohibitory injunction so that

elections may proceed under the existing, legislatively enacted map pending appellate review.

Any other result guarantees widespread confusion and disruption. First, the IRC cannot produce a map that satisfies Supreme Court's standard because Petitioners themselves never offered—and Supreme Court never found—evidence that any map can satisfy the standard. Thus, the IRC is being asked to produce a map that satisfies a standard that has never been tested against any evidentiary record. This is a recipe for further litigation, further delay, and further chaos—not "orderly elections."[30]

Second, even if the IRC could produce a map, the timeline makes orderly implementation impossible. At this point, it is impossible for the IRC to complete a map in time for petitioning to begin on February 24, 2026, particularly since it's yet to be determined whether drawing such a map is even possible.

The "public policy underlying" the automatic stay is "to stabilize the effect of adverse determinations on governmental entities" (*Summerville v City of New York*, 97 NY2d 427, 434 [2002]). That purpose is served here by maintaining the automatic stay of the IRC directive and lifting the prohibitory injunction so that elections may proceed under the existing map. This is the only path that truly stabilizes New York's electoral system pending appellate review. It preserves the status quo and avoids the

[30] Petitioners' Mem. at 4.

chaos, confusion, and uncertainty Petitioners ask this Court to unleash across New York.

Since Petitioners created this crisis through their own nineteen-month delay, the equities cannot favor Petitioners.

III. This Court should grant leave to appeal to the Court of Appeals

For the reasons explained in Intervenors' reply memorandum of law, this Court should grant leave to appeal to the Court of Appeals.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant Appellants' motion for a stay pending appeal and for leave to appeal to the Court of Appeals, deny Petitioners' cross-motion, and grant such other and further relief as this Court deems equitable or appropriate.

Dated: February 6, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*
Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9416
nfaso@cullenllp.com
cbuckey@cullenllp.com

Attorneys for Appellants Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III

PRINTING SPECIFICATIONS STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: February 6, 2026

New York Supreme Court

APPELLATE DIVISION — FIRST DEPARTMENT

Case No. 2026-00384

MICHAEL WILLIAMS, JOSÉ RAMÍREZ-GAROFALO, AIXA TORRES, and MELISSA CARTY,

Petitioners-Appellees,

against

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,

(Caption Continued on the Reverse)

REPLY AFFIRMATION OF BENNET J. MOSKOWITZ IN SUPPORT OF EMERGENCY MOTION FOR INTERIM STAY, STAY, AND LEAVE TO APPEAL AND IN OPPOSITION TO CROSS-MOTION TO VACATE STAY

TROUTMAN PEPPER LOCKE LLP
Attorneys for Intervenors-Respondents-Appellants
875 Third Avenue
New York, New York 10022
212-704-6000
bennet.moskowitz@troutman.com

Date Completed: February 6, 2026

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 NEW YORK STATE SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE 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-Appellants,

and

REPRESENTATIVE NICOLE MALLIOTAKIS, EDWARD L. LAI, JOEL MEDINA, SOLOMON B. REEVES, ANGELA SISTO, and FAITH TOGBA,

Intervenors-Respondents-Appellants.

AFFIRMATION OF BENNET J. MOSKOWITZ IN SUPPORT OF REPLY IN SUPPORT OF EMERGENCY MOTION FOR INTERIM STAY, STAY, AND LEAVE TO APPEAL AND IN OPPOSITION TO CROSS-MOTION TO VACATE STAY

BENNET J. MOSKOWITZ, an attorney duly admitted to practice in the Courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am a Partner at the law firm Troutman Pepper Locke LLP, counsel for Appellants-Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, the "Intervenor-Respondents") in this proceeding.

2. I submit this Affirmation solely to present to the Court information and materials relating to Intervenor-Respondents' Reply in Support of Emergency Motion for Interim Stay, Stay, and Leave to Appeal, which materials are attached hereto as described below. I am fully familiar with the facts and circumstances set forth herein.

3. A true and correct copy of the version of Professors Greenwood and Stephanopoulos' Proposed Appellate Division Amicus Memorandum of Law, submitted to this Court on February 4, 2026, is attached hereto as **Exhibit A**, originally filed as NYSCEF No.33. The Clerk has returned this filing for correction. As of the time of this filing, Professors Greenwood and Stephanopoulos have not re-filed the document.

I affirm this 6th day of February 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, NY 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Counsel for Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

EXHIBIT A

Court of Appeals Docket No. 2026-00010
On Appeal from the New York Supreme Court, Index No. 164002/2025
Appellate Division – First Department, Docket No. 26-00384

Court of Appeals

State of New York

MICHAEL WILLIAMS, ET AL.,

Petitioners-Respondents,

against

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, ET AL.,

Respondents,

and

PETER S. KOSINSKI, ANTHONY J. CASALE, AND RAYMOND J. RILEY III,

Respondent-Appellants,

and

REPRESENTATIVE NICOLE MALLIOTAKIS, ET AL.,

Intervenor-Appellants.

PROPOSED BRIEF OF RUTH GREENWOOD AND NICHOLAS STEPHANOPOULOS AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

Counsel for Proposed Amici Curiae

Dated February 4, 2026

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STATEMENT OF INTEREST

Amici curiae are law professors who research, write about, and litigate using federal and state voting rights acts. They have a longstanding interest in the development and application of vote dilution doctrine.

Amicus curiae Nicholas O. Stephanopoulos is the Kirkland & Ellis Professor of Law at Harvard Law School. His works on federal and state voting rights acts include *Race, Place, and Power*, 68 Stan. L. Rev. 1323 (2016), *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862 (2021) (with Jowei Chen), and *Voting Rights Federalism*, 73 Emory L J. 299 (2023) (with Ruth M. Greenwood).

Amicus curiae Ruth M. Greenwood is an Assistant Clinical Professor of Law at Harvard Law School and the Director of the Election Law Clinic, also at Harvard Law School. Her works on federal and state voting rights acts include *Fair Representation in Local Government*, 5 Ind. J.L. & Soc. Equal. 197 (2017), and *Voting Rights Federalism*, 73 Emory L.J. 299 (2023) (with Nicholas O. Stephanopoulos).

Together, Amici make two points about the Supreme Court's decision in this case. First, the court correctly construed Petitioners' claim as a claim for a coalition crossover district and set forth the proper standard for this kind of allegation. Second, however, the court failed to apply the standard it laid out because it

believed this analysis could be deferred to the remedial stage of the litigation. In fact, before *liability* may be imposed in a vote dilution suit, it must be clear that a reasonable alternative policy exists that would cure the plaintiffs' harm.

INTRODUCTION

The Supreme Court was confronted with a complex and novel case. Petitioners are the first to assert a vote dilution claim under Article III, Section 4(c)(1) of the New York Constitution. Their presentation of this claim was also ambiguous. At times, their filings seemed to seek the creation of a coalition crossover district: a district in which a coalition of minority groups, together comprising less than fifty percent of the district's population, would in fact be able to elect the groups' mutually preferred candidate. At other times, Petitioners' filings appeared to ask for an influence district: a district in which minority voters are able to exert substantial influence over electoral outcomes but *not* to elect their candidate of choice.

In the face of this uncertainty, the Supreme Court correctly construed Petitioners' claim as a coalition crossover claim. *See* NYSCEF Doc. 217 at 14. Not only is this type of claim more consistent with the language of Article III, Section 4(c)(1), most of Petitioners' materials emphasized minority voters' potential opportunity to elect their preferred candidate in a reshaped district. This

opportunity to elect is a hallmark of a coalition crossover district—and its absence is the defining characteristic of an influence district. The Court also set forth the proper standard for a coalition crossover claim. A hypothetical district qualifies as a coalition crossover district only if (1) a coalition of minority groups, amounting to less than fifty percent of the district's population, would usually be able to nominate the groups' mutual candidate of choice in the primary election; and (2) this candidate would usually prevail in the general election. *See id.* at 15.

The Supreme Court went astray, however, when it thought this standard had been satisfied. The court believed that vote dilution liability could be proven *solely* based on racially polarized voting, historical and ongoing discrimination, and a lack of current representation for minority voters—*without* determining whether a coalition crossover district could actually be drawn. In the court's view, this determination should be made at the remedial, not the liability, stage. But this position is at odds with both the concept of, and the case law on, vote dilution. A group's representation can be deemed diluted only if a showing has been made that a reasonable alternative policy would improve the group's representation. As the California Supreme Court recently put it, "what is required to establish 'dilution' . . . is proof that, under some lawful alternative electoral system, the protected class would have the potential . . . to elect its preferred candidate." *Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 60 (Cal. 2023).

True, district configuration and performance must *also* be evaluated at the remedial stage. The Supreme Court was not wrong about that. But this remedial evaluation cannot substitute for the earlier assessment at the liability stage because they serve different functions. The question at the liability stage is whether a reasonable alternative district exists that could bolster the plaintiffs' representation; only if so can the existing district configuration be dilutive. In contrast, the remedial issue is whether a particular proposed district—like one drawn by the legislature or offered by a party—would in fact cure the identified dilution and be otherwise lawful. Critically, the hypothetical district put forward at the liability stage need not be the same as the remedial district ultimately adopted.

Amici take no position on what result should follow here from the application of the proper standard for coalition crossover claims. Amici's view is simply that Congressional District 11 should not be invalidated unless and until a court concludes that this standard has been met.

ARGUMENT

I. The Supreme Court Correctly Construed Petitioners' Claim and Set Forth the Proper Standard for Coalition Crossover Claims.

A. As flagged above, Petitioners' suit is the first to allege a violation of Article III, Section 4(c)(1) of the New York Constitution. The litigation is novel in other respects as well. Very few vote dilution cases have been brought under state

constitutions (as opposed to state voting rights acts or the federal Voting Rights Act (VRA)). And very few vote dilution cases seeking the creation of crossover districts have been filed since the U.S. Supreme Court held that crossover claims are unavailable under the federal VRA in *Bartlett v. Strickland*, 556 U.S. 1 (2009).

The Supreme Court faced not just a novel suit but also a somewhat confusing one. As amici explained in their brief to that court, Petitioners' filings "freely mix[ed] the concepts of 'opportunity,' 'crossover,' and 'influence,'" sometimes seeming to request a new coalition crossover district, elsewhere appearing to call for a new influence district, and in still other places combining these formulations. NYSCEF Doc. 135 at 7. For example, one paragraph of the petition asserted that liability should arise if a district map "is responsible for the protected class's lack of electoral *influence*." NYSCEF Doc. 1 ¶ 46. The next paragraph switched from the language of "influence" to that of "coalition" and "crossover" claims, stating that "the voters of New York . . . made the choice to go beyond the scope of the federal Voting Rights Act and protect coalition and crossover districts." *Id.* at ¶ 47. Then in their brief, Petitioners typically merged these concepts into a unitary idea, arguing that the current boundaries of Congressional District 11 impair minority voters' ability "to elect candidates of their choice *and* influence elections." NYSCEF Doc. 63 at 8, 10, 15, 19, 21, 26 (emphasis added).

B. By way of background, vote dilution law distinguishes between opportunity districts, influence districts, and all other districts. Minority voters have the ability to elect their candidate of choice in an opportunity district (thanks to the turnout and electoral decisions of minority and non-minority voters alike). In an influence district, minority voters cannot elect their preferred candidate but do have some sway over electoral outcomes (for instance, by blocking the election of their least-preferred candidate). And in all other districts, minority voters can neither elect their candidate of choice nor exert substantial electoral influence.

Opportunity districts, in turn, are divided between majority-minority and crossover districts. Minority voters comprise an outright majority of the population in a majority-minority district. They make up less than fifty percent of the population in a crossover district (and so must rely on some crossover support from white voters to elect their preferred candidate). In both a majority-minority and a crossover district, minority voters can belong to a single racial or ethnic group or to multiple such communities. Where multiple racial or ethnic groups are mutually politically cohesive, and are able to elect their jointly favored candidate, an opportunity district is known as a coalition district. *See, e.g.*, *Bartlett*, 556 U.S. at 13-14 (plurality opinion) (discussing this terminology); NYSCEF Doc. 135 at 8-17 (same).

As noted, crossover claims have been barred under the federal VRA since 2009. The U.S. Supreme Court also does not recognize claims for influence districts under the federal VRA. *See League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 445-46 (2006) (opinion of Kennedy, J.). However, the Court has assumed that coalition claims *may* be brought under the federal VRA, *see, e.g.*, *Growe v. Emison*, 507 U.S. 25, 41 (1993), and most federal courts, including the Second Circuit, agree that these claims are available, *see, e.g.*, *NAACP Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379 (S.D.N.Y. 2020), *aff'd*, 984 F.3d 213 (2d Cir. 2021).

C. Here, amici argued in their Supreme Court brief that Petitioners' claim is best understood as a coalition crossover claim—an allegation that Congressional District 11 is dilutive because it is not an opportunity district and could be replaced by a coalition crossover district in which minority voters *would* be able to elect their candidate of choice. *See* NYSCEF Doc. 135 at 18-19. The court construed Petitioners' claim the same way, stating that it "sees this as a crossover claim." NYSCEF Doc. 217 at 14; *see also id.* at 12-13 (holding that vote dilution was established with respect to a coalition of Black and Latino voters).

The Supreme Court's interpretation of Petitioners' claim was sensible. While their filings were opaque at times, "the thrust of their complaint [was] clearly that a new minority opportunity district (specifically, a coalition crossover district)

should be drawn." NYSCEF Doc. 135 at 19. The phrasing of Article III, Section 4(c)(1) also more plainly authorizes a coalition crossover claim (a type of claim for an opportunity district) than an influence claim. Unlike the New York Voting Rights Act (NYVRA), *see* N.Y. Elec. Law § 17-206(2)(a), the constitutional provision does not use the term "influence." But it does refer to the "opportunity" of "racial or minority language groups" to "elect representatives of their choice." N.Y. Const. art. III, § 4(c)(1). This sentence explicitly contemplates that a claim for an opportunity district may be brought. A coalition crossover claim, again, is merely one such claim.

D. After correctly construing Petitioners' claim, the Supreme Court set forth the proper standard for a coalition crossover claim. A hypothetical district counts as a crossover district if, first, "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election." NYSCEF Doc. 217 at 15. "Second, these candidates must usually be victorious in the general election." *Id.* When these conditions are satisfied, minority voters (whether from a single group or a coalition) are genuinely able to elect their preferred candidates despite comprising less than a majority of the district's population.[1]

[1] The court added a third condition that seems unnecessary to Amici: "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the

As Amici pointed out in their earlier brief, this standard is consistent with the opinions of U.S. Supreme Court justices who have addressed crossover districts. In *LULAC*, Justice Souter argued that a crossover district exists where "minority voters . . . constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election." 548 U.S. at 485-86 (Souter, J., concurring in part and dissenting in part). Justice Souter thereby recognized that minority voters must effectively control a crossover district and that the primary election is often the key to wielding (and ascertaining) control. In *Bartlett*, the plurality cited this passage from Justice Souter's opinion in *LULAC* and confirmed that "some have suggested using minority voters' strength within a particular party as the proper yardstick." 556 U.S. at 22 (plurality opinion). Consideration of both the primary and general elections is also implied by the plurality's understanding of a crossover district as one where the minority population "is large enough" (despite not being a majority) "to elect the candidate of its choice." *Id.* at 13. A minority population is sufficiently large when it can both

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selection of candidates." NYSCEF Doc. 217 at 15. As long as the challenged district is not an opportunity district and a hypothetical district would be one, the hypothetical district would necessarily "increase the influence of minority voters." *Id.* And minority voters are necessarily "decisive in the selection of candidates" when (as required by the first two conditions) their candidates of choice usually prevail in both the primary and the general election. *Id.*

nominate its preferred candidate in the primary and see this candidate take office after the general election.

In the academy, scholars, including one of us, have evaluated whether districts qualify as crossover districts using very similar approaches. In one article, Jowei Chen and amicus Nicholas Stephanopoulos relied on the following working definition of a minority opportunity district: "one where (1) the minority-preferred candidate wins the general election, and (2) minority voters who support the minority-preferred candidate outnumber white voters backing that candidate, provided that (3) minority voters of different racial groups are aggregated only if each group favors the same candidate." Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862, 899 (2021). Any minority opportunity district must satisfy the first element. The second element is the one that ensures that minority voters in a crossover district effectively control the district—because their votes outnumber white voters' votes for the minority-preferred candidate. *See also, e.g.*, Nicholas O. Stephanopoulos, Eric McGhee & Christopher Warshaw, *Non-Retrogression Without Law*, 2023 U. Chi. Legal. F. 267, 269 (using the same definition).

Because these studies sought to make comparisons across states and lacked data from primary elections, they had to approximate control of the primary by asking if more minority voters than white voters backed the minority-preferred

candidate in the general election. Studies of a single state, however, do not face this limitation and do explicitly analyze both primary and general elections. For example, a team of prominent scholars defined a successful outcome for the voters of a minority group in Texas as "one in which the minority-preferred candidate in the primary prevailed in both" that election and the general election. Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 Election L.J. 407, 420 (2021). By "*link*[ing] the primary . . . to the general election," the authors addressed their "main concern here," which was "whether minority-preferred candidates are ultimately elected to office." *Id.* at 416.

A final benefit of this standard is that it eschews racial thresholds for crossover district status. The U.S. Supreme Court is extremely suspicious of such thresholds, viewing them as admissions that race predominated over all other factors. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 299 (2017) (applying strict scrutiny when "the State's mapmakers . . . purposefully established a racial target: African-Americans should make up no less than a majority of the voting-age population"). But this standard does not rely on crude racial quotas. Instead, it asks, as a functional matter, whether minority voters control the primary election because their candidate of choice is usually nominated, and whether they also control the general election because their preferred candidate usually wins that

race, too. Answering these questions requires a sophisticated assessment of voters' likely turnout and electoral decisions. The issues are *not* resolved by simply tabulating a minority group's size.

II. The Supreme Court Erred by Failing to Apply Its Standard for Coalition Crossover Claims.

A. So far, so good. But despite correctly construing Petitioners' claim and setting forth the proper standard for coalition crossover claims, the Supreme Court made a serious mistake in its decision. Fundamentally, the court did not *apply* its own standard. That is, the court did not examine whether the demonstrative district offered by Petitioners was, in fact, a coalition crossover district (and otherwise lawful). This district combines Staten Island with a portion of lower Manhattan rather than southern Brooklyn. *See* NYSCEF Doc. 217 at 13. The court did not consider whether a coalition of minority voters in this district would usually be able to nominate their candidate of choice in the primary election and, if so, whether this candidate would usually prevail in the general election as well.

The Supreme Court did not perform this analysis because it apparently believed that vote dilution liability arises when three elements are present: racially polarized voting, historical and ongoing discrimination highlighted by the totality

of the circumstances, and a lack of current representation for minority voters.[2] *See* NYSCEF Doc. 217 at 8-13 (discussing relevant evidence). These three elements are indeed necessary—but they are insufficient to establish vote dilution liability. What is missing is a showing that minority voters' current underrepresentation could be *ameliorated* by a reasonable alternative policy: here, a new coalition crossover district that complies with all federal and state legal requirements. Without this showing, it might be that no plausible remedy could improve the representation of minority voters in Congressional District 11. In that case, linguistically and legally, one would not say that these voters are the victims of vote dilution since the concept implies the existence of an available undiluted state.

B. Justice Scalia once humorously expressed the idea that vote dilution requires an undiluted baseline at an oral argument. "It seems to me you need a standard for dilution," he told Solicitor General Ken Starr. "You don't know what watered beer is unless you know what beer is, right?" Transcript of Oral Argument at 8, *Chisom v. Roemer*, 501 U.S. 380 (1991) (Nos. 90-757, 90–1032).

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[2] The court also focused on minority voters' lack of representation in Congressional District 11 alone. But vote dilution occurs across multiple districts (typically, a geographic region or an entire jurisdiction). The court should thus have asked whether minority voters are underrepresented in part or all of New York State, not solely in Congressional District 11. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1013-16, 1023-24 (1994) (finding no vote dilution in the Dade County portions of Florida state legislative plans because both Black and Hispanic voters already received close to proportional representation in this area).

In the *Gingles* framework for vote dilution claims under the federal VRA, the first precondition serves the purpose of identifying an undiluted baseline to which the challenged plan is then compared. The first precondition requires a plaintiff to prove that a minority group is "sufficiently large and geographically compact to constitute a majority in [an additional] single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). When a plaintiff makes this showing, "minority voters possess the *potential* to elect [more] representatives" than they do under the "challenged structure or practice." *Id.* n.17. Conversely, if the first precondition is not satisfied, minority voters "cannot claim to have been injured by that structure or practice." *Id.*

The U.S. Supreme Court has confirmed the baseline-identifying function of the first *Gingles* precondition in subsequent cases. In *Growe*, the Court explained that this element is "needed to establish that the minority has the potential to elect a representative of its own choice in [an additional] single-member district." 507 U.S. at 40. "Unless [this] point[] [is] established, there neither has been a wrong nor can be a remedy." *Id.* at 40-41. More recently, in *Allen v. Milligan*, 599 U.S. 1 (2023), the Court observed that "[e]ach *Gingles* precondition serves a different purpose." *Id.* at 18. "The first, focused on geographical compactness and numerosity," does what the Court said in *Growe*: ensure that a hypothetical district map exists that is better in terms of minority representation and still compliant with

traditional line-drawing criteria. *Id.*; *see also, e.g.*, *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997) ("Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must . . . postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice.").

C. While state voting rights acts diverge from the federal VRA in several ways, they share its approach that liability may be imposed only if the existence of a reasonable alternative policy that better represents the plaintiffs is proven. For instance, in the first appellate decision interpreting the NYVRA, the Appellate Division held that, "in order to obtain a remedy under the NYVRA, a plaintiff . . . must show that 'vote dilution' has occurred." *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 39 (2d Dep't 2025). In turn, vote dilution has occurred only if "there is an alternative practice that would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Id.* (quoting N.Y. Elec. Law § 17-206(5)(a)). "Thus," the court concluded, "the NYVRA does not significantly differ from the FVRA in this respect." *Id.*

Similarly, the California Supreme Court held in *Pico Neighborhood Association* that, to succeed under the California Voting Rights Act (CVRA), a plaintiff must do more than show racially polarized voting and a lack of minority representation. "[W]hat is [also] required to establish 'dilution' . . . is proof that,

under some lawful alternative electoral system, the protected class would have the potential . . . to elect its preferred candidate." *Pico Neighborhood Association*, 534 P.3d at 60. According to the court, this element is necessary because, otherwise, "a party [could] prevail based solely on" racially polarized voting and minority underrepresentation "that could not be remedied or ameliorated by any other electoral system." *Id.* at 65. The reasonable-alternative-policy requirement ensures that there could be "a net gain in the protected class's potential to elect candidates under an alternative system." *Id.* at 69; *see also* Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299, 345-46 (2023) (arguing that state voting rights acts plaintiffs should "identify a benchmark relative to which their underrepresentation would be evaluated").

D. Federal and state vote dilution precedents make clear, then, that the Supreme Court erred by imposing liability without first investigating whether Petitioners' demonstrative district qualifies as a coalition crossover district (and is otherwise lawful). Contrary to the court's decision, *see* NYSCEF Doc. 217 at 13-15, this question is part of the *merits* analysis of this (and any other) vote dilution case. It is not an issue that can be deferred to the remedial stage.

That said, the Supreme Court was right that district configuration and performance must be examined anew at the remedial stage. At this stage, a court knows that a new district *could* be drawn that would improve the plaintiffs'

representation and comport with all federal and state requirements. Again, demonstrating this is the whole point of the reasonable-alternative-policy requirement at the liability stage. Now, however, a court must determine whether a proposed remedial district *would* actually cure the vote dilution by bolstering the plaintiffs' representation. This potential district could be enacted by the legislature, put forward by a party, or crafted by the court itself, possibly with the assistance of a special master. Regardless of the remedial district's provenance, the court must ensure that it would fully cure the violation. *See, e.g.*, N.Y. Elec. Law § 17-206(5)(a) ("Upon a finding of a violation . . . the court shall implement appropriate remedies to ensure that voters of [all racial and ethnic groups] have equitable access to fully participate in the electoral process . . .").

Of course, if the remedial district contemplated by the court is the same as the demonstrative district used earlier to satisfy the reasonable-alternative-policy requirement, the liability and remedial analyses are identical. But "the remedy the court ends up selecting . . . need not[] be the benchmark the plaintiff offered to show the element of dilution." *Pico Neighborhood Ass'n*, 534 P.3d at 69. And when the demonstrative district and the potential remedial district are different, the latter may not cure the violation even if the former, had it been adopted, would have done so.

To illustrate, in the *Milligan* litigation in which the U.S. Supreme Court recently reaffirmed the viability of vote dilution claims, the district court initially held that the plaintiffs satisfied the first *Gingles* precondition by offering several demonstrative maps containing two reasonably-configured Black-majority districts (compared to one in the enacted plan). *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 1004-16 (N.D. Ala. 2022), *aff'd sub nom Allen v. Milligan,* 599 U.S. 1 (2023). After liability was found, however, Alabama declined to accept any of the plaintiffs' demonstrative maps, instead ratifying its own new plan. At the remedial stage, the district court rejected this plan on the ground that it did "not completely remedy the likely [federal VRA] violation" because it included only one rather than the necessary two Black opportunity districts. *Singleton v. Allen*, 690 F. Supp. 3d 1226, 1295 (N.D. Ala. 2023).

Accordingly, the Supreme Court was correct that its standard for coalition crossover claims must be applied at the remedial stage to determine if a potential remedial district *would* fully cure a violation. But the court was wrong to think that this standard need only be applied at the remedial stage. To the contrary, it must first be applied at the liability stage to find out if a hypothetical, reasonable district *could* improve the plaintiffs' representation.

E. Amici take no position on what result should follow here from the application of the proper standard for coalition crossover claims. This application

could be conducted by the Supreme Court upon remittitur. It could be conducted by the Appellate Division, to which Intervenor-Respondents have also appealed. *See, e.g.*, *People v. Brenda WW.*, 2025 N.Y. Slip Op. 03643, at 6 (N.Y. June 17, 2025) ("The Appellate Division has the same factfinding ability as the trial courts, and its factual review is plenary."). Or this Court could apply the proper standard if doing so would involve "a proposition of law which appeared upon the face of the record and which could not have been avoided if brought to the attention of . . . the court below." *Persky v. Bank of Am. Nat'l Ass'n*, 261 N.Y. 212, 218 (1933). Amici's view is simply that Congressional District 11 should not be invalidated unless and until a court concludes that this standard has been met.

CONCLUSION

In this complex and novel case, the Supreme Court correctly construed Petitioners' claim as a claim for a coalition crossover district and set forth the proper standard for this kind of allegation. However, the court failed to apply its own standard before imposing liability, mistakenly believing that this application could be postponed until the remedial stage of the litigation. Congressional District 11 should not be struck down unless and until a court determines that a coalition crossover district compliant with federal and state legal requirements could be drawn in its place.

Dated: February 4, 2026
Cambridge, MA

Respectfully submitted,

ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL

by: /s/

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
Attorneys for Proposed Amici Curiae
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 500.13(c)(1) of the Rules of Practice of the Court of Appeals of the State of New York, I hereby certify that, according to the word count of the word-processing system used to prepare this brief, the total word count for all printed text in the body of the brief exclusive of the material omitted under Rule 500.13(c)(3), is 4,278 words.

This brief was prepared on a computer using Microsoft Word, in Times New Roman, a proportionally spaced typeface, with 14-point font size and 2.0 line spacing.

Dated: February 4, 2026
Cambridge, MA

/s/ Ruth M. Greenwood

Ruth M. Greenwood

New York Supreme Court

APPELLATE DIVISION — FIRST DEPARTMENT

Case No. 2026-00384

MICHAEL WILLIAMS, JOSÉ RAMÍREZ-GAROFALO, AIXA TORRES, and MELISSA CARTY,

Petitioners-Appellees,

against

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,

(Caption Continued on the Reverse)

REPLY MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR INTERIM STAY, STAY, AND LEAVE TO APPEAL AND RESPONSE IN OPPOSITION TO CROSS-MOTION TO VACATE STAY

TROUTMAN PEPPER LOCKE LLP
Attorneys for Intervenors-Respondents-Appellants
875 Third Avenue
New York, New York 10022
212-704-6000
bennet.moskowitz@troutman.com

Date Completed: February 6, 2026

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 NEW YORK STATE SENATE MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE 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-Appellants,

and

REPRESENTATIVE NICOLE MALLIOTAKIS, EDWARD L. LAI, JOEL MEDINA, SOLOMON B. REEVES, ANGELA SISTO, and FAITH TOGBA,

Intervenors-Respondents-Appellants.

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N.Y. Const. art. III, § 4 ..... *passim*

PRELIMINARY STATEMENT

It is hard to imagine a case that more clearly calls out for this stay pending appeal. The Supreme Court below adopted a theory that no party briefed or submitted evidence on, in violation of due process and fairness principles. This Court does not need to take Appellants-Intervenor-Respondents' ("Intervenor-Respondents") word for it. The professors who submitted the *amicus* brief from which the Supreme Court derived its test have told this Court that the trial court made a "serious mistake" by not requiring Appellees-Petitioners ("Petitioners") to satisfy the critical elements of that test. Affirmation of B. Moskowitz, Ex.A ("AD.Prof.Am.Br.") at 12. *Amici* from multiple voting groups—who, to the undersigned's knowledge, have never before argued that any court erred in striking down any map based upon a vote dilution theory—make the same point, explaining that the Supreme Court "erred in finding liability without making a determination as to [an] essential element." NYSCEF Doc. No.36, NYCLU et al. Proposed *Amicus* Memorandum of Law ("AD.NYCLU.Am.Br.") at 8. The State Respondents take no position on a stay. *See* NYSCEF Doc. No.34, State Respondents' Memorandum of Law in Response to Motions for Stay ("AD.Gov.Br.") at 12–23. And Petitioners ask this Court to not only ignore what the Supreme Court actually said, but to flout the basics of vote dilution claims by allowing a finding of liability without any showing of vote dilution. That is just the tip of the iceberg of the Supreme Court's fatal errors,

which include inventing a crossover-district test with no support in the New York Constitution's text and ordering a violation of the U.S. Constitution's Equal Protection and Elections Clauses. None of the parties or *amici* that defend the Supreme Court's crossover-district standard—even while most admit that the Supreme Court did not even apply it lawfully—explain how judicially discovering that requirement can be consistent with the serious Equal Protection Clause constitutional problems that the U.S. Supreme Court warned about when it rejected adopting a crossover-district mandate.

The equities calling for a stay are just as clear. Petitioners still have no answer for the point that they waited 18 months after the Legislature enacted the 2024 Congressional Map to bring their lawsuit, which is the only reason these emergency proceedings are happening now. A party that saw so little urgency in bringing its concerns to the courts, and then filed such a fatally flawed theory that the Supreme Court adopted an entirely new theory that requires reversal, cannot then succeed in asking the Court to move election deadlines to accommodate its own delay and poor litigation choices. And, to be clear, Petitioners' position guarantees delay and confusion. Even if this Court lifts the automatic stay, which it clearly should not, there is no chance the Independent Redistricting Commission ("IRC") will be able to reconvene, take in necessary evidence from the public, and engage in careful deliberations in order to carry out the Supreme Court's mandate to racially

gerrymander New York's Eleventh Congressional District ("CD11") before February 24. Accordingly, declining to lift the stay that Intervenor-Respondents seek, while granting Petitioners' cross-motion to dissolve the automatic stay on the IRC, will mean substantial delays in the 2026 Congressional Election for all New Yorkers. And all of this will benefit no one because there is no chance that the Supreme Court's indefensible order will survive appellate review.

In all, this Court should grant Intervenor-Respondents' stay motion, deny Petitioners' cross-motion, and make clear that the 2026 Congressional Election will begin on February 24, under the map that the Legislature adopted. While Intervenor-Respondents strongly believe that this appeal will end with an order requiring dismissal of Petitioners' entirely meritless lawsuit, there is no reason to impose serious harm on Intervenor-Respondents and the public in the meanwhile, especially given Petitioners' egregious, unexplained delay in bringing this lawsuit.

ARGUMENT

I. Intervenor-Respondents Are Certain To Prevail In Their Challenge To The Supreme Court's Order

A. As Even The Professor *Amici* Whose Test The Supreme Court Unconstitutionally Adopted After The Close Of Evidence Admit, The Supreme Court Did Not Apply Its Crossover-District Test But Nevertheless Somehow Ruled In Petitioners' Favor

1. The Supreme Court violated due process rights, basic principles of fairness and the party presentation principle by adjudicating this case under a standard that no party proposed or submitted evidence on, and which the Court announced for the

first time after trial. NYSCEF Doc. No.11, Intervenor-Respondents' Memorandum of Law in Support of Motion to Stay ("AD.Int'r.Resp't.Br.") at 22–28 (citing, *e.g.*, *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020); *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *Reich v. Collins*, 513 U.S. 106, 111 (1994); *Wells Fargo Bank, N.A. v. St. Louis*, 229 A.D.3d 116, 122 (2d Dep't 2024)). Petitioners' sole theory was that the NYVRA's standards applied to their Article III, Section 4 vote dilution claim. *Id.* at 24. After the parties developed their evidence in response to that theory and tried the case under the NYVRA's standards, the Supreme Court ruled for Petitioners based upon a wholly different, novel, *amici*-suggested standard. *Id.* at 24–26. Under the Supreme Court's belated standard, a petitioner carries its burden of proving that "redrawing of the congressional lines is a proper remedy" by showing that a proposed district exists where (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 are "usually [ ] victorious" (meaning that they "win more often than not") in the general election, and (3) minority voters "are decisive in the selection of candidates" in primary races. NYSCEF Doc. No.11, Ex.A, Decision and Order of the Supreme Court of the State of New York ("Order") at 13, 15.

Unsurprisingly, no party submitted evidence on multiple elements of the Supreme Court's belatedly adopted test, including whether minority voters are

"decisive" in any party's primary or whether they control candidate selection in a proposed crossover district, AD.Int'r.Resp't.Br.26, as would be necessary to show the existence of a reasonable alternative crossover district for purposes of proving a crossover-district claim, *id.* at 26–27. The Supreme Court in fact *rejected* Petitioners' entire approach to crafting a demonstrative remedial map—which approach relied upon moving White Democratic voters from Lower Manhattan into CD11 while moving out a bipartisan mix of White and Asian voters, *id.* at 7–8, 19—and nonetheless somehow ruled in their favor. The Supreme Court noted that if "minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not," the proposed district is not a crossover district and is instead "simply" a means of "bolstering a political party's power and influence." Order at 15. And yet it still concluded that Petitioners won, based on a crossover-district standard that Intervenor-Respondents did not have any reason to brief and on which no party submitted evidence. The Supreme Court's approach to this case offends basic principles of fairness to litigants and requires reversal. AD.Int'r.Resp't.Br.26–28.

2. This Court has now before it four briefs filed on Wednesday—submitted by the Professor *amici*, the NYCLU *amici*, the State Respondents, and Petitioners—that favor the idea of crossover districts, but they offer at least three different

interpretations of the Supreme Court's holding below. That even those who support the Supreme Court's crossover-district approach cannot agree as to what the Supreme Court did in this case underscores how obvious the due process violation is here, where the Supreme Court sprang a new legal standard on the parties after the close of evidence and then applied that standard without any adversarial testing. *See, e.g.*, *Reich*, 513 U.S. at 111; *Wells Fargo*, 229 A.D.3d at 122.

a. *The Professor Proposed Amici*. The Professor *amici* reiterate their own test for a crossover district, which the Supreme Court adopted as the first two prongs of its three-pronged standard: that "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election," and that "these candidates must usually be victorious in the general election." AD.Prof.Am.Br.8 (quoting Order at 15). As the Professors note, a plaintiff *must* present evidence establishing that minority voters' purported "underrepresentation could be *ameliorated* by a reasonable alternative policy: here, a new coalition crossover district that complies with all federal and state legal requirements." *Id.* at 13. In other words, "before *liability* may be imposed," *id.* at 2, a crossover-district plaintiff must establish an *undiluted* baseline to show that a minority group's representation in the current district is, in fact, diluted, *see Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997) ("the very concept of vote dilution" requires "the existence of an 'undiluted' practice against which the fact of dilution may be

measured"). And so, as the Professor *amici* (correctly) explain, "what is required to establish 'dilution' . . . is proof that, under some lawful alternative electoral system, the protected class would have the potential . . . to elect its preferred candidate." AD.Prof.Am.Br.3 (alterations in original) (quoting *Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 60 (Cal. 2023)). To the extent that a plaintiff is bringing a "crossover" claim, its proposed alternative electoral system must show, at minimum, that minority voters are able to select their candidates of choice in the primary election and that these candidates are usually victorious in the general election, *id.* at 8—which is largely the standard that the Supreme Court announced as its crossover-district test here, *see* Order at 15.

As the Professor *amici* concede, the Supreme Court did not assess whether Petitioners' illustrative CD11 "was, in fact, a coalition crossover district (and otherwise lawful)," and so committed a "**serious mistake**." AD.Prof.Am.Br.12 (emphasis added). **That "serious mistake" alone—which there can be no reasonable dispute occurred here—demonstrates that Intervenor-Respondents are likely to succeed on the merits of *this* appeal**. Petitioners understood that a reasonable alternative map is essential evidence for any vote dilution claim; that is why they prepared and submitted their illustrative CD11. The Supreme Court rejected Petitioners' approach and the theory upon which it was based without holding Petitioners to their burden of establishing an undiluted baseline. Petitioners

presented no evidence at all on the Supreme Court's *post hoc* crossover-district standard, nor did Intervenor-Respondents have any reasonable chance to submit evidence on that standard. That is a clear due process violation. *See, e.g.*, *Sineneng-Smith*, 590 U.S. at 375; *Wells Fargo*, 229 A.D.3d at 122. And even if the Professor *amici* were correct that the Supreme Court could remedy its error by applying the Professors' crossover-district standard to Petitioners' illustrative map on remand (from which there would surely be yet another appeal), Intervenor-Respondents are still likely to succeed on *this* appeal, from an order where the Supreme Court very clearly did not do what the Professor *amici* admit it had to do.

That said, remanding this matter for the Supreme Court to apply the Professors' test—as these *amici* suggest—would only heighten the due process violation here, where no party submitted evidence tailored to this test. Petitioners chose to present their vote dilution claim under the NYVRA's standards and offered no evidence of a reasonable alternative *crossover* district. The only permissible outcome of this case is to reverse and remand with instructions to dismiss Petitioners' lawsuit. *See* AD.Int'r.Resp't.Br.4. If some other party wants to bring a lawsuit under the Professors' theory, it is free to do so. But even if this Court were to order a remand at the end of this appeal, there would still need to be an additional proceeding with new expert reports analyzing whether the illustrative district that Petitioners submitted satisfies the Supreme Court's test. The fundamental point is

that the Supreme Court's decision is legally indefensible, and was instead premised on at least one "serious mistake" (and actually many more). AD.Prof.Am.Br.12. That mistake, standing alone, establishes that Intervenor-Respondents have a strong likelihood of success for purposes of their stay motion.[1]

In addition and also independently sufficient to satisfy Intervenor-Respondents' burden to show likelihood of success on appeal, Petitioners failed entirely to present evidence suggesting that minority voters are underrepresented in part or all of New York State, which evidence the Professor *amici* concede was *also* necessary to establish vote dilution under their theory. *Id.* at 13 n.2 (citing *Johnson v. De Grandy*, 512 U.S. 997, 1013–16, 1023–24 (1994)). As Justice Souter acknowledged in his *Bartlett* dissent that the Supreme Court relied upon, to determine whether particular district lines result in vote dilution, a court "must look to an entire districting plan (normally, statewide)," assessing whether "the challenged plan creates an insufficient number of minority-opportunity districts in

[1] The Professor *amici* also suggest that this Court could perhaps use its own factfinding authority to determine if Petitioners' illustrative map meets the Supreme Court's crossover-district standard. Taking this approach would be inappropriate for multiple reasons, including because the parties would need to submit new expert evidence tailored to the Supreme Court's newly adopted standard. That would mean preparing evidence for this Court's review demonstrating whether minority voters are able to select (and are decisive in the selection of) their preferred candidate in primary elections, and whether these candidates win more often than not in general elections. Order at 15. But even if this Court were to step in and conduct the legal and factual analysis that the Supreme Court failed to perform, that would not change the stay analysis here, where Petitioners do not even argue that their illustrative map meets the Supreme Court's crossover-district criteria.

the territory as a whole." *Bartlett v. Strickland*, 556 U.S. 1, 30 (2009) (Souter, J., dissenting). As the Professors similarly explain (and as Intervenor-Respondents argued below), "vote dilution occurs across multiple districts (typically, a geographic region or an entire jurisdiction)," such that the Supreme Court was required to "ask[ ] whether minority voters are underrepresented in part or all of the New York State, not solely in [CD11]." AD.Prof.Am.Br.13 n.2. The Supreme Court thus erred by "focus[ing] on minority voters' lack of representation in [CD11] alone." *Id.* The evidence in this case on this point is *undisputed*: Black and Latino-preferred candidates (that is, Democrats) win every district wholly within or around New York City other than CD11 and constitute 73% of the New York congressional delegation statewide. AD.Int'r.Resp't.Br.14.

Finally, while the Professor *amici* try to explain why the Supreme Court made its clear error—noting that Petitioners' "presentation of [their] claim was [ ] ambiguous," "confusing," and mixing and merging different election-law concepts, AD.Prof.Am.Br.2, 5—this only further demonstrates the due process violation here. Despite Petitioners' poor presentation of their claim, Intervenor-Respondents made clear throughout the litigation that they were presenting evidence under the NYVRA theory that Petitioners very clearly proposed in their Petition and in their briefing. Intervenor-Respondents explained to the Supreme Court that it would violate due process to apply any different theory, now that the parties had prepared their briefing

and expert reports in accordance with the Article-III-Section-4-equals-NYVRA theory that Petitioners had presented. AD.Int'r.Resp't.Br.10. But then the Supreme Court decided the case on a new theory announced for the first time after trial, without even addressing these due process arguments.

b. *The NYCLU Proposed Amici*. The NYCLU *amici*—whose stated mission is to develop voting rights policy and litigate racial vote dilution claims on behalf of voters of color—similarly admit that the Supreme Court fatally erred in failing to analyze whether Petitioners' illustrative map constitutes a valid crossover district at the liability phase, AD.NYCLU.Am.Br.11, providing even further support for Intervenor-Respondents' argument that the Supreme Court violated the parties' due process rights here, *see, e.g.*, *Sineneng-Smith*, 590 U.S. at 375; *Wells Fargo*, 229 A.D.3d at 122. While the NYCLU *amici* and Professor *amici* disagree to some extent on what the standard for crossover districts should be, *compare* AD.Prof.Am.Br.8 & n.1 (stating that the third element of the Supreme Court's crossover-district test "seems unnecessary to Amici"), *with* AD.NYCLU.Am.Br.12–13 (agreeing with most aspects of the Supreme Court's test),[2] they agree that the

[2] Curiously, both sets of *amici* now appear to walk back on what it means for minority groups to be "decisive" in the selection of candidates, with the Professor *amici* and the NYCLU *amici* now arguing that this element can be met merely by showing that a minority-preferred candidate can usually win in both the primary and the general election. *See* AD.Prof.Am.Br.8 n.1; AD.NYCLU.Am.Br.13. But that is incorrect: if minority voters' preferred candidate would win regardless of minority voters' votes, these voters can hardly be said to be "decisive" in electoral

Supreme Court got the analysis badly wrong. As the NYCLU *amici* note, "[a]uthority from state and federal courts supports the principle that proffering a reasonable alternative practice is part of a vote-dilution plaintiff's liability showing." AD.NYCLU.Am.Br.9. The Supreme Court thus "erred in finding liability without making a determination as to this essential element." *Id.* at 8. Although these *amici* and Intervenor-Respondents may disagree on the appellate remedy for the Supreme Court's error, *compare id.* at 11 (arguing, contrary to Intervenor-Respondents' position, that remand for further proceedings is appropriate), *with supra* p.6 (explaining that dismissal on remand is the only permissible option), they agree that the Court made a critical legal error, such that Intervenor-Respondents are likely to prevail in this appeal.

The NYCLU *amici* also underscore the fundamental due process issues in the Supreme Court's approach. As these *amici* recognize, "*no party* [ ] briefed the position that crossover claims are cognizable under the New York State Constitution." NYSCEF Doc. No.36, Affirmation of Perry M. Grossman, ¶ 8 (emphasis added). The Supreme Court's decision to "seize upon an issue not raised by any party . . . , without providing . . . notice of the issue and an opportunity for all parties to be heard on it" is a due process violation that demands reversal. *See*

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outcomes. In any event, Petitioners did not present evidence that their illustrative map meets any of the Supreme Court's conditions for crossover districts.

Wells Fargo, 229 A.D.3d at 122; *see also Sineneng-Smith*, 590 U.S. at 375; *Espinosa*, 559 U.S. at 272; *Reich*, 513 U.S. at 111.

c. *The State Respondents*. The State Respondents remarkably insist that the Supreme Court actually assessed Petitioners' proposed illustrative map and determined that the court's new crossover-district "standards [were] satisfied here," AD.Gov.Br.9, but their arguments only support finding a due process violation. The State Respondents explain the Supreme Court's holding that, to demonstrate a crossover district, a plaintiff must show that minority voters "comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes." *Id.* at 8–9. As the State Respondents note, this is proven under the Supreme Court's test by showing that minority voters in a proposed district are able to select (and are decisive in the selection of) their preferred candidates in primary elections, and these candidates win more often than not in general elections. Order at 15. But not even the *amici* who have championed the Supreme Court's new crossover-district test have taken the implausible position that the Supreme Court secretly determined Petitioners' illustrative district *satisfied* this three-pronged test. *See supra* pp.5–10. Nowhere in its order did the Court perform any analysis of whether Petitioners' illustrative map allows "minority voters (including from two or more ethnic groups) . . . to select their candidates of choice in the primary election." *See* Order at 15. Nor did it address whether these

candidates would "usually be victorious in the general election." *See id.* And the Supreme Court certainly did not discuss whether Petitioners' illustrative district—which, again, was premised largely on moving White Democratic voters into CD11—would "increase the influence of minority voters, such that they are decisive in the selection of candidates" in primary races. *See id.* It would, in fact, have been impossible for the Supreme Court to do so, since Petitioners did not present evidence on any of these mandatory factors under the Supreme Court's own test. But even if the State Respondents were correct that the Supreme Court made this finding without telling anyone, that would only heighten the due process violation here, where Petitioners did not present and Intervenor-Respondents did not have an opportunity to respond to evidence relating to a crossover district. *See Wells Fargo*, 229 A.D.3d at 122; *Reich*, 513 U.S. at 111.

d. *Petitioners*. Petitioners, for their part, find themselves in the unenviable position of attempting to defend the indefensible. They cannot seriously tout the theory on which they actually tried the case—that Article III, Section 4, adopted in 2012, time traveled to incorporate the NYVRA's influence-district framework adopted in 2022. And they likewise cannot defend what the Supreme Court actually did: rejecting that theory and then, after the close of evidence, adopting a new, *amici*-designed crossover-district standard that no party had litigated or introduced evidence to satisfy as to multiple elements. Petitioners thus take out their blue pen

to rewrite both their own prior briefing and the Supreme Court's test, while mischaracterizing Intervenor-Respondents' due process argument and ignoring the fundamental mismatch between their evidence and the standard that the Supreme Court belatedly announced.

Petitioners' response to Intervenor-Respondents' due process argument is an exercise in misdirection. According to Petitioners, the Supreme Court did not violate due process because it based its conclusion that Black and Latino voters' representation in CD11 is diluted solely on the racial polarization and totality-of-the-circumstances evidence that Petitioners submitted during trial. NYSCEF Doc. No.37, Petitioners' Memorandum of Law in Opposition to Motions to Stay and in Support of Cross Motion to Vacate Stay ("AD.Pet.Br.") 15–16. But as Intervenor-Respondents, Respondents, and both sets of *amici* have now explained to this Court, Petitioners' argument misunderstands both the Supreme Court's own test and the nature of vote dilution claims. Regardless of whether Petitioners successfully proved sufficient racially polarized voting and satisfied the relevant totality-of-the-circumstances test (both points Intervenor-Respondents strenuously dispute, *see infra* pp.17–19), the Supreme Court indisputably failed to analyze a key element of Petitioners' vote dilution claim under its own test: whether Petitioners proved that there is an alternative to CD11 that would satisfy the Court's three-part test for a non-dilutive, cross-over district baseline. *See supra* pp.5–10. This showing is

necessary for Petitioners to prevail on the merits, and yet Petitioners submitted no evidence on multiple elements in the Court's belatedly announced test. When the Supreme Court announced a novel three-part crossover-district test after the close of evidence, it deprived the parties of any opportunity to litigate the merits of that test or submit expert evidence on it, in violation of basic Due Process Clause and fairness principles. *See Wells Fargo*, 229 A.D.3d at 122; *Sineneng-Smith*, 590 U.S. at 375; *Reich*, 513 U.S. at 111.

Although Petitioners admit that they "principally argued that the court should have looked to the NYVRA's framework" to analyze their vote dilution claim, they contend that this is a "distinction without a difference," as both federal and state law require evidence of racially polarized voting and the totality of the circumstances to prove vote dilution. AD.Pet.Br.16–17. **But both federal and state law *also* require a 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) (quoting N.Y. Elec. Law § 17-206(5)(a)), *aff'd on other grounds*, __ N.E.3d ___, 2025 WL 3235042 (N.Y. Nov. 20, 2025); *Reno*, 520 U.S. at 480 ("the very concept of vote dilution" requires the "existence of an 'undiluted' practice against which the fact of dilution may be measured"). The Supreme Court here came up with a standard for evaluating this prong of the vote dilution analysis that no party to the

case advanced, and then did not hold Petitioners to their burden of actually proving it. *See* Order at 13–16. Regardless of whether Petitioners "hitched their wagon to the NYVRA alone as a possible framework," AD.Pet.Br.16–17—which they very clearly did, *see infra* pp.13–14—they indisputably did *not* advocate for the crossover-district standard that the Supreme Court adopted. Nor is that standard "substantially similar" to the framework that Petitioners proposed, *contra* AD.Pet.Br.17, as demonstrated by Petitioners' failure to make any evidentiary showing relevant to this standard.

After admitting that they "principally" argued an NYVRA-based theory, Petitioners cite to a footnote in their opening pre-trial brief where they stated that they would "readily satisfy" "any possible [vote dilution] standard." AD.Pet.Br.16–17. That characterization elides the core problem. It is true that Petitioners used the word "crossover" a handful of times in describing the district they sought. But labels—and especially "confusing" labels used in an "ambiguous" manner, *see* AD.Prof.Am.Br.2, 5—are not legal standards, and the case that Petitioners actually tried was built around an NYVRA influence-district theory. Nothing in Petitioners' presentation below remotely resembled the post-trial crossover-district test that the Supreme Court ultimately adopted. Nor do Petitioners' assurances in a single footnote that they could "readily satisfy" "any possible standard," AD.Pet.Br.17, cure the lack of notice issue here. Petitioners' vague reference to "any possible

standard" did not put the other parties on notice that they would need to defend against any possible standard that the Supreme Court could ultimately adopt. Due process protects the parties' opportunity to shape the record around the actual elements that will decide the case. *See Espinosa*, 559 U.S. at 272; *Sineneng-Smith*, 590 U.S. at 375.

Equally untenable is Petitioners' effort to recast what the Supreme Court's opinion requires. Contrary to Petitioners' interpretation, the Supreme Court did not simply hold that minority voters must "comprise a sufficiently large portion of the population' in the relevant area 'to influence electoral outcomes'" (whatever that means) to make out a crossover-district claim. AD.Pet.Br.18 (citation omitted). Rather, as the State Respondents explain, *see supra* pp.10–11, after rejecting Petitioners' NYVRA-incorporation theory, the Supreme Court held that a proposed crossover district "counts" for purposes of showing a "sufficiently large portion of the population" only if: (1) minority voters (including multiple ethnic groups) are able to select their candidates of choice in the primary; (2) those candidates "usually" prevail in the general election, which the court defined as winning "more often than not"; and (3) minority voters' preferences are "decisive" in the district, such that they are not merely swept along by White voters who would elect the same candidates regardless. Order at 15. The Supreme Court's failure to apply this standard to Petitioners' proposed illustrative district flies in the face of both state and

federal precedent, *see, e.g.*, *Clarke*, 237 A.D.3d at 39; *Reno*, 520 U.S. at 480, as well as the core principles that *amici* espouse and that were set forth in the dissenting opinion that the Supreme Court relied upon to formulate its new crossover-district standard, *see League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 485–86 (2006) (Souter, J., concurring in part and dissenting in part).

Petitioners next attempt to portray Intervenor-Respondents as claiming that courts cannot adopt a legal standard that differs from the parties' submissions in any respect. *See* AD.Pet.Br.20–21. That is not Intervenor-Respondents' position. Their core due process objection is more specific. This case was tried under one legal standard—Petitioners' Article-III-Section-4-equals-NYVRA theory—but decided under another. After the parties submitted briefing and expert evidence and tried the case on Petitioners' Article-III-Section-4-equals-NYVRA theory, the Supreme Court announced a materially different and novel standard that required *different* kinds of evidence, without providing the parties with any notice or opportunity to litigate that new standard or introduce evidence tailored to its elements. Neither side was asked to—and neither side did—marshal primary-election data in Petitioners' proposed district or data regarding whether Black and Latino voters would be "decisive" in that district. Only after both sides had rested and the record was closed did the Court reject Petitioners' proposed NYVRA framework and embrace an *amici*-derived model that made primary-election control and "decisiveness" central

elements of a crossover-district claim. It is these facts—litigation under one test, followed by post-trial adoption of another—that violate the party presentation principle and offend due process. *See Wells Fargo*, 229 A.D.3d at 122; *Sineneng-Smith*, 590 U.S. at 375.

None of the authorities that Petitioners cite addresses a situation where the court adopted a new standard after the close of evidence. Cases recognizing courts' inherent duty to interpret statutes and constitutions, *see* AD.Pet.Br.22–23 (citing, *e.g.*, *Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006), *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024), and *O'Reilly v. City of New York*, 205 A.D. 888, 892 (2d Dep't 1923)), or their ability to consider unpreserved legal issues, *see id.* (citing, *e.g.*, *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991), and *Am. Timber & Trading Co. v. First Nat'l Bank of Or.*, 690 F.2d 781, 786 (9th Cir. 1982)), do not authorize a court to adopt a fact-intensive, *amici*-designed liability standard after trial is over, and then enter judgment without requiring any evidence satisfying that standard.

The U.S. Supreme Court's decision in *Sineneng-Smith* underscores this point. There, the Court faulted an appellate panel for allowing *amici* to "radical[ly] transform[ ]" the case by injecting new constitutional theories not advanced by the parties. 590 U.S. at 380. Here, the Supreme Court adopted an *amici*-crafted crossover framework into controlling law, post-trial, and never required Petitioners

to prove its elements. That is precisely the kind of non-adversarial doctrinal transformation that the U.S. Supreme Court has warned against. *See id.* at 375, 380.

Nor can Petitioners identify evidence showing that they did, in fact, satisfy the Supreme Court's *post-hoc* crossover-district test. Petitioners do not show that the record contains the primary-election and "decisiveness" data under the Supreme Court's standard. There is no evidence, for example, that in Petitioners' illustrative CD11, Black and Latino voters would control Democratic primaries. The Supreme Court expressly makes primary-election control central to defining a crossover district. Order at 15. Yet, Petitioners' experts did not model or analyze primary-election behavior in their illustrative district, failing to provide any evidence whatsoever regarding primary election data. Nor is there any analysis of whether Black and Latino voters would be "decisive" in that proposed district.

Petitioners are wrong to argue that their illustrative map demonstrated that any alleged vote dilution in CD11 could be lawfully remedied under the Supreme Court's standard. Even assuming that the Supreme Court's decision to import the Professors' standard into Article III, Section 4 was legally permissible, *but see infra* Section I.B, Petitioners presented no evidence suggesting that their illustrative district could meet that standard. Indeed, Petitioners' illustrative map achieves its dramatic increase in minority-preferred success by importing overwhelmingly Democratic White voters from Lower Manhattan. And while Petitioners contend

that their map "would have afforded Staten Island's Black and Hispanic residents an equal opportunity to elect their candidates of choice," AD.Pet.Br.11, that map would have all-but-assured dominance for candidates preferred by those imported White voters from Lower Manhattan, resulting in Democrats winning roughly 90% of the time according to Petitioners' own expert, *see* AD.Int'r.Resp't.Br.44–45. The Supreme Court appeared to recognize that Petitioners' approach was about partisan engineering, not the creation of a coalition in which minority voters are genuinely "decisive." Order at 15. The Supreme Court thus rejected Petitioners' remedial approach, explaining that its understanding of Article III would look instead to "adding Black and Latino voters" where appropriate. *Id.* at 13. Petitioners' Opposition does not confront that rejection, nor do they explain how their proposed illustrative district could possibly be reconciled with the Supreme Court's own insistence that minorities be "decisive" in crossover districts.

Petitioners incorrectly contend that Intervenor-Respondents "never meaningfully disputed the obvious fact that the IRC and Legislature have numerous lawful options for redrawing CD-11 in [a] manner that remedies vote dilution and complies with other ordinary redistricting criteria." AD.Pet.Br.21. To be clear, Intervenor-Respondents believe that any effort to redraw CD11 would be unlawful. But it was Petitioners—and not Intervenor-Respondents—who bore the burden of presenting a reasonable alternative map. *See supra* pp.5–10. Their suggestion that

Intervenor-Respondents had to prove that there is no conceivable reasonable alternative to the current CD11 that met a test that the Court did not announce until after trial is risible.

Discussing briefly the evidence that the parties did dispute at trial—which the Supreme Court lumped into its all-things-considered inquiry—Petitioners cannot defend the Supreme Court's reasoning. On racial polarization and "usually defeated," AD.Pet.Br.30–32, Petitioners' own expert reports and testimony show that Black and Latino voters make up roughly 22.7% of CD11's current voting-age population and elect their preferred candidates in 25% or more of elections that the expert hand-selected, AD.Int'r.Resp't.Br.28. Petitioners do not seriously dispute this proportionality, and the *amici* in this case explicitly agree with Intervenor-Respondents that, to prove vote dilution, Petitioners were required to show that "minority voters are underrepresented in part or all of New York State, not solely in [CD11]." AD.Prof.Am.Br.13 n.2. Polarization in a district where a minority coalition approximates its population share in terms of electoral success—and where the broader jurisdiction is overwhelmingly favorable to that coalition—does not establish that CD11's boundaries dilute Black and Latino voters' representation. The evidence also showed that Black and Latino-preferred candidates (Democrats) routinely win across New York State and in New York City. *See id.* at 14.

The same is true of Petitioners' discussion of the other evidence that the Supreme Court relied upon, *see* AD.Pet.Br.32–40, which Intervenor-Respondents discuss only briefly here given that they focused their stay motion on the clear constitutional errors in the Supreme Court's analysis (to be clear, when this appeal reaches the merits, Intervenor-Respondents will have much more to say on the Supreme Court's many mistakes as to this evidence). For instance, while the Supreme Court credited Dr. Sugrue's narrative of Staten Island's history, Petitioners overstate what that evidence shows about present conditions in CD11. *See id.* at 33–35. Historical redlining, school segregation, and mid-century discrimination are deeply troubling, but the legal question is whether those practices still distort political opportunity today. *See* AD.Int'r.Resp't.Br.27–28. Intervenor-Respondents' expert Mr. Borelli provided contemporary data showing increased integration, and Petitioners' own dissimilarity indices indicate only moderate segregation between White and Latino residents, with higher but improving Black–White measures. *See id.* Likewise, the socioeconomic data that Petitioners cite—gaps in income, education, and homeownership—describe disparities but do not by themselves demonstrate dilution. Petitioners largely rely on generic scholarship suggesting that socioeconomic inequality can reduce electoral participation, and then simply assume such a causal link in CD11. *See* AD.Pet.Br.35–36. But there is no district-specific analysis tying the disparities to turnout patterns in a way that

transforms ordinary socioeconomic inequality into proof that CD11's lines deny minorities equitable access to the political process. *See id.*; AD.Int'r.Resp't.Br.27–28. And Petitioners present no authority suggesting that three instances of allegedly racially tinged appeals over several decades, with the most recent being in 2017, proves that racial appeals are "common." *See* AD.Pet.Br.37. Petitioners' focus on minority officeholding fares no better. *See* AD.Pet.Br.36. Recognizing that CD11's *current* representative is of Cuban descent—Congresswoman Malliotakis—the Supreme Court itself concluded that the "election of minority candidates in CD-11 presents more complexity" and did not clearly weigh this factor in either party's favor. Order at 11.

B. The New York Constitution Does Not Contain The Professor *Amici*'s Test Or Any Crossover-District Mandate And None Of The Parties Or *Amici* Even Explain How Adopting That Test Complies With The Constitutional Concerns The U.S. Supreme Court Articulated In *Bartlett*

1. As Intervenor-Respondents explained, Article III, Section 4 does not incorporate the Professors' crossover theory that the Supreme Court adopted. AD.Int'r.Resp't.Br.29–38. Article III, Section 4 was modeled after, and uses substantially identical language to, Section 2 of the federal VRA, *id.* at 29–33, which the U.S. Supreme Court determined does not require crossover districts, *Bartlett*, 556 U.S. at 21–23 (plurality op.). Well-settled principles of constitutional construction thus compel adopting the U.S. Supreme Court's interpretation of the

same language used in Article III, Section 4. AD.Int'r.Resp't.Br.28–33; *accord In re Colo. Indep. Cong. Redistricting Comm'n*, 497 P.3d 493, 508–12 (Colo. 2021). The Supreme Court defended its contrary conclusion by stating that the 2014 redistricting amendments were meant to "expand on those provided by the federal government" in the VRA. AD.Int'r.Resp't.Br.35–36 (quoting Order at 6). But even assuming that is true in some manner, there is no textual support for writing the Professors' crossover mandate into Article III, Section 4. *Id.* And there are strong constitutional reasons to avoid that reading. As the controlling *Bartlett* concurrence explained when rejecting reading a crossover mandate into Section 2, such a mandate would "unnecessarily infuse race into virtually every redistricting" by ""[i]njecting [a] racial measure" into the redistricting process at every turn, asking how each "factor that enters into districting" affects "crossover voting." *Bartlett*, 556 U.S. at 21–22 (plurality op.); AD.Int'r.Resp't.Br.35. The doctrine of constitutional avoidance thus compels rejecting any interpretation of Article III, Section 4 that incorporates a crossover mandate, AD.Int'r.Resp't.Br.35.

2. None of the arguments raised by Petitioners, AD.Pet.Br.25–29, the State Respondents, AD.Gov.Br.16–19, or *amici*, AD.NYCLU.Am.Br.5–8; AD.Prof.Am.Br.7–9, support the Supreme Court's rewrite of Article III, Section 4.

Attempting to find support for their crossover-district theory in Article III, Section 4's text, these parties and *amici* rely upon a single textual difference between

Article III, Section 4 and Section 2 of the federal VRA: 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" to elect representatives of their choice. AD.Pet.Br.25–26. Section 2, in contrast, uses slightly different verbiage. This minor textual difference does not even arguably bless injecting a crossover-district mandate into the New York Constitution. That is, even if some difference in meaning existed between Article III, Section 4 and Section 2 due to the use of plural here, the "mousehole[ ]"-sized textual difference between these provisions cannot possibly house the "elephant[ ]"-sized difference that Petitioners and the *amici* Professors seek to insert into it, *Haar v. Nationwide Mut. Fire Ins. Co.*, 34 N.Y.3d 224, 231 (2019)—a crossover-district mandate encompassing the particular crossover-district theory espoused by the *amici* Professors here. At most, this slight difference suggests that the New York Constitution tolerates coalition claims, *see* AD.Pet.Br.25–26—that is, a claim where two or more minority groups come together to create a majority, an issue the U.S. Supreme Court has never addressed with regard to Section 2 of the VRA, *see* AD.Int'r.Resp't.Br.33 n.7. The substantive parallels in language between Article III, Section 4 and Section 2 of the VRA are far more comprehensive than the single, isolated difference in language upon which the Professors and Petitioners seize. *See* AD.Int'r.Resp't.Br.29–33. It is implausible that this State—in the face

of clear U.S. Supreme Court authority that Section 2's language does not permit crossover claims, *Bartlett*, 556 U.S. at 21 (plurality op.)—decided to take a different approach to crossover districts with this minor linguistic difference. If the People wanted to constitutionalize such a stark departure from core Section 2 case law, they would have made that intent clear in the New York Constitution's text.

Contrary to Petitioners' assertions, AD.Pet.Br.25–26, the Sixth Circuit's decision in *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc), does not support their position, as that case dealt with coalition claims, *not* crossover claims like the case here. In *Nixon*, the plaintiffs brought a minority coalition claim under Section 2 of the VRA, alleging that a district had diluted Black and Hispanics' collective voting rights. *Id.* at 1383. *Nixon* held that the plaintiffs could not succeed on this claim because Section 2 does not recognize "coalition suits." *Id.* at 1386. As the Sixth Circuit explained, Section 2 protects "members of *a class*," and "[i]f Congress had intended to sanction coalition suits, the statute would read 'participation by members of *the classes* of citizens.'" *Id.* *Nixon*, therefore, addressed a distinct claim—coalition claims—saying nothing about crossover claims that are at issue here, under the Supreme Court's Order.

Petitioners are also incorrect to suggest that any New York "precedent" supports reading a crossover-district mandate found nowhere in Article III, Section 4. *Contra* AD.Pet.Br.26–27. Petitioners claim that the Steuben County Supreme

Court's decision in *Harkenrider v. Hochul*, 173 N.Y.S.3d 109 (Sup.Ct., Steuben Cnty. 2022), *aff'd as modified*, 167 N.Y.S.3d 659 (4th Dept. 2022), *aff'd as modified*, 38 N.Y.3d 494 (2022), supports their position, but the best Petitioners can do is point to its offhand observation that "experts" believe Article III, Section 4 provides more expansive protections than Section 2 and a statement made by "the special master" in that case reciting Article III, Section 4's command not to "draw districts that would result in the denial or abridgement or racial or language minority voting rights." AD.Pet.Br.26–27 (citations omitted). That stray comment and innocuous recitation of Article III, Section 4 in no way amount to a holding that the New York Constitution contains a crossover-district mandate. Indeed, that question was neither presented nor addressed in *Harkenrider*, *see generally* 173 N.Y.S.3d 109, and Petitioners do not attempt to show otherwise.

Petitioners' reliance on the NYVRA, AD.Pet.Br.27–28, is similarly misplaced. According to Petitioners, Article III, Section 4 should be read as permitting crossover districts because the NYVRA permits such districts, and those provisions should be read "in parallel" rather than "in direct tension with one another." AD.Pet.Br.27. But the Supreme Court *rejected* Petitioners' theory that the NYVRA adopted in 2022 should inform New York courts' interpretation of Article III, Section 4, adopted eight years earlier. Order at 5. And on this score, at least, the Supreme Court got it right: while a statute adopted *contemporaneously*

with a constitutional amendment on the same subject may inform the amendment's meaning because those voting for the amendment reasonably had the statute in mind as informing how the amendment would operate, *see Harkenrider v. Hochul*, 38 N.Y.3d 494, 510–11 (2022), that is not the situation here.

Petitioners next argue that Article III, Section 4 should be interpreted as requiring crossover districts—despite containing materially indistinguishable language from Section 2, which does not permit crossover-district claims—to prevent Article III, Section 4 from becoming "a pointless duplicate to the federal VRA." AD.Pet.Br.25; *see id.* at 29. But reading Article III, Section 4 to mirror Section 2's lack of a crossover district mandate would not render Article III, Section 4 "pointless," *contra id.* at 25, because that constitutional provision differs from the VRA in other ways. For example, the 2014 Amendments prohibit partisan gerrymandering, whereas the VRA does not. *Compare Harkenrider*, 38 N.Y.3d at 518, *with Hunt v. Cromartie*, 526 U.S. 541, 551 (1999). And those amendments also establish redistricting principles beyond those contained in the VRA, including the requirements to maintain "cores of existing districts" and "pre-existing political subdivisions." N.Y. Const. art. III, § 4(c)(5). This further demonstrates that the Legislature knew how to distinguish the 2014 Amendments from the federal VRA when it so desired. The Legislature chose not to differentiate Article III, Section 4's language from Section 2 of the VRA, but that does not make it pointless—it shows

that the People intended for these specific provisions to be coextensive. *See* AD.Int'r.Resp't.Br.29–34. Regardless, States—including New York—often adopt constitutional provisions that are coterminous with federal law. *See Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 404 (1979). Indeed, the Court of Appeals has interpreted the equal protection guarantees, search and seizure provision, and due process protections of the New York Constitution to all be coextensive with the U.S. Constitution's Equal Protection Clause, Fourth Amendment, and Due Process Clause, respectively. *See Congregation Rabbinical Coll. of Tartikov, Inc. v. Vill. of Pomona*, 945 F.3d 83, 110 n.211 (2d. Cir. 2019) (New York and federal "equal protection guarantees" "are coextensive"); *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 304 (1988) (provision against "unlawful searches and seizures contained in NY Constitution . . . conforms with that found in the 4th Amendment"); *Cent. Sav. Bank in N.Y. v. City of New York*, 280 N.Y. 9, 10 (1939) (per curiam).

Finally, Petitioners, the State Respondents, and *amici* fail to grapple with Intervenor-Respondents' constitutional-avoidance argument, based on *Bartlett*, for not reading a crossover mandate into Article III, Section 4. *See* AD.Pet.Br.29; *see generally* AD.Gov.Br.18–19 (not addressing this argument); AD.NYCLU.Am.Br.6–7 (same); AD.Prof.Am.Br.8–9 (same). As Intervenor-Respondents explained, *Bartlett* warned that adopting a crossover-district mandate would "unnecessarily

infuse race into virtually every redistricting" and threaten "balkaniz[ing] us into competing racial factions." 556 U.S. at 21 (plurality op.). That would lead to the "perilous enterprise" of mapdrawers "relying on a combination of race and party to presume an effective majority" and "predictions" that they "would hold together as an effective majority over time" rather than considering only "objective" redistricting criteria. *Id.* at 22–23. Interpreting the law to mandate those evils would raise "serious constitutional concerns under the Equal Protection Clause," counseling in favor of adopting a different "plausible interpretation[ ] of a [ ] text" to avoid such "serious constitutional doubts." *Id.* at 21 (citations omitted).

Petitioners do not meaningfully respond to any of this, *see* AD.Pet.Br.29, and their other supporting parties and *amici* do not respond to these arguments at all. Petitioners just tar Intervenor-Respondents' legitimate, *Bartlett*-based warning as "simply scaremongering," AD.Pet.Br.29, but the concerns are ones the U.S. Supreme Court voiced: mandating the creation of crossover districts would require "courts and legislature . . . to scrutinize *every factor* that enters into districting to gauge its effect on crossover voting," which is "a perilous enterprise," *Bartlett*, 556 U.S. at 22 (plurality op.) (emphasis added). And this case shows why. To satisfy Article III, Section 4's supposed crossover-district mandate, the Supreme Court ordered "adding Black and Latino voters" into the redrawn CD11 "from elsewhere" to increase electoral success based upon racial groups. Order at 13. The Supreme

Court entered this order in the face of Petitioners' own evidence that the 23% of Black and Latino voters in CD11 were already expected to have their candidate of choice win 25% of elections, which for some reason the Supreme Court thought was not enough. That is precisely the kind of unconstitutional racial balkanization of which *Bartlett* warned. 556 U.S. at 21 (plurality op.). Petitioners' only other attempt to avoid *Bartlett*'s warnings is to claim that *Bartlett* "confirmed that states are free" to draw crossover districts. AD.Pet.Br.29. But *Bartlett*'s conclusion that States are "free" to draw crossover districts "where no other prohibition exists," 556 U.S. at 23–24 (pluralirt op.), is not even arguably an endorsement of state authority to *mandate* the drawing of such districts as a matter of state-constitutional law. "[T]here is a difference between being aware of racial considerations and being motivated by them." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (plurality op.) (citation omitted). *Bartlett* merely acknowledges that a State may happen to draw crossover districts due to its "aware[ness] of racial considerations" or "racial demographics," *Allen*, 599 U.S. at 30; it does not allow a State to mandate the drawing of such districts where "the overriding reason for choosing [them]" is "race for its own sake," *id.* at 31.

C. The Equal Protection Clause Prohibits Judicially Mandating The Racial Redrawing Of CD11

1. As Intervenor-Respondents explained, the Supreme Court ordered the IRC to adopt a racial gerrymander in violation of the Equal Protection Clause of the

Fourteenth Amendment, and it did so without even attempting to address this fundamental point of U.S. constitutional law—despite Intervenor-Respondents repeatedly raising this issue. AD.Int'r.Resp't.Br.38–45. Under U.S. Supreme Court precedent, the Supreme Court's order triggers strict-scrutiny review because it mandates the redrawing of CD11's lines based on racial considerations, requiring the IRC to "add[ ] Black and Latino voters from elsewhere" into CD11 with the sole, express goal of increasing the electoral prospects of voters lumped together by race. *Id.* at 41–43 (quoting Order at 13, and citing, *e.g.*, *Cooper v. Harris*, 581 U.S. 285, 291, 299–301 (2017); *Wis. Legislature w. Wis. Elections Comm'n*, 595 U.S. 398, 402–03 (2022); and *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192–93 (2017)). Thus, the "predominant"—and, indeed, sole—objective for the new district lines is race-based, clearly triggering strict-scrutiny review. *Id.* at 41–42.

Neither the Supreme Court nor Petitioners attempted to meet Petitioners' burden to show that a race-based reconfiguration of CD11 satisfies strict scrutiny. *Id.* at 43–45. Petitioners did not present, and the Supreme Court did not identify, any evidence that race-based action is "necessary" to remediate "*identified* discrimination," providing instead only "generalized assertion[s] of past discrimination" that are insufficient to satisfy strict scrutiny. *Id.* at 43 (citing *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*")). As to strict scrutiny's narrow-

tailoring prong, Petitioners failed to establish how redrawing a district where Black and Latino voters already win at least 25% (according to Plaintiffs' expert's election set) of elections while comprising 23% of the district population, with the goal of increasing Black and Latino electoral success, is narrowly tailored to any interest—let alone any compelling interest. *Id.* at 44–45.

2. The equal-protection arguments of Petitioners, AD.Pet.Br.47–54, and of the State Respondents, AD.Gov.Br.19–21, all fail.

The Equal Protection Arguments Are Clearly Ripe Now. Petitioners argue that it is "premature" to consider the Equal Protection Clause here, as the Court "must wait to see what the remedial district actually looks like." AD.Pet.Br.47–48. But the mandated redrawing of CD11 by the Supreme Court violates the Equal Protection Clause no matter how CD11 is ultimately redrawn because the order itself mandates racial gerrymandering without satisfying strict scrutiny. By requiring the IRC to "add[ ] Black and Latino voters from elsewhere" into CD11 in order to increase the electoral prospects of voters lumped together by race, Order at 13, the Supreme Court has ordered the IRC to redraw CD11 with "race furnish[ing] the predominant rationale for that district's redesign," *Cooper*, 581 U.S. at 299. Or, to use the words of Petitioners' own cited authority here, "*any* remedial district" that the IRC draws to comply with the Supreme Court's order would "necessarily" violate the Equal Protection Clause, AD.Pet.Br.47 (quoting *Black Voters Matter*

Capacity Bldg. Inst., Inc. v. Byrd, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sept. 02, 2023), *rev'd on other grounds*, 375 So. 3d 335 (Fla. Dist. Ct. App. 2023)), as every possible compliant permutation must "add[ ] Black and Latino voters [into CD11] from elsewhere" in order to increase racial group electoral prospects in CD11, Order at 13.

Strict Scrutiny Applies. Petitioners' and the State Respondents' arguments that the Supreme Court's order does not trigger strict scrutiny under the Equal Protection Clause fare no better.

As an initial matter, Petitioners and the State Respondents admit, AD.Pet.Br.48; AD.Gov.Br.19–20, that strict scrutiny applies when a district is redrawn with race as the predominant rationale for the redesign, *Cooper*, 581 U.S. at 299–301. Yet they attempt to avoid the application of this test here by claiming that the Supreme Court's order mandates "an awareness of race," AD.Pet.Br.49, as "one factor among many that must be considered," AD.Gov.Br.20–21, which does not trigger strict scrutiny. A map triggers strict scrutiny when the mapdrawer has an express race-based purpose for drawing the map at issue, without any further showing required. *Wis. Legislature*, 595 U.S. at 401–04; *Cooper*, 581 U.S. at 291, 295–96. So, in *Wisconsin Legislature*, the U.S. Supreme Court held that "race [was] the predominant factor motivating the placement of voters in or out of a particular district," 595 U.S. at 401—triggering strict scrutiny—where a remedial map added

a "seventh majority-black district," without any additional inquiry, *id.* at 402. And in *Cooper*, the U.S. Supreme Court held that a challenger may establish that race was the predominant consideration in the redrawing of a district with "direct evidence," 581 U.S. at 291, that the mapdrawer "purposefully established a racial target" for the district," without anything more, *id.* at 299–301; *see generally id.* at 291 (discussing other evidentiary pathways). So, where a mapdrawer has such an express race-based purpose in redrawing the district at issue, the mapdrawer is not simply "aware of racial considerations" but rather is "motivated by them," *Milligan*, 599 U.S. at 30 (plurality op.), with no further "holistic analysis" required, *Bethune-Hill*, 580 U.S. at 192; *contra* AD.Pet.Br.48–49; AD.Gov.Br.20–21. Applying this precedent here, the Supreme Court's order requires racial considerations to predominate in the redrawing of CD11, as the *only* way for the IRC to satisfy that order is to pursue the sole and express race-based purpose of "adding Black and Latino voters from elsewhere" into CD11. Order at 13.

Petitioners' discussion of the plurality portion of *Milligan*—which they fail to denote as a plurality—does not change this analysis. AD.Pet.Br.49–50; *see also* AD.Gov.Br.20–21. In that plurality portion of *Milligan*, the Chief Justice articulated the same predominance standard described immediately above, explaining that "race may not be 'the predominant factor in drawing district lines unless there is a compelling reason'" and that race "predominates . . . when 'race-neutral

considerations come into play only after the race-based decision had been made.'" 599 U.S. at 30 (plurality op.) (first quoting *Cooper*, 581 U.S. at 291, and then quoting *Bethune-Hill*, 580 U.S. at 189 (brackets omitted)). The Chief Justice then explained that a mapdrawer's use of an express racial target for a district does not necessarily establish that race has predominated where the mapdrawer gives "several other factors" "*equal weighting*." *Id.* at 31–32 (emphasis added). That is because "use of an express racial target" would be "just one factor among others," *id.* at 32 (citation omitted), that may not necessarily be "the overriding reason for choosing one map over others," *id.* at 31 (citations omitted). That dynamic is not present here, as the sole criterion of whether a map complies with the Supreme Court's order is whether that map "add[s] Black and Latino voters from elsewhere" into CD11, Order at 13, meaning that race is "the criterion that, in the [mapdrawer's] view, could not be compromised," *Bethune-Hill*, 580 U.S. at 189 (citations omitted; brackets omitted), rather than simply being "just one factor among others" with "equal weighting," *Milligan*, 599 U.S. at 31–32 (plurality op.); *Cooper*, 581 U.S. at 291, 295–96; *Wis. Legislature*, 595 U.S. at 401–04.

Relatedly, Petitioners claim that any map that the IRC draws pursuant to the Supreme Cour's order could also avoid strict-scrutiny review by "comply[ing] with traditional redistricting criteria." AD.Pet.Br.48–50; *see* AD.Gov.Br.20–21. U.S. Supreme Court precedent forecloses this argument as well. As just explained, both

in *Wisconsin Legislature* and in *Cooper*, the U.S. Supreme Court held that a mapdrawer's *explicit* intent in drawing a map based on race *necessarily* makes race the predominant rationale, *Wis. Legislature*, 595 U.S. at 401–02; *Cooper*, 581 U.S. at 291, 295–96, with no need to consider whether the resulting map also fails to adhere to traditional redistricting criteria, *see generally Wis. Legislature*, 595 U.S. at 401–04; *Cooper*, 581 U.S. at 299–301. This is why, for example, the U.S. Supreme Court did not even discuss in *Wisconsin Legislature* the Wisconsin Governor's argument that, because the remedial map under review there complied with traditional redistricting criteria, race did not predominate in the drawing of that map. *Compare* Opp'n To Appl. From Resp't Governor Tony Evers at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022),[3] *with Wis. Legislature*, 595 U.S. at 401–04.

Bethune-Hill then makes this point clearly, where the Court held that "showing a deviation from, or conflict with, traditional redistricting principles is *not* a necessary prerequisite to establishing racial predominance" and triggering strict-scrutiny review. 580 U.S. at 191 (emphasis added). Again, "[r]ace may predominate even when a reapportionment plan respects traditional principles . . . if race was the criterion that, in the [mapdrawer's] view, could not be compromised, and race-

[3] Available at https://www.supremecourt.gov/DocketPDF/21/21A471/218427/20220311165107226_21A471%20Wisconsin%20-%20SCOTUS%20Opp%20Final.pdf (last visited Feb. 6, 2026).

is no way that the IRC can reconvene, complete each of those tasks, and finalize its map, before February 24, 2026. That means that absent a stay, the election schedule will need to be judicially amended, causing state officials, candidates, and voters, including Intervenor-Respondents, to be needlessly placed into a state of confusion and uncertainty. And while such confusion from moving election deadlines can be worth the candle in a situation like *Harkenrider*—where the petitioners acted as quickly as possible to challenge a clearly unconstitutional map—it cannot possibly be justified here, where the situation is entirely of Petitioners' own making, and there is no chance that the order declaring the extant map unconstitutional will survive judicial review.

Lastly, the State Respondents suggest that if the Court issues a stay of the order blocking the use of the 2024 Congressional Map for the impending 2026 Congressional Election, this should "not preclude the IRC from taking preparatory steps to comply with the order below" so as to "mitigate" the "challenges" that Petitioners have created "with regard to the upcoming 2026 election calendar." AD.Gov.Br.12–14. Intervenor-Respondents disagree. While a stay of the Supreme Court's order will not impact the IRC's voluntary actions—so, they are free to take whatever voluntary actions they choose, so long as those actions comply with all extant laws and constitutional provisions—there is no reason for the IRC to reconvene to begin a needless, racial gerrymander redraw and cast doubt on the 2026

Congressional Election going forward. Rather, this Court's order should make clear that the election will begin on February 24, 2026, as scheduled, under the map that the Legislature adopted, and that any relief from this proceeding—however unlikely—will have to await a future election in light of the impending election cycle, Petitioners' egregious, unexplained delay in bringing this action, and the legally unsound nature of the Supreme Court's decision.

III. Granting Petitioners' Cross-Motion To Dissolve The Automatic Stay Would Only Further The Chaos That The Supreme Court's Order And Petitioners' Delay Has Generated

A. To be entitled to dissolution of the automatic stay, Petitioners must show: (1) that the appeal is "meritless," CPLR § 5519 cmt. ¶ 6; *see Gur Assocs. LLC v. Convenience on Eight Corp.*, 208 N.Y.S.3d 838, 843–44 (N.Y. Civ. Ct. 2024); (2) that they will suffer "irreparable harm" absent vacatur, *DeLury v. City of New York*, 48 A.D.2d 405, 405 (1st Dep't 1975) (per curiam); and (3) that the stay does not "promot[e] any viable State interest," *Clark v. Cuomo*, 105 A.D.2d 451, 452 (3d. Dep't 1984) (Weiss, J., dissenting). Given that these factors mirror, if not heighten, those of Intervenor-Respondents' stay request, for all the reasons discussed above, Petitioners failed to demonstrate that vacatur of the automatic stay is warranted here. *See supra* Part I. After all, Petitioners obviously cannot demonstrate that this appeal is "meritless," CPLR § 5519 cmt. ¶ 6, given that Intervenor-Respondents are likely to succeed on appeal, *see supra* Part I.

More generally, the automatic stay must remain in place as it is the only way to provide certainty for the 2026 Congressional Election, especially when paired with this Court properly staying the portion of the Supreme Court's order blocking the use of the 2024 Congressional Map. The purpose of CPLR 5519(a)(1)'s automatic stay is "to maintain the status quo pending appeal," *New York v. Town of Haverstraw*, 219 A.D.2d 64, 65 (2d Dep't) (per curiam), and thereby "stabilize the effect of adverse determinations on governmental entities," *Summerville v. City of New York*, 97 N.Y.2d 427, 434 (2002). Such an automatic stay is not "to be vacated" "lightly" as CPLR 5519(a)(1) furthers "a public policy designed to protect a 'political subdivision of the state.'" *DeLury*, 48 A.D.2d at 405. If the Court were to dissolve the stay now, that would undermine CPLR 5519(a)(1)'s objective by causing chaos and destabilizing the 2026 Congressional Election. With that stay vacated, the IRC must begin a multi-step effort to racially gerrymander CD11's boundaries, causing confusion for state officials, candidates, and voters regarding what district they will represent or vote in. Then, given the Supreme Court's order's glaring legal failings, *see supra* Part I, the redraw will accomplish nothing for anyone because the Supreme Court's order is sure to fail on appeal. The congressional lines, at that point, will return to those imposed by the 2024 Congressional Map, further confusing all those involved. This result is precisely

what CPLR 5519(a)(1)'s automatic stay aims to avoid. *Haverstraw*, 219 A.D.2d at 65–66; *Summerville*, 97 N.Y.2d at 433–34.

Petitioners contend that "[t]his case squarely fits the circumstances warranting vacatur" because they "will be irreparably harmed should New York be left without a lawful map in time for the 2026 elections" and "forced to vote under" unlawful maps. AD.Pet.Br.57–58. Petitioners have no one but themselves to blame for having to vote in another election under the lines created in the 2024 Congressional Map that they did not challenge for 18 months. Petitioners then argue that Intervenor-Respondents "will suffer no irreparable harm should the Court vacate the automatic stay" because things can simply "return to the 'status quo'" if Intervenor-Respondents ultimately prevail on appeal. AD.Pet.Br.58. That blinks reality. Intervenor-Respondents and the public will suffer harm if their district lines flip flop. *Contra* AD.Pet.Br.58–59. Again, creating an alternative, racially gerrymandered map that will never survive appeal accomplishes nothing positive for anyone. It will only confuse the voters as to which district they reside in and will lead to distrust and apathy among voters. The candidates will not know which voters to begin courting whenever petitioning actually begins, given the needless confusion that Petitioners and the Supreme Court have created. And the state officials will be unsure of how to run the election, not even knowing whether the election deadlines will remain. Keeping the automatic stay in place—which is the default position—

while pairing that with a stay against the prohibition against using the 2024 Congressional Map starting on February 24, 2026 will "stabilize the effect of" the Supreme Court's order by making clear that these long-delayed proceedings will not impact the impending election. *See Summerville*, 97 N.Y.2d at 433–34.

IV. This Court Should Authorize A Direct Appeal To The Court Of Appeals

This appeal presents issues of statewide significance that the Court of Appeals has not addressed, AD.Int'r.Resp't.Br.52–53; *see supra* Part I, and Intervenor-Respondents sought authorization to appeal because those issues should be resolved by the State's highest court, as an institutional matter. Petitioners' argument that this Court "should not even contemplate certifying an appeal," AD.Pet.Br.60, ignores that it is the role of the Court of Appeals to "authoritatively declare and settle the law uniformly throughout the state" regarding "legal issues of statewide significance," *People v. Hawkins*, 11 N.Y.3d 484, 493 (2008). And this is especially important here because the Supreme Court's order has thrown New York's *federal* elections into chaos, meaning that if the New York appellate courts do not fix the problem, the U.S. Supreme Court will need to do so. If the Court of Appeals concludes that it does not have jurisdiction over Intervenor-Respondents' direct appeal under CPLR 5602, the only way review of these important issues in this case can occur by the State's highest court now—rather than potentially skipping right from this Court to the U.S. Supreme Court—is for this Court to issue an "order"

immediately, and then grant permission to appeal to the Court of Appeals under CPLR 5602(b)(1). *See* CPLR § 5602. Given these considerations, as well as the extraordinary public importance of ensuring stable, lawful rules for electing New York's congressional delegation, and the important issues of "statewide significance," *Hawkins*, 11 N.Y.3d at 493, this Court should authorize an immediate appeal to the Court of Appeals.

CONCLUSION

This Court should grant Intervenor-Respondents' motion for a stay pending resolution of this appeal, as well as granting leave to appeal directly to the Court of Appeals, and deny Petitioners' request to lift the automatic stay.

Dated: New York, New York
February 6, 2026

TROUTMAN PEPPER LOCKE LLP

BENNET J. MOSKOWITZ
875 Third Avenue
New York, New York 10022
(212) 704-6000

MISHA TSEYTLIN
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240

Counsel for Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

----------X

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

-against-

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 New York State Senate Majority Leader and President Pro Tempore of the 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,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenor-Respondents.

----------X

Appellate Division Index No.: 26-00384

New York County Index No.: 164002/2025

NOTICE OF CROSS-MOTION

PLEASE TAKE NOTICE that upon the annexed Affirmation of Attorney Christopher D. Dodge and the exhibits annexed thereto, the annexed memorandum of law, and upon all proceedings heretofore had herein, the Petitioner-Respondents Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty, will move this Court at a Term thereof to be held at the Appellate Division, First Department Courthouse located at 27 Madison Avenue, New York, NY 10010, on February 9, 2026, at 10:00 a.m., or as soon thereafter as counsel can be heard, pursuant to CPLR § 5519(c) for an Order:

1. Vacating any automatic stay of the Supreme Court's Opinion and Order dated January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026, pending this Court's determination of the appeal from the Opinion and Order.

Dated: New York, New York
February 4, 2026

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

Andrew G. Celli, Jr. (No. 2434025)
Emily Wanger (No. 5816210)
One Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel.: (212) 763-5000
acelli@ecbawm.com
ewanger@ecbawm.com

ELIAS LAW GROUP LLP

/s/ Christopher Dodge
Aria C. Branch*
Christopher Dodge (No. 5245907)
Lucas Lallinger (No. 5443460)
Nicole Wittstein*
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel.: (202) 968-4490
abranch@elias.law
cdodge@elias.law
llallinger@elias.law
nwittstein@elias.law

**Of the bar of the District of Columbia, by permission of the Court*

Attorneys for Petitioner-Respondents

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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Respondents,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenor-Respondents.

----------X

Appellate Division Index No.: 26-00384

New York County Index No.: 164002/2025

AFFIRMATION OF CHRISTOPHER D. DODGE IN SUPPORT OF CROSS-MOTION

CHRISTOPHER D. DODGE, an attorney duly admitted to practice in the Courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am Counsel at the law firm Elias Law Group LLP, attorneys for Petitioner-Respondents Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty ("Petitioner-Respondents") in this CPLR Article 4 Proceeding.

2. I submit this Affirmation solely to present to the Court information and materials relating to Petitioner-Respondents' Cross-Motion to Vacate Stay Pending Appeal, which materials are attached hereto as described below. I am fully familiar with the facts and circumstances set forth herein.

3. A true and correct copy of Petitioners' Post-Trial Summation Memorandum is attached hereto as **Exhibit 1**, originally available as NYSCEF No. 208.

I affirm this 4th day of February 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

_/s/ Christopher D. Dodge_____
Christopher D. Dodge
Elias Law Group LLP
250 Massachusetts Avenue, NW Suite 400
Washington, DC 20001
Tel.: (202) 968-4490
cdodge@elias.law

Attorneys for Petitioners Michael Williams; José Ramírez-Garofalo; Aixa Torres; and Melissa Carty,

Exhibit 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Index No. 164002/2025

Petitioners,

-against-

Petitioners' Summation Memorandum

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Respondents,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

Intervenor-Respondents.

----------X

[Signature block on the following page]

Andrew G. Celli, Jr. (No. 2434025)
Emily Wanger (No. 5816210)
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP
One Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel.: (212) 763-5000
acelli@ecbawm.com
ewanger@ecbawm.com

Counsel for Petitioners

Aria C. Branch*
Christopher D. Dodge (No. 5245907)
Lucas Lallinger (No. 5443460)
Nicole Wittstein*
ELIAS LAW GROUP LLP
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel.: (202) 968-4490
abranch@elias.law
cdodge@elias.law
llallinger@elias.law
nwittstein@elias.law

*Admitted *pro hac vice*

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PRELIMINARY STATEMENT

Absent relief from this Court, the current configuration of Congressional District 11 ("CD-11") will continue to perpetuate the unlawful dilution of Black and Hispanic voting strength on Staten Island, in violation of Article III, Section 4(c)(1) of the New York Constitution. At the multi-day hearing in this matter, Petitioners' evidence proved that, despite exponential growth in the Black and Hispanic voting-age populations on Staten Island over the past several decades, these voters are routinely denied an equal opportunity to elect their candidate of choice at the congressional level. This inequity cannot persist under the New York Constitution. In 2014, the People of New York voted to enshrine in the state constitution protections against precisely the sort of minority vote dilution Petitioners have demonstrated here.

This first-of-its-kind case presents the first opportunity to define the legal standard for claims under Article III, Section 4(c)(1) of the New York Constitution, which precludes drawing congressional districts in a way that, "based on the totality of the circumstances, racial or minority language groups . . . have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." The Court, however, is not without guidance: In 2022, the Legislature enacted the John R. Lewis Voting Rights Act (the "NY VRA") with the express intent of implementing the Constitution's equal-opportunity mandate—specifically by extending the Constitution's protections to local political subdivisions. The NY VRA offers sweeping protections for the right to vote, exceeding the floor set by the federal Voting Rights Act ("VRA") and solidifying the State's position as a national leader in protecting the electoral franchise. In that way, the NY VRA mirrors the intended scope of Article III, § 4(c)(1), and it offers a framework under which this Court can evaluate Petitioners' claim—one that gives

effect to the will of New York voters, unlike the more restrictive standards under the federal VRA that Respondents and Intervenor-Respondents would prefer.

At the hearing on this matter, Petitioners met their burden to prove that the current configuration of CD-11 unconstitutionally dilutes the voting strength of Black and Hispanic voters by demonstrating, (1) with the testimony of political scientist Dr. Maxwell Palmer, that Black and Hispanic voters in CD-11 vote cohesively for a mutual candidate of choice that is usually defeated within the district; (2) also with Dr. Palmer's testimony, that voting within CD-11 is racially polarized, with the White majority likewise voting as a bloc to defeat the Black and Hispanic–preferred candidate; and (3) with the testimony of expert historian Dr. Thomas Sugrue, that the ability of Black and Hispanic Staten Islanders to participate fully in the electoral franchise is impaired under the totality of the circumstances. Petitioners also proved that the dilution of Black and Hispanic voters *can* be remedied. Seasoned demographer William S. Cooper offered one illustrative example of a map that would cure the constitutional defects that plague CD-11 under the current plan by joining Staten Island with lower Manhattan instead of Southwest Brooklyn. A district that follows this basic format (though the ultimate remedial district need not adhere strictly to Mr. Cooper's boundaries) has historical and modern precedent; is more competitive than the current CD-11; and it would allow Black and Hispanic Staten Islanders to form an electoral coalition with crossover voters from the White majority to elect their candidate of choice.

Time is of the essence. It is imperative that—consistent with Petitioners' previous briefing on the appropriate remedy, NYSCEF Doc. ("Doc.") 203—the Legislature adopts a new map that cures the vote dilution in CD-11 in time for the 2026 election. Because remedies are available, "the People of this state" cannot be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521, 197 N.E.3d 437,

454 (2022). For the reasons stated herein, as well as those discussed in Petitioners' prior briefing in this matter, Docs. 63 & 156, Petitioners respectfully ask that the Court swiftly declare the 2024 Congressional Map unlawful, enjoin Respondents from using the map in future elections, and order that CD-11 be redrawn in a manner that remedies the dilution of Black and Hispanic voting strength before the 2026 election.

BACKGROUND

I. The New York Constitution expansively protects against vote dilution.

In 2014, "the People of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process," *Harkenrider*, 38 N.Y.3d at 501, including changes that "guarantee[] the application of substantive criteria that protect minority voting rights," Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086.

The Constitution's prohibition on vote dilution is contained in Article III, Section 4(c)(1). It provides that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). In addition, "[d]istricts 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." *Id.* These provisions apply specifically to New York's state assembly, senate, and congressional districts. *Id.* art. III, § 4(b). The Redistricting Amendments list the express prohibition on vote dilution along with other redistricting criteria, including equal population size, contiguity, compactness, maintaining competition and the "cores of existing districts," as well as a prohibition on partisan or incumbency-based gerrymandering. *See id.* § 4(c)(2)–(5).

By enshrining constitutional protections against minority vote dilution, New York voters seized upon the U.S. Supreme Court's recognition that states may go further than the requirements

of the federal Voting Rights Act in order to protect minority voters. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality op.); *see also* N.Y. Elec. Law § 17-200 ("[T]he protections for the right to vote provided by the constitution of the state of New York . . . substantially exceed the protections for the right to vote provided by the constitution of the United States.").

II. The Legislature enacted the 2024 Congressional Map following a tumultuous redistricting process.

The Redistricting Amendments reformed the congressional and state legislative redistricting processes and mandated specific substantive criteria for district maps. In addition to prohibiting racial vote dilution in redistricting, the Redistricting Amendments created an independent redistricting commission ("IRC"), which submits proposed redistricting plans to the Legislature for consideration, as well as detailed procedures by which the Legislature could approve, reject, or modify plans submitted by the IRC. *See* N.Y. Const. art. III, § 4(b).

In the first redistricting cycle following the enactment of the Redistricting Amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. N.Y. Const. art. III, § 4(b); *see Harkenrider*, 38 N.Y.3d at 504–05. As a result, and following a legal challenge to the map eventually passed by the Legislature, the congressional map in place for the 2022 elections (the "2022 Congressional Map") was drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 38 N.Y.3d at 524. The special master admitted in his report that he did not actively avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided simply because "the largest minority groups . . . are almost always highly geographically

concentrated." Rep. of the Special Master at 11, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben Cnty., May 21, 2022), NYSCEF Doc. No. 670.

Following additional litigation, the Court of Appeals ordered the IRC to redraw the 2022 Congressional Map to fix the procedural defects by requiring the IRC to submit a second congressional map to the Legislature. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 370 (2023). The IRC submitted a second congressional map to the Legislature that made very few substantive changes and no changes at all to the configuration of CD-11.[1] The Legislature rejected the IRC's map, *see* 2024 NY Senate Bill S8639, 2024 NY Assembly Bill A9304, and ultimately drew its own, but did not make any sweeping substantive changes.[2] The 2024 Congressional Map, which was passed by the Legislature on February 28, 2024, did not alter the configuration of CD-11. *See* 2024 NY Senate Bill S8653A, 2024 NY Assembly Bill 9310A. Although the enactment of the 2024 Congressional Map fixed the procedural defects identified in *Hoffman*, it did not remedy the unlawful racial vote dilution in CD-11.

III. Congressional District 11 fails to account for significant changes in Staten Island's racial demographics over the last several decades.

A. Staten Island has become increasingly diverse in recent decades.

Staten Island spans 57.5 square miles but is the smallest borough by population. When Staten Island was first annexed by New York City in 1898, it was "mostly rural area." PX-1 ¶ 9 (Sugrue Report). In the twentieth century, however, its population began to grow, spurred in large

[1] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=congress_specialmastercorrected_20220604&propB=cong_nyirc_20240215&opacity=2&selected=74.12227663802202,40.583456106019945#%26map=10.46/40.6097/-74.0286 (last visited Jan. 16, 2026).

[2] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=cong_nyirc_20240215&propB=cong_legamend_20240226&opacity=0&selected=-74.12227663802202,40.583456106019945#%26map=7.48/41.322/-74.234 (last visited Jan. 16, 2026).

part by transit links to other parts of New York City. The most important developments were the Staten Island Ferry, which connects Staten Island to Manhattan, and the Verrazano Narrows Bridge, which connects Staten Island to Brooklyn. PX-1 ¶ 10 (Sugrue Report).

Prior to the 1980s, Staten Island was overwhelmingly White. PX-1 ¶ 9 (Sugrue Report). The Island was home to a small population of Black citizens, but they were confined to the North Shore, particularly the Stapleton area and Sandy Ground. PX-1 ¶ 9 (Sugrue Report). Both neighborhoods carried deep historical significance for the Black community. Stapleton is "home to Stapleton AME Church, the borough's oldest Black Church," and Sandy Ground is "the oldest free Black settlement on the East Coast, founded by former enslaved people from Maryland in 1828 – the year after New York State abolished slavery." PX-1 ¶ 9 (Sugrue Report).

Staten Island's demography began to meaningfully change in the 1980s. PX-1 ¶ 12 (Sugrue Report). New transportation options between Staten Island and mainland New York City, including the opening of the Verrazzano-Narrows Bridge in 1964, helped facilitate waves of immigration to the borough through the late twentieth and early twenty-first centuries. Between 1980 and 2020, Staten Island's population ballooned by approximately 40%. PX-1 ¶¶ 12–13 (Sugrue Report). During this period, the White population on Staten Island dropped from 85% to 56%, while the combined Black and Hispanic population increased from approximately 11% to nearly 30%. PX-1 ¶¶ 12–13 (Sugrue Report). While the growth of the Black and Hispanic populations has been significant, it has been unevenly distributed across the Island. Most of Staten Island's Black and Hispanic residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton. See PX-1 ¶ 16 (Sugrue Report).

B. The current configuration of CD-11 does not account for the district's recent demographic changes.

Even though Staten Island's population began to grow in the twentieth century, it has never

had enough residents to comprise its own congressional district. PX-5 ¶ 36 (Cooper Report). Thus, to equalize population, the Legislature has always joined Staten Island with neighboring sections of either Brooklyn or Manhattan. Under the 2024 Map, CD-11 encompasses all of Staten Island and the southwestern-most portion of Brooklyn across the Verrazzano Bridge, including Fort Hamilton, Dyker Heights, New Utrecht, Bath Beach, and part of Bensonhurst. PX-5 at 8, fig. 1 & Ex. F-1 (Cooper Report).

Staten Island's congressional district has remained roughly the same—joining Staten Island with neighborhoods in southern Brooklyn—since the early 1980s. This configuration of CD-11, however, does not account for the stark changes in the Island's demographic makeup since that time. As a result, Staten Island's Black and Hispanic residents remain in a district where they consistently and systematically have less opportunity to influence elections and elect their representatives of choice.

Joining Staten Island with Brooklyn is not the only historical configuration of the Staten Island-based congressional district. In 1972, following the 1970 Census, the New York Legislature enacted a congressional map that joined Staten Island with southern Manhattan in what was CD-17 at the time. *See* PX-5 at 14, fig. 7 (Cooper Report). The district remained in this configuration until the contentious 1982 redistricting battle, following the state's loss of five House seats due to population changes.[3] With the two houses of the Legislature controlled by opposite parties, the parties compromised to redraw the Staten Island–based congressional district to include the Bay Ridge section of Brooklyn instead of the southern tip of Manhattan.[4] The move was transparently

[3] *See* Maurice Carroll, *Plan by Democrats Effaces Old 'Silk Stocking' District*, N.Y. Times (Feb. 20, 1982), https://www.nytimes.com/1982/02/20/nyregion/plan-by-democrats-effaces-old-silk-stocking-district.html#:~:text=Political%20practicality%20says%20the%20Democrat.
[4] *Id.*

partisan, securing Republican advantage on Staten Island for decades to come and effectively unseating the popular Democratic Representative Leo Zeferetti in Brooklyn.[5]

Joining Staten Island with Manhattan has a modern precedent, too. During the last redistricting cycle, the Legislature redrew Assembly District 61, which encompasses Staten Island's North Shore, to include the southernmost neighborhoods of Manhattan as well. *See* PX-5 at 13, fig. 6 (Cooper Report). The Legislature inexplicably failed to adopt a similar configuration for CD-11, which, as explained in detail below, would have afforded Staten Island's Black and Hispanic residents an equal opportunity to elect their candidates of choice.

SUMMATION

I. The legal elements of Petitioners' claim under Article III, Section 4(c)(1) of the New York Constitution.

Petitioners have challenged the configuration of Congressional District 11 under Article III, Section 4(c)(1), which protects against racial vote dilution in redistricting by expressly requiring that all congressional "[d]istricts 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." That provision does not specifically identify the elements of a racial vote dilution claim, and all parties agree that this is the first claim of its kind to be litigated in a New York state court. Therefore, this Court must decide the appropriate legal standard under which to evaluate Petitioners' constitutional claim.

For the reasons explained in Petitioners' briefing and below, the Court should conclude that both the language and the context of the vote dilution protections enshrined in the New York Constitution support the conclusion that they sweep more broadly than federal law. Article III,

[5] *Id.*

Section 4(c)(1), unlike federal law, is sufficiently broad to afford relief to petitioners who show vote dilution that can be remedied with a new district that permits a minority population to elect its candidate of choice, even without constituting a majority of the district's population. The NY VRA—which likewise does not require proof that a majority-minority single-race district can be drawn in the challenged area—thus offers a better framework than Section 2 of the federal VRA to decide whether Petitioners have established racial vote dilution under the Constitution. Here, Petitioners have satisfied the elements of a racial vote dilution claim under the NY VRA: they have established that candidates preferred by Black and Hispanic Staten Islanders are "usually defeated"; that voting is racially polarized in Congressional District 11; and that under the totality of the circumstances—a term used expressly in Article III, Section 4(c)(1) of the Constitution—the ability of Black and Hispanic voters, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. *See* N.Y. Elec. Law § 17-206(2)(b)(ii).

A. The parties' proposed legal frameworks

The parties have advocated for evaluating Petitioners' claim under different legal standards. Respondents and Intervenors contend that the Court should find that the framework under Section 2 of the VRA governs Petitioners' claim, and Petitioners are therefore required to meet the preconditions identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986), to prove racial vote dilution. In *Gingles*, the U.S. Supreme Court identified three "necessary preconditions" ("*Gingles* preconditions") for a Section 2 vote dilution claim: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive"; and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51. The first *Gingles* precondition requires the minority group to constitute at least 50% of the voting age population of a potential new district. *See Bartlett*, 556 U.S. at 18–20.

By contrast, the NY VRA does *not* require Petitioners to show the first *Gingles* precondition. Petitioners contend the same is true for Article III, Section 4(c)(1), meaning that they do not need to show that Black and Hispanic voters could form a majority in a new CD-11.[6] Petitioners contend instead that Article III, Section 4(c)(1) protects minority "coalition" and "crossover" districts—districts where different minority groups can create coalitions to influence elections and elect their candidates of choice with the assistance of crossover voters from the White majority. They agree, however, that they must show that there is consistently a Black and Hispanic preferred candidate in the focus area (current CD-11) and that that candidate is usually defeated—a requirement mirrored in the NY VRA. *See* N.Y. Elec. Law § 17-206(2)(b)(ii).

Except for the requirement to demonstrate the first *Gingles* precondition, the two standards before the Court largely mirror one another. Respondents' view that Petitioners must demonstrate *Gingles* preconditions 2 and 3, *see Allen v. Milligan*, 599 U.S. 1, 18 (2023) (quoting *Gingles*, 478 U.S. at 51), is mirrored in the NY VRA's "usually defeated" requirement and the requirement to show racially polarized voting. *Cf.* N.Y. Elec. Law § 17-206(2)(b)(ii). And the final element—demonstrating the totality of the circumstances—is common to both the federal VRA, the NY VRA, and Article III, Section 4(c)(1).

B. The Court should conclude that Article III, Section 4(c)(1) does not require Petitioners to demonstrate the first *Gingles* precondition.

The Court should conclude that Article III, Section 4(c)(1) does not require Petitioners to demonstrate the first *Gingles precondition*, and it should adopt Petitioners' proposed standard under which to demonstrate unconstitutional racial vote dilution.

[6] The NY VRA also differs from Section 2 of the VRA by requiring that Petitioners demonstrate *either* racially polarized voting *or* the totality of the circumstances factors, not both; however, because Petitioners here have proved both racially polarized voting and that the totality of the circumstances establish that Black and Hispanic voters have less ability to influence elections and elect candidates of their choice, that distinction between the two standards is not implicated.

No party disputes that the Constitution's equal-opportunity mandate—that minorities shall "not have less opportunity to participate in the political process" than others, N.Y. Const. art. III, Section 4(c)(1)—precludes diluting the voting strength of racial minority groups. Respondents and Intervenors have argued that this equal opportunity mandate implicitly incorporates the federal law requirement that a single minority group must constitute the *majority* voting population in an alternative district—a requirement the Supreme Court grafted onto Section 2 of the federal VRA. *See generally Bartlett*, 556 U.S. 1. But the New York Constitution clearly lacks such a precondition. Article III, Section 4(c)(1) protects the right of racial and language minority groups to have the same opportunity as their neighbors to elect candidates of their choosing, and there are many ways the Legislature might go about depriving minority groups of that equal opportunity. The Legislature might, for example, divide members of different racial groups that might otherwise form an electoral coalition to elect minority-preferred candidates in the district. A district that is configured to eliminate opportunities for minority voters to form electoral coalitions—including coalitions with crossover voters from the majority group (typically White voters)—deprives those voters of an "equal opportunity" to elect candidates of their choice. If another reasonably configured district that complies with the Constitution's other redistricting criteria would allow minority voters the "opportunity . . . to elect" candidates of their choice by forging such electoral alliances, a violation has been established. That is Petitioners' claim precisely.

Put simply: the text of the New York Constitution lacks the "majority-minority district" requirement that Respondents and Intervenors would have the Court graft onto it here. While Petitioners recognize that such a requirement exists under *federal* law, there are several reasons the Court should find that New Yorkers did not intend to so narrowly cabin vote-dilution claims under the Redistricting Amendments.

First, the language of the vote dilution provision in the New York Constitution is distinct from Section 2 and supports Petitioners' argument that it does not require showing that a single minority group is sufficiently large to form a majority in a new district. The use of the plural word "groups" in Article III, Section 4(c)(1) differentiates the New York Constitution from Section 2 (which refers only to members of "a class") in a manner that courts have concluded indicates a broader protection against minority vote dilution than Section 2 currently provides. *See, e.g.*, *Nixon v. Kent County*, 76 F.3d 1381, 1386–87 (6th Cir. 1996). After *Gingles*, the *en banc* Sixth Circuit underscored that the text of Section 2 does not permit lawsuits seeking coalition districts where one minority group comprises less than a majority, explaining that if Congress had "intended to sanction [such] suits, the statute would" refer to "the *classes* of citizens protected." *Id.* at 1386–87 (emphasis added); *see* Doc. 95 at 4. That plural language—which was illustrative in the context of the Sixth Circuit case—is very similar to the language New Yorkers adopted when they voted to adopt Article III, Section 4(c)(1), which prohibits diluting the ability of "racial or minority language *groups*" from "elect[ing] representatives of their choice." (emphasis added). New York's decision to meaningfully vary from the federal VRA's narrower scope compels likewise departing from the correspondingly narrower *Gingles* preconditions that come with it.[7]

[7] Intervenors argued that *Nixon* is inapposite because the case involved a coalition district claim—that is, where two or more minority groups together would comprise the majority in a redrawn district. Doc. 161 at 8–9. That argument misses the point: the textual variation between Section 2 of the VRA, and Article III, Section 4(c)(1), as spelled out in *Nixon*, conveys New Yorkers' intent to do away with *Gingles*' single majority-minority district requirement. Intervenors also misconstrue the remedy Petitioners seek here. The remedial district Petitioners advance allows two minority *groups*, Black and Hispanic voters, to leverage their combined voting strength to *elect* candidates of their choice by forging alliances with White crossover voters. This is precisely the sort of remedy the Constitution contemplates. Respondents, meanwhile, appear to misunderstand the textual difference Petitioners highlight: the Constitution's use of the plural minority "groups" instead of the singular "group," which, as *Nixon* explains, would have been selected if the intent was to incorporate Section 2's *Gingles I* requirement. *See* Doc. 175 at 11–12.

Indeed, the State Respondents—Governor Hochul, Senate Majority Leader and President *Pro Tempore* Stewart-Cousins, Assembly Speaker Heastie, and Attorney General James—agree that petitioners bringing constitutional vote dilution claims are not restricted by the requirements of federal law. "[T]he relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law." State Resp'ts' Br. at 3. Reading Article III, Section 4(c)(1) in line with the federal VRA would render Section 4(c)(1) "a redundancy and the will of New York voters in voting for them would be read out of the State Constitution." *Id.*

New York courts have also recognized the broader protection that the New York Constitution provides. In *Harkenrider v. Hochul*, for example, the court found that "according to many experts," Article III's "prohibition against discriminating against minority voting groups . . . expanded the[] protection" against vote dilution as compared to the federal VRA. 76 Misc. 3d 171, 176, 173 N.Y.S.3d 109, 112 (Sup. Ct. Steuben Cnty. 2022), *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022).

Second, the Legislature's later passage of the NY VRA further underscores why the federal VRA offers the wrong framework for Petitioner's constitutional vote dilution claims, and why the NY VRA's broader standards omitting the first *Gingles* factor should guide the Court here. Neither Respondents nor Intervenors dispute that the NY VRA offers broader relief than the federal VRA—specifically in that it does not require plaintiffs to satisfy the first *Gingles* factor. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14, 38 (2d Dept. 2025) ("[T]he NYVRA specifically allows for remedies that might allow for minorities to elect their candidates of choice or influence the outcome of elections without their constituting a majority in a single-member district."), *aff'd*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025). But they miss that the NY VRA points to *the New*

York Constitution as the basis for permitting such relief. The Legislature enacted the NY VRA in express "recognition of . . . the constitutional guarantee[] . . . against the denial or abridgement of the voting rights" of racial minority groups—that is, Article III, Section 4(c)(1), under which provision Petitioners assert their claim here. N.Y. Elec. Law § 17-200. In other words, Section 17-200 tells us what it is doing: expounding directly on the State Constitution's broader voting rights protections.

And like the NY VRA, the state constitutional protection against racial vote dilution is designed to ensure equal "opportunity" for minority voters to elect candidates of their choice. The NY VRA's definition of vote dilution—which eschews the first *Gingles* requirement and exceeds the minimum requirements of the federal VRA—in turn sets out the Legislature's view that equal "opportunity" does not include a requirement that plaintiffs prove that a majority-minority district is an available alternative. In this way, the NY VRA acts as "a legislative interpretation" of the Constitution itself. *See Lallave v. Martinez*, 635 F. Supp. 3d 173, 188 (E.D.N.Y. 2022) ("[A] later act can be regarded as a legislative interpretation of an earlier act in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting, and is therefore entitled to great weight in resolving any ambiguities and doubts." (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972)).

Finally, the fact that Article III, Section 4(c) notes that state redistricting criteria remain "[s]ubject to the requirements of the federal constitution and statutes," does not mean that state constitutional racial vote dilution claims must identically mirror Section 2 of the VRA. That language simply recognizes that the federal constitution and federal law set "a floor" for the minimum protections states must afford voters, *see People v. Stultz*, 2 N.Y.3d 277, 284 n.12 (2004), but it does not prescribe the substantive standards under which racial vote dilution claims

must be established. The U.S. Supreme Court has expressly recognized that states may afford greater protections to minority voters than federal law, and it has recognized the benefits of doing so. *Bartlett*, 556 U.S. at 24 ("States that wish to draw crossover districts are free to do so where no other prohibition exists."). Article III, Section 4(c) recognizes the federal floor, but nothing in its plain language does anything to bind or restrict the Constitution's reach to federal redistricting standards. Nor do the standards that New York imposes conflict with federal standards; they simply provide greater protections—as the Supreme Court has recognized they may.

II. Petitioners satisfy the necessary elements of their constitutional claim.

Based on the foregoing, the Court should hold that Petitioners have satisfied the New York Constitution's standard for minority vote dilution by proving that:

(1) voting patterns of members of the protected class within the political subdivision are racially polarized;

(2) candidates or electoral choices preferred by members of the protected class would usually be defeated; and,

(3) 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.[8]

[8] Adopting a standard that requires Petitioners to demonstrate both racially polarized voting and the totality of the circumstances factors would not violate Respondents' Due Process rights. First, as Petitioners have made clear, they did not rely exclusively on this Court's adoption of the precise articulation of the racial vote dilution standards in the NY VRA. *See* Doc. 63 at 19 n.5 ("Even if the Court adopts a different constitutional standard than the one set forth in the NY VRA, Petitioners would readily satisfy it."). Second, this Court's articulation of such a racial vote dilution standard would not prejudice Respondents in any way. All parties fully litigated and had the opportunity to present evidence, analysis, and witnesses to bear on all of the necessary elements of a vote dilution claim, including racially polarized voting and totality of the circumstances factors. Any claim from Respondents that they were not given a full opportunity to present evidence on the dispositive issues in this matter therefore fails.

Additionally, Petitioners' Illustrative Map demonstrates that the dilution of Black and Hispanic voters in CD-11 can be remedied by redrawing the district to join Staten Island with lower Manhattan instead of Southwest Brooklyn. Petitioners are therefore entitled to relief. *See Clarke*, 237 A.D.3d at 39.

A. Voting is racially polarized voting within CD-11.

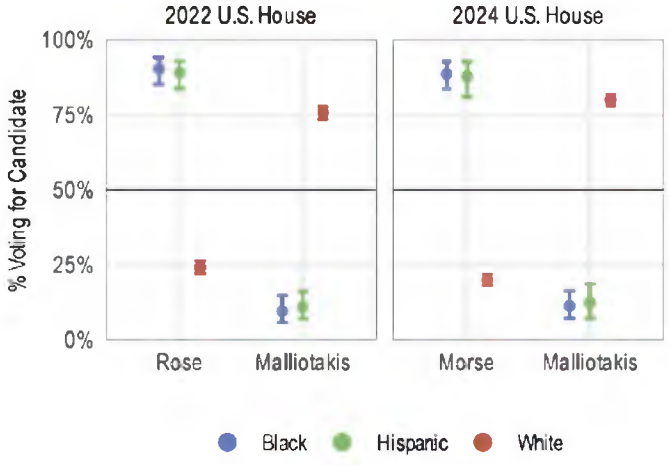
1. Relevant legal principles

The first element Petitioners established is that voting in CD-11 is racially polarized, with White voters voting cohesively to defeat the Black and Hispanic–preferred candidate. "Racially polarized voting" means "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." N.Y. Elec. Law § 17-204(6). Racially polarized voting is proven through evidence of "bloc voting." "Bloc voting by [minority voters] tends to prove that the [minority] community is politically cohesive, that is, it shows that [minorities] prefer certain candidates whom they" would elect if given the opportunity. *Gingles*, 478 U.S. at 68. At the same time, "the white majority [also] votes sufficiently as a bloc to enable it . . . usually to defeat the [minority groups'] preferred candidate." *Id.* at 51. Evidence offered in support of racially polarized voting analysis is "weighed and considered consistent with several well-defined princip[les]." *Serratto v. Town of Mount Pleasant*, 86 Misc. 3d 1167, 1172, 233 N.Y.S.3d 885, 890 (Sup. Ct., Westchester Cnty. 2025); *see* N.Y. Elec. Law § 17-206(2)(c). Courts weigh statistical evidence most heavily, and "evidence concerning elections for members" of the challenged district is the most probative. N.Y. Elec. Law § 17-206(2)(c).

2. Petitioners' evidence

Voting in CD-11 is heavily racially polarized. Petitioners' expert Dr. Maxwell Palmer examined voting patterns in CD-11 using official election data and Census data, and employing

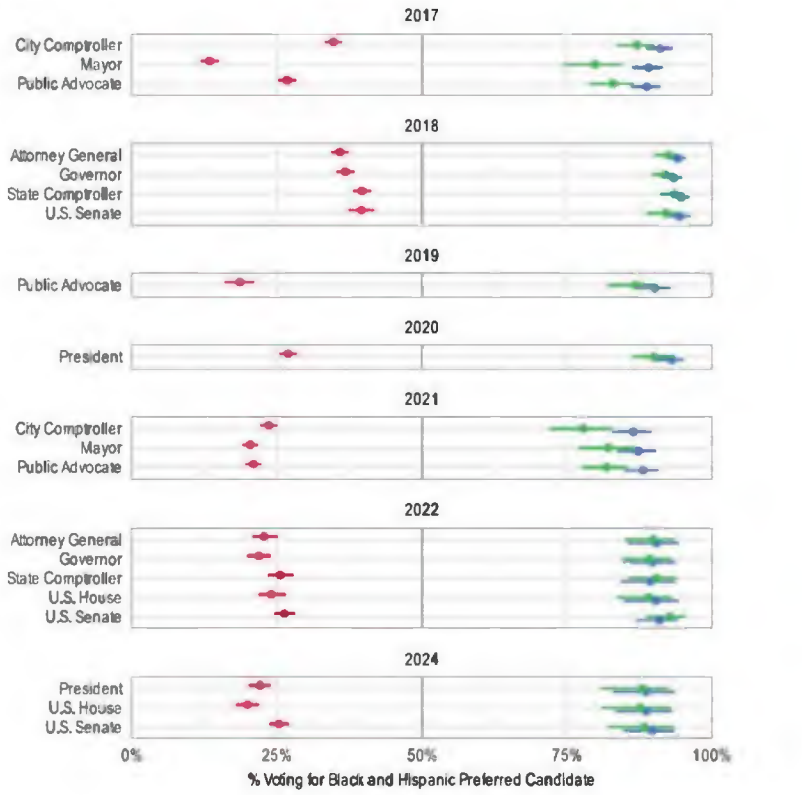
ecological inference, he found that White voters have consistently voted as a bloc to defeat the Black and Hispanic–preferred candidate. *See* PX-3 ¶¶ 5–6, 9–11 (Palmer Report); Tr. 157:11-18 (Palmer). Dr. Palmer's analysis of CD-11 demonstrates that Black and Hispanic Staten Islanders have remained "extremely cohesive" over nearly a decade of elections. PX-3 ¶ 15 (Palmer Report). In the two most recent congressional elections—2022 and 2024—Black voters had "a clear preferred candidate," and Hispanic voters shared that choice. PX-3 ¶ 15 (Palmer Report); *see* Tr. 163:13–64:3 (Palmer) (discussing these elections). Across these elections, the Black and Hispanic–preferred candidate (Democrat Max Rose in 2022 and Democrat Andrea Morse in 2024) averaged 89.55% of the Black vote and 88.4% of the Hispanic vote. PX-3 ¶ 15, fig. 1; *id.* at 10, tbl. 1 (Palmer Report). White voters in CD-11, however, voted as a bloc to defeat the Black and Hispanic–preferred candidate in both elections. PX-3 ¶ 15, fig. 1, *id.* at 10, tbl. 1 (Palmer Report).



PX-3 ¶ 15, fig. 1 (Palmer Report); *see* Tr. 163:13–64:3 (Palmer) (testifying to these results).

Broadening the lens beyond congressional elections, Dr. Palmer's analysis revealed high levels of racial polarization in CD-11 across *all* state and federal elections he studied over nearly a decade, from 2017 to 2024. In all 20 elections he examined, Black voters supported their preferred candidates with 90.5% of the vote on average. PX-3 ¶ 17 (Palmer Report). Hispanic

voters "supported their preferred candidates with 87.7% of the vote." PX-3 ¶ 18 (Palmer Report). White voters, meanwhile, voted just as cohesively against the Black and Hispanic–preferred candidate with an average of 73.7% of the vote. PX-3 ¶ 19 (Palmer Report). In other words, they supported Black and Hispanic–preferred candidates with only 26.3% of the vote. PX-3 ¶ 19 (Palmer Report).



PX-3 ¶ 19, fig. 2 (Palmer Report); *see* Tr. 165:4–20 (Palmer) (testifying to these results).

The effect of this bloc voting is unmistakable: of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times. PX-3 ¶ 20 (Palmer Report); Tr. 168:8–10 (Palmer). And the few minority-preferred candidates that won prevailed by very narrow margins. *See* PX-3 at 12, tbl. 3 (Palmer Report). These victories are also quite dated. Of the city, state, and district-wide elections that Dr. Palmer analyzed, no Black and Hispanic–preferred

candidate has prevailed within CD-11 since 2018, and voting within the district has become increasingly racially polarized since. PX-3 ¶ 20, fig. 3 (Palmer Report).[9]

Respondents and Intervenors offered two experts—Dr. Voss and Dr. Alford—to dispute Dr. Palmer's analysis, but they failed to discredit Dr. Palmer's conclusion that voting in CD-11 is racially polarized. Intervenors offered Dr. Voss, who did not dispute Dr. Palmer's results or his conclusions from ecological inference, but rather the methodology he employed and the data on which he relied in the first place. Dr. Alford, meanwhile, accepted Dr. Palmer's methodology and its results, and disputed only Dr. Palmer's interpretation of those results—specifically, whether the disparity in voting patterns he observed was attributable to race rather than partisanship. At trial, these criticisms collapsed under scrutiny.

First, Dr. Voss took issue with the scope of Dr. Palmer's testimony. He critiqued Dr. Palmer's decision to limit his analysis to precinct data from the precincts within the existing CD-11. He testified that one congressional district does not contain enough data on which to base an ecological inference. Tr. 617:5–16 (Voss); IRX-3 ¶ III.I, app. B at 18 (Voss Report). At the same time, however, Dr. Voss conceded that there is "no consensus" in the scientific community regarding how much data is necessary to conduct a reliable ecological inference. Tr. 641:10–14 (Voss). And Dr. Palmer was unequivocal that he had more than enough data to conduct a reliable ecological inference because CD-11 offered precinct data from 300-400 precincts. Tr. 161:1–12 (Palmer). Dr. Voss's opinion that a single congressional district never offers enough data for

[9] Dr. Palmer was cross-examined on his decision not to include the 2018 and 2020 U.S. House races in his analysis. *See* Tr. 197:11–199:13 (Palmer). Dr. Palmer explained that he made this choice because those elections were conducted "under different [district] boundaries." Tr. 197:14–15 (Palmer). Even accounting for those elections, however, the Black and Hispanic candidate of choice prevailed within CD-11 in only six of 22 elections. Tr. 237:16–25 (Palmer). And it is still the case that no Black and Hispanic–preferred candidate has prevailed within the district since 2018. *See id.*; *see also* PX-3 ¶ 20, fig. 3 (Palmer Report).

ecological inference is overly simplistic, for "[d]istricts vary widely [in] the way that precincts are drawn," particularly in rural versus urban areas, and what matters "is the amount of information available." Tr. 238:7–17 (Palmer).

But even accepting Dr. Voss's opinion on the appropriate scope of the analysis at face value, it changes nothing about Dr. Palmer's bottom-line conclusion that voting in CD-11 is racially polarized. Dr. Voss re-ran Dr. Palmer's ecological inference using precinct data for all the congressional districts that comprise New York City (congressional districts 5 through 15), and he obtained materially similar results. *See* IRX-3, app. B at 20–21, tbl. 6 (Voss Report). He agreed that his ecological inference—which, in the interests of time, he limited to only the 2022 gubernatorial election—showed that Black voters in CD-11 voted cohesively for one candidate, Governor Hochul, with 95% of their vote. Tr. 647:5–6 (Voss). Hispanic voters cohesively supported the same candidate with 75% of the vote. Tr. 647:7–9 (Voss). White voters in CD-11, meanwhile, supported Governor Hochul's opponent with 80% of the vote. Tr. 647:10–16 (Voss); IRX-3, app. B at 21, tbl. 6 (Voss Report). Though a slightly lower estimate than Dr. Palmer's, Dr. Palmer reviewed Dr. Voss's conclusions and testified that these results still show "strong evidence of racially polarized voting" in CD-11. Tr. 175:14–76:4 (Palmer); *see also* PX-4 ¶ 20 (Palmer Rebuttal). Either way the Court looks at it—whether it accepts the district-wide scope of Dr. Palmer's analysis or looks to Dr. Voss's city-wide approach—the conclusion is the same: voting in CD-11 is racially polarized, with the White majority bloc voting cohesively to usually defeat the Black and Hispanic–preferred candidate.

Second, Dr. Voss challenged Dr. Palmer's decision not to modify his ecological inference—which has, for decades, been the "gold standard" to assess racially polarized voting, *see Ala. State Conf. of NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1275 n.27 (M.D. Ala. 2020)—

by adding a "covariate" to the model to adjust for aggregation bias. Dr. Voss claimed that, had Dr. Palmer adjusted his approach in this fashion, his results would have shown less polarization between White and Hispanic voters. At trial, Dr. Voss's conclusions on this score were exposed to be unsubstantiated and unreliable, and the Court should disregard them.

For starters, despite testifying that adjusting the EI model with covariates would have been "best practices," Tr. 647:21–23 (Voss), Dr. Voss was unable to identify a *single* expert that has deployed ecological inference in the way he describes even *once* in the redistricting context. *See* Tr. 649:2–10 (Voss). Dr. Palmer—an experienced expert that has testified in 12 redistricting trials—was aware of none. Tr. 177:16–22 (Palmer); *see* PX-4 ¶¶ 9–11 (Palmer Rebuttal). That includes the Intervenors' and Respondents' own expert witnesses—Dr. Trende and Dr. Alford, both of whom have previously conducted ecological inference in the same manner Dr. Palmer did here to estimate racial voting patterns in redistricting cases, but neither of whom have ever utilized the approach that Dr. Voss describes. *See* PX-4 ¶¶ 10–11 (Palmer Rebuttal). The only support Dr. Voss offers to corroborate his approach is a brand-new ecological inference tool produced by a political media organization, VoteHub.com, which analyzes the 2024 election results *only*, utilizing a novel methodology that has neither been published nor peer reviewed. IRX-3 ¶ III.F; app. B at 12–16 (Voss Report).[10]

Moreover, despite leveraging his revised methodology to conclude that Dr. Palmer likely overestimated racially polarized voting in CD-11, Dr. Voss failed to offer defensible evidence of his own to support that conclusion. He stated quite plainly—on several occasions during direct and

[10] Indeed, the author of that report—with whom Dr. Voss was familiar via "election twitter" only, Tr. 654:9–12 (Voss)—completed his undergraduate education less than a year ago. *See* Zachary Donnini, LinkedIn, https://www.linkedin.com/in/zachary-donnini-078aa1205?trk=public_post_feed-actor-name.

cross-examination—that the estimates of racial voting patterns in CD-11 that he includes in his report, *see* IRX-3, app. B at 13, tbl. 3, 14 tbl. 4 (Voss Report), are not "authoritative" estimates. Tr. 594:24–95:2, 655:1–5, 22–25, 656:1–15 (Voss). In other words, *Dr. Voss himself does not believe the estimates he reports accurately estimate voter choice in the relevant region.*

In fact, trial testimony revealed that Dr. Voss's analysis was not even on the right track. Ecological inference produces two sets of estimates: estimates for *voter choice* among racial groups, as well as *turnout* among racial groups. *See* Tr. 660:4–7 (Voss). One way to gauge the accuracy of *voter choice* estimates is whether the corresponding *turnout* estimates are consistent with what is otherwise known about voter behavior. *See* Tr. 659:25–60:3 (Voss). Dr. Palmer testified on direct examination that he ran this simple diagnostic on the ecological inference model (with a covariate) that Dr. Voss disclosed, and the results did not "make much sense." Tr. 178:3–12 (Palmer). For example, Dr. Voss's model predicted 75% turnout among Hispanic voters—and 95% turnout among voters who identified as races other than White, Black, Hispanic, or Asian—in certain elections. Dr. Palmer testified that these results are "nonsensical." Tr. 178:6–12 (Palmer). Dr. Palmer's testimony is confirmed by sheer common sense—95% turnout among *any* racial group of voters is essentially unheard of. Despite predicting that his analysis might contain "anomalies," Dr. Voss testified that he was unable to calculate his turnout estimates before submitting his report in this case. Tr. 664:16–665:3 (Voss). But when pressed on cross-examination, Dr. Voss admitted that he had since run the same analysis as Dr. Palmer, and he agreed his results were indeed anomalous. Tr. 665:4–8 (Voss). For that reason, Dr. Palmer concluded that Dr. Voss's adjustment of adding a covariate to his code produced "[un]reliable" results—a conclusion Dr. Voss was ultimately unable to dispute. *See* Tr. 178:11–12 (Palmer).

Ultimately, Dr. Voss did little more than throw spaghetti at Dr. Palmer's "gold standard" analysis, suggesting that if one adjusted Dr. Palmer's EI model in novel and untested ways, it may or may not produce meaningfully different estimates of racial voting patterns, which may or may not reflect racially polarized voting. The Court should disregard Dr. Voss's thoroughly discredited conclusions.

Third, Respondents offered the testimony of Dr. Alford, who provided the Court the same conclusion he has put forward in scores of other redistricting cases—which courts *routinely* reject. Dr. Alford accepted the results of Dr. Palmer's ecological inference entirely and conducted no analysis of his own beyond verifying Dr. Palmer's results. *See* Tr. 707:12–08:3 (Alford). Dr. Alford's sole conclusion is that the racial voting patterns that Dr. Palmer observed are attributable to partisanship—not race. Tr. 681:4–13 (Alford); *see* RX-2 at 13–15 (Alford Report). But as Dr. Palmer testified, Dr. Alford answers the wrong question: "[T]he question should be how are voters voting. That is, what are their preferences, not where do the preferences come from." Tr. 186:1–3 (Palmer). And "the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting." PX-4 ¶ 4 (Palmer Rebuttal). Courts have broadly agreed, and they have discounted Dr. Alford's unchanging opinion as a result. *See* Tr. 725:6–27:4 (Alford); *see also Robinson v. Ardoin*, 605 F. Supp. 3d 759, 840 (M.D. La. 2022), *vacated & remanded on other grounds*, 86 F.4th 574 (5th Cir. 2023); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1305–07 (11th Cir. 2023), *appeal docketed*, No. 23-13914 (11th Cir. Nov. 28, 2023), *argued* Jan. 23, 2025; *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020). This Court should do the same.

In sum, Petitioners have satisfied their burden to show racially polarized voting in CD-11, with the White majority voting as a bloc to defeat the Black and Hispanic candidate of choice.

B. The totality of the circumstances demonstrate that Black and Hispanic Staten Islanders have less opportunity to participate in the political process than the borough's White population.

1. Relevant legal principles

Petitioners next established that, under the totality of the circumstances, the ability of Black and Hispanic voters, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. A "'totality of the circumstances' inquiry in a voter dilution case 'is fact intensive and requires weighing and balancing [the] various facts and factors'" identified in the NY VRA. *Serratto*, 86 Misc. 3d at 1174 (quoting *Alpha Phi Alpha Fraternity Inc.*, 700 F. Supp. 3d at 1252). Courts evaluating the totality of the circumstances under the NY VRA often rely on decisions interpreting the totality of the circumstances factors under the Federal VRA—known as the Senate Factors.[11] Those decisions make clear that the totality of the circumstances analysis is "local in nature," *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 243 (4th Cir. 2014), and requires "an intensely local appraisal," *White v. State Bd. of Election Comm'rs*, 795 F. Supp. 3d 794, 831 (N.D. Miss. 2025) (quoting *Gingles*, 478 U.S. at 79)). Courts examine these factors in the jurisdiction at issue—here, Staten Island. Evidence of what occurs outside that jurisdiction is "ordinarily irrelevant in assessing the totality of the circumstances." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment).

Both the New York Constitution and NY VRA employ the term "totality of the circumstances." *See* N.Y. Const. art. III, § 4(c)(1); N.Y. Elec. Law § 17-206(2)(b)(ii). The NY VRA delineates the relevant factors specifically, *see* N.Y. Elec. Law § 17-206(3), and for the reasons stated above, those factors should inform the constitutional "totality of the circumstances"

[11] The totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA. *See Gingles*, 478 U.S. at 36–37.

analysis as well. *Supra* Summation § I. Specifically, the factors "that may be considered shall include, but not be limited to":

(a) the history of discrimination in or affecting the political subdivision;

(b) the extent to which members of the protected class have been elected to office in the political subdivision;

(c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme;

(d) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election;

(e) the extent to which members of the protected class contribute to political campaigns at lower rates;

(f) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate;

(g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection;

(h) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process;

(i) the use of overt or subtle racial appeals in political campaigns;

(j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and

(k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.

N.Y. Elec. Law § 17-206(3). No "specified number of factors [is] required in establishing that . . . a violation has occurred." *Id.*

2. Petitioners' evidence

The evidence at trial definitively showed that, in view of the totality of the factors above, Black and Hispanic Staten Islanders' ability to "elect candidates of their choice or influence the outcome of elections is impaired." *Id.* § 17-206(2)(b)(ii). Petitioners' expert, Dr. Thomas Sugrue,[12] presented evidence of a long history of discrimination in Staten Island, including residential segregation which remains to this day; a history of racial violence and hate crimes; significant and ongoing disparities in education, employment, criminal justice, housing, income and voter turnout; the presence of racial appeals in campaigns in Staten Island; and the extremely limited electoral success of Black and Hispanic candidates. All of these factors limit Black and Hispanic political participation and ability to influence elections. Dr. Sugrue's report follows historical research methodology, and he cites and relies on academic literature relevant to the totality of the circumstances factors that he addresses in his report. Tr. 49:1–15 (Sugrue). By all measures, Dr. Sugrue's expert report and testimony is reliable, based on credible academic research and methodology, and for these reasons, is entitled to significant weight.

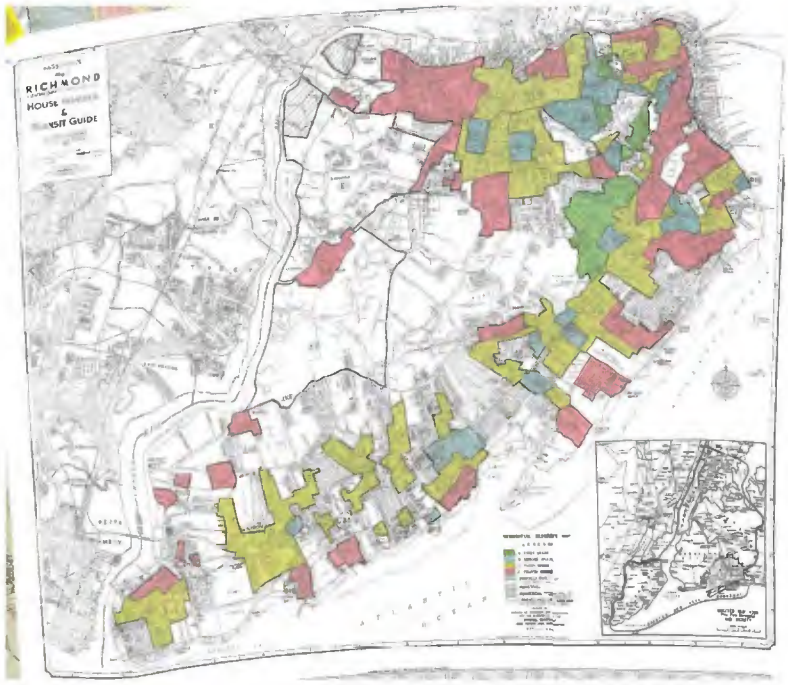
The vast majority of Petitioners' evidence was either unopposed by Respondents and Intervenors or supported by the evidence Intervenors' expert, Mr. Joseph Borelli, provided in his reports and at trial. Mr. Borelli is a partisan politician with no prior experience in racial vote dilution or civil rights cases. Tr. 778:24–79:17 (Borelli). Prior to his engagement in this case, Mr. Borelli had never performed an analysis of the totality of the circumstances factors under the New

[12] Dr. Sugrue is an award-winning, tenured, NYU historian, whose scholarship has focused on discrimination, urban history, and civil rights for more than thirty years. PX-1 ¶¶ 1–4 & app. 1. Dr. Sugrue has performed the totality of the circumstances analysis multiple times in racial vote dilution cases, and every court has found him qualified and several have relied on his testimony and analysis. Tr. 41:24–42:18 (Sugrue); *see also United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 593–95 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606–07 (N.D. Ohio 2008).

York Constitution, the New York Voting Rights Act, or Section 2 of the VRA. Tr. 779:7–14 (Borelli). While Mr. Borelli has personal and professional experiences on Staten Island as both a resident and elected representative, his testimony was replete with the sort of personal anecdotes common to lay witnesses, not experts. *See, e.g.*, Tr. 756:10–22 (Borelli) (Mr. Borelli discussing his own neighborhood and selling his "grandmother's house to a Pakistani family who moved in a couple of years ago"). Mr. Borelli's lack of expert experience is evident throughout his report and the methodology through which he came to his conclusions, which in many instances, was not based on any review of the relevant academic literature and contain no citations to that literature. PX-2 ¶ 64 (Sugrue Rebuttal). These limitations underscore the importance of expert testimony, like Dr. Sugrue's, that assesses the totality of the circumstances factors impartially, using accepted research methods. For these reasons, the court should afford Mr. Borelli's testimony and report little weight.

Factor (a): the history of discrimination. There is no meaningful dispute as to whether there is a history of discrimination on Staten Island. Dr. Sugrue identifies an extensive body of evidence—undisputed by Intervenors and Respondents—that demonstrates this discriminatory history. For example, Dr. Sugrue traced a history of redlining on Staten Island, identifying particular neighborhoods in Staten Island that were historically redlined, Tr. 61:5–23 (Sugrue). Figure 5 of Dr. Sugrue's opening expert report shows these Staten Island neighborhoods.

Figure 5: Federal Home Loan Bank Board Richmond County, New York, Home Security Map, 1940[33]



PX-1 at 22, fig. 5 (Sugrue Report).

Tracing the history of residential discrimination to the present, Dr. Sugrue also identified a "wide body of scholarship by historians, sociologists, public health experts and other social scientists, demonstrating that areas that [were] redlined are more likely today to have various negative socioeconomic indicators, problematic environmental outcomes and problematic health outcomes." Tr. 61:24–62:7 (Sugrue). Mr. Borelli confirmed at trial that nothing in his report "challenges this body of scholarship," Tr. 796:25–97:6 (Borelli), or the incidents of discrimination Dr. Sugrue identified, Tr. 788:17–18 (Borelli).

Dr. Sugrue also demonstrated that the history of residential segregation on Staten Island has led to continued racial residential segregation today. Dr. Sugrue explained, and Mr. Borelli did not dispute, that Hispanics and Whites are moderately segregated on Staten Island today, while Blacks and Whites are highly segregated, Tr. 58:22–59:5 (Sugrue); Tr. 797:10–98:18 (Borelli),

with the majority of both groups living North of the Staten Island expressway, or what many minority Staten Islanders refer to as the "Mason-Dixon line." Tr. 55:9–20 (Sugrue). Dr. Sugrue also presented evidence of numerous examples of racial violence and hate crimes on Staten Island, all of which was unrebutted. PX-1 ¶¶ 55–75; Tr. 788:17–20 (Borelli). While Mr. Borelli claimed that he did not "attempt to whitewash [Staten Island's] history" in his report, Tr. 787:9–13 (Borelli), he conceded at trial that he failed to mention numerous hate crimes against Black people on Staten Island of which he was aware. While his report mentioned two hate crimes against Blacks on Staten Island in 2025, he confirmed that he had reviewed the NYPD Hate Crimes Dashboard going as far back as 2020 and did not discuss in his report the 27 *additional* incidents of hate crimes against Blacks on Staten Island during that period. Tr. 784:15–85:8 (Borelli).

Mr. Borelli's repeated claim that similar racial discrimination to that identified by Dr. Sugrue was purportedly also happening elsewhere in New York during the same historical period, *see, e.g.*, Tr. 788:7–10 (Borelli), misunderstands the relevant inquiry under the totality of the circumstances analysis. Courts look to the history of the particular jurisdiction at issue to determine whether the totality factors are satisfied; evidence of other jurisdictions is "irrelevant in assessing the totality of the circumstances in [the disputed] district." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment) (analyzing totality of the circumstances under Section 2 of the VRA). The undisputed evidence presented at trial bearing on the appropriate jurisdiction—an "intensely local appraisal" of Staten Island, *id*. at 78, 79—makes clear that Black and Hispanic Staten Islanders have faced a history of discrimination that has had a lasting effect on their ability to participate in the political process.

Factor (b): minority electoral success in the jurisdiction. As the evidence presented at trial demonstrated, Black and Hispanic Staten Islanders have experienced very limited electoral

success. The sum total of all the successful Black and Hispanic candidates that have ever been elected to office in Staten Island's history can be counted on one hand. PX-2 ¶¶ 48–49 (Sugrue Rebuttal). For example, Dr. Sugrue explained, and Mr. Borelli did not dispute, that although Black people have lived on Staten Island for more than 200 years, the first Black candidate to obtain electoral success was Debi Rose, elected to the City Council in 2009. Since then, only three Black candidates have been elected to any office on Staten Island. Tr. 70:17–71:12 (Sugrue); PX-2 ¶¶ 48–49 (Sugrue Rebuttal). The single example of Latina political success is Representative Nicole Malliotakis, but she is decidedly not Black and Hispanic voters' candidate of choice. PX-3 ¶ 15, fig. 1 (Palmer Report). Staten Islanders have never elected a Black member of Congress, Hispanic City Councilperson, or a Hispanic judge. PX-2 ¶¶ 48–52 (Sugrue Rebuttal).

Mr. Borelli's claims that Blacks and Hispanics have experienced great political success fails as a matter of common sense and is further undermined by his erroneous reporting of purported additional electoral success. In his report, he claims that Judge Tashanna Golden and Judge Raymond Rodriguez are additional examples of Black and Hispanic electoral success, IRX-2 at 30 (Borelli Report), but as he admitted at trial, that is incorrect. Tr. 774:14–19 (Borelli). Judge Golden was appointed to the housing court in Brooklyn, and Judge Rodriguez was appointed to the New York City Criminal Court. Tr. 73:2–9 (Sugrue); PX-2 ¶¶ 50–51 (Sugrue Rebuttal).

Factor (c): the use of voting qualification, prerequisite to voting, law or policy that may enhance the dilutive effects of the election scheme. Dr. Sugrue presented evidence of the historical use of literacy tests on Staten Island beginning in the 1920s and continuing through the latter half of the twentieth century. PX-1 ¶¶ 88–89 (Sugrue Report). Mr. Borelli does not dispute their use on Staten Island; among other things, his report identifies that "New York required a literacy test in 1921" and notes that "by 1970 the literary test re-emerged as an obstacle to voting"

for Hispanics due to the "increased migration of Spanish speaking people to the mainland United States" during this period. IRX-2 at 31–32 (Borelli Report). This factor is undisputed.

Factor (f): Blacks and Hispanics "in the state or political subdivision vote at lower rates than other members of the electorate." The evidence at trial makes clear that this factor weighs in Petitioners' favor. Dr. Palmer presented evidence that Black and Hispanic voter turnout estimates lag far behind that of whites since at least 2020. As Figure 6 below demonstrates, for each year of data measured there were significant disparities between White as compared to Black and Hispanic voter turnout in Staten Island.

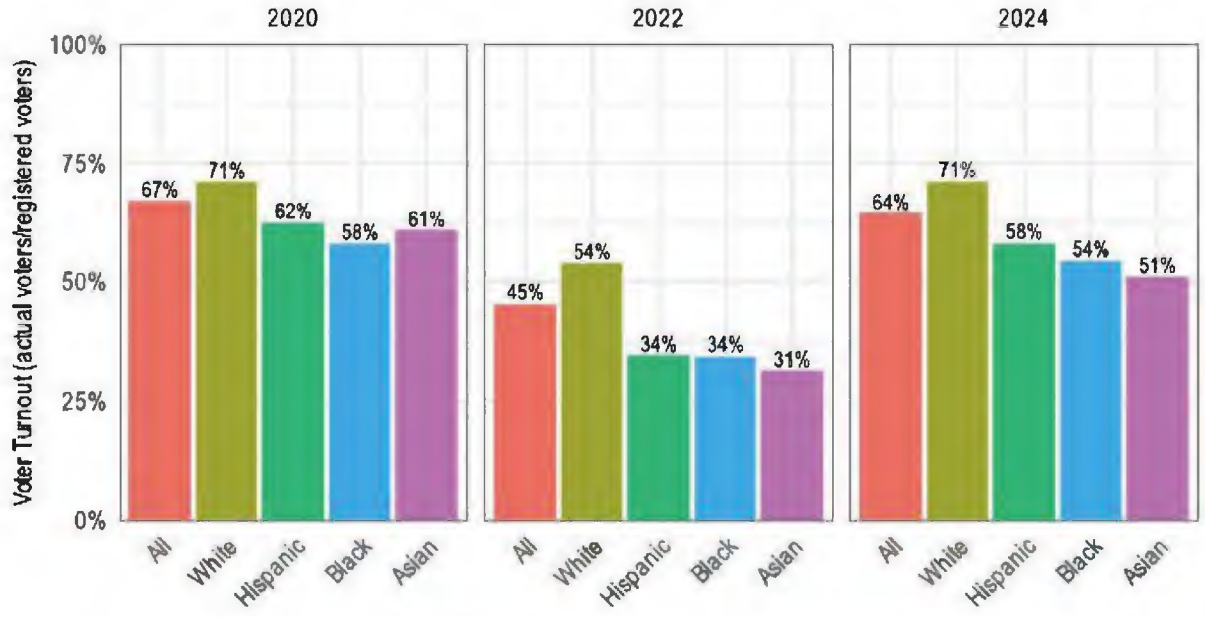


Figure 6: Estimated Voter Turnout by Race and Election in Staten Island

PX-3 at 9, fig. 6 (Palmer Report). For example, there were disparities of 13% and 17% for Hispanics and Blacks respectively as compared to Whites in 2024, and there was a 20% disparity for both Hispanics and Blacks as compared to whites in 2022. PX-3 (Palmer Report). Mr. Borelli presented no evidence to dispute this data. Indeed, the voter turnout data that Mr. Borelli relied upon supports this conclusion. He presented nationwide voter turnout data demonstrating a greater

than 19% disparity between White and Hispanic voter turnout and a greater than 12% disparity between White and Black voter turnout in 2022. Tr. 811:3–22 (Borelli).

Factor (g): Blacks and Hispanics "are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection" on Staten Island. The undisputed evidence at trial demonstrated significant disadvantages for Black and Hispanic Staten Islanders as compared to Whites in education, employment, criminal justice and housing. And as Dr. Sugrue made clear at trial, there is a "wide body of scholarship," Tr. 69:4–14 (Sugrue); *see also* Tr. 66:4–6, 67:21–68:3 (Sugrue), showing that "[e]ach of these socioeconomic factors"—"educational attainment, income, poverty[,]. . . unemployment and homeownership"—are "strongly related to one's ability to participate fully in the political process. And on every one of these metrics, there are significant disparities between Blacks, Latinos and Whites on Staten Island." Tr. 70:5–12 (Sugrue). Mr. Borelli failed to provide any academic literature or other evidence that rebuts the connection between these socioeconomic factors and political participation. *See* Tr. 66:13–17, 68:4–7 (Sugrue); PX-2 ¶ 30 (Sugrue Rebuttal).

Education. Dr. Sugrue demonstrated significant and persistent disparities between Black and White Staten Islanders in educational attainment, a finding that Mr. Borelli's own data confirmed. For example, Figure 7 of Dr. Sugrue's report confirmed that Black and Hispanic Staten Islanders are much more likely to have less than a high school diploma as compared to White Staten Islanders, and Whites are much more likely to have graduated from college.

Figure 7: Highest Educational Attainment: Blacks, Latinos, and Whites, Staten Island, 2019-2023

	White	Black	Latino
Less than high school diploma	7.2%	11.1%	20.5%
High school graduate	29.6%	33.7%	33.6%
Some college or associate's degree	24.3%	26.2%	22.7%
Bachelor's degree or higher	39.0%	28.8%	23.1%

PX-1 at 39, fig. 7 (Sugrue Report). The evidence presented by Mr. Borelli demonstrated the same. He provided charts on educational attainment by race that made clear, among other things, that in 2024 there was a 28% and 47% disparity, respectively, between Black and Hispanic college graduation rates as compared to White college graduation rates.

2024 Educational Attainment by Race[104]

Race & Educational Attainment	Total	Percent	Percent of White
White - High school graduate or higher	186,170	92.9%	100.00%
White - Bachelor's degree or higher	83,716	41.8%	100.00%
Black - High school graduate or higher	27,572	90.2%	97.09%
Black - Bachelor's degree or higher	9,182	30.0%	71.77%
Asian - High school graduate or higher	39,590	75.7%	81.49%
Asian - Bachelor's degree or higher	17,841	34.1%	81.58%
Latino - High school graduate or higher	49,975	82.8%	89.13%
Latino - Bachelor's degree or higher	13,304	22.0%	52.63%

IRX-2 at 38 (Borelli Report).

In an attempt to minimize these vast disparities, Mr. Borelli claimed that significant progress in education has been made, Tr. 806:20–07:1 (Borelli); but at trial Mr. Borelli confirmed that his own data did not support this claim either. He conceded that in many instances, including when examining Black and Hispanic college graduation rates, and Hispanic high school graduation rates, the disparities in education have actually *increased* in recent years. Tr. 807:8–08:8 (Borelli).

Dr. Sugrue identified "a wide body of scholarship going back decades now by social scientists who show a strong relationship between educational attainment and political participation." Tr. 66:4–6 (Sugrue); *see also* PX-2 ¶ 30 (Sugrue Rebuttal). He described that educational attainment provides voters with, among other things, "access to information and knowledge about political issues," as well as "social capital that gives some advantages in the voting process." Tr. 66:6–11 (Sugrue).

Employment. Only Dr. Sugrue presented evidence on employment figures on Staten Island, which demonstrate, using the most recent five-year ACS estimates, Blacks and Hispanics face higher unemployment rates on Staten Island than whites: 5 percent for Whites as compared to 6.7 and 6.8 percent for Hispanics and Blacks. PX-1 ¶ 78, fig. 8 (Sugrue Report).

Criminal Justice. Dr. Sugrue presented substantial evidence of "persistent disparate treatment of Staten Islanders by police in . . . recent years, especially in [the] NYPD's use of 'stop and frisk' tactics," which Mr. Borelli entirely failed to rebut. PX-1 ¶ 84 (Sugrue Report). For example, in 1998 and 2007, Dr. Sugrue identifies studies by the U.S. Civil Rights Commission and the RAND Corporation that established the disproportionate targeting of Black and Hispanic Staten Islanders. In 1998, despite being only 9 percent of the borough's population, Blacks were 51.6 percent of those stopped and frisked. PX-1 ¶ 84 (Sugrue Report). Whites, who were more than 75 percent of the population at that time, were only subject to 32.4 percent of the stops. PX-1 ¶ 84 (Sugrue Report). In 2007, those disparities remained: a RAND report found that whereas 20 percent of whites had been stopped, 29 percent of Blacks had. PX-1 ¶ 85 (Sugrue Report). And in 2014, Staten Island was the site of an internationally infamous case of police brutality in which New York City Police officers arrested Eric Garner for selling untaxed cigarettes in Tompkinsville

and proceeded to hold Garner in an unlawful chokehold while Garner stated "I can't breathe" eleven times before he died. PX-1 ¶ 87 (Sugrue Report).

Housing. Dr. Sugrue presented unrebutted evidence of vast homeownership disparities on Staten Island. Whereas 76.8% of White Staten Islanders own their homes, only 43.7% of Hispanics do and only 35.8% of Black Staten Islanders do. PX-1 ¶ 79, fig. 9 (Sugrue Report). These figures represent disparities of more than 33% and 41% for Hispanics and Blacks respectively as compared to Whites.

Figure 9: Housing Tenure by Race and Ethnicity, Staten Island, 2019-2023[121]

	White	Latino	Black
Homeowner	76.8%	43.7%	35.8%
Renter	23.2%	56.3%	64.2%

PX-1 ¶ 79 (Sugrue Report). Mr. Borelli confirmed at trial that he offered nothing to dispute this conclusion. Tr. 808:13–25 (Borelli). To the extent Mr. Borelli claims that Black and Hispanic homeownership rates are higher than those in other New York City boroughs, that claim is irrelevant to the Court's evaluation of this totality factor—"the totality of the circumstances [inquiry] . . . [requires] 'an intensely local appraisal,'" *White*, 795 F. Supp. 3d at 831 (quoting *Gingles*, 478 U.S. at 79)).

Factor (h) Black and Hispanic voters are "disadvantaged in other areas which may hinder their ability to participate effectively in the political process." Both Dr. Sugrue and Mr. Borelli presented evidence of differences in income between Blacks, Hispanics, and Whites at trial, and both sets of evidence make clear that Black and Hispanic Staten Islanders face significant income disparities relative to Whites. For example, Mr. Borelli presented three charts showing median household income by race in 2010, 2020, and 2024. *See* IRX-2 at 44 (Borelli Report). Black and Hispanic mean household income never exceeds 66% of White household income. IRX-

2 at 44 (Borelli Report); Tr. 809:5–14 (Borelli). Dr. Sugrue's data confirmed this finding and demonstrated that White per capita income was more than $20,000 more than Black and Hispanic Staten Islanders'.

Figure 8: Socio-Economic Status by Race and Ethnicity, Staten Island, 2019-2023

	White	Latino	Black
Per capita income	$52,572	$31,647	$30,784
Unemployment rate	5.0%	6.7%	6.8%
Below Poverty line	6.8%	16.3%	24.6%

PX-1 ¶ 78, fig. 8 (Sugrue Report).

Factor (i) Racial Appeals are common in campaigns in Staten Island. Dr. Sugrue explained that racial appeals are characterized by "[n]egative stereotypical imagery that . . . activate[s] voters' negative racial attitudes[,] includ[ing] depictions of African Americans as criminals or welfare recipients." PX-1 ¶ 91 (Sugrue Report) (quoting LaFleur Stephens-Dougan, *The Persistence of Racial Cues and Appeals in American Elections*, 24 Ann. Rev. Pol. Sci. 301, 303 (2021)). Such appeals are often subtle and involve "[r]acially coded language" and "terms that invoke racial themes without ever explicitly mentioning race, including 'law and order,' 'tough on crime,' and 'inner city.'" PX-1 ¶ 91 (Sugrue Report) (quoting Stephens-Dougan, *supra* at 303–04). By contrast, Mr. Borelli failed to include any definition of racial appeals in his report, but he conceded at trial that he presented no academic literature about racial appeals that would call Dr. Sugrue's definition into question. Tr. 805:17–23 (Borelli). Dr. Sugrue presented evidence of numerous racial appeals in Staten Island campaigns, *see* PX-1 ¶¶ 91–104 (Sugrue Report), including two such appeals in Representative Malliotakis' 2020 congressional campaign, PX-2 ¶¶ 39–42 (Sugrue Rebuttal), and concluded that "[t]here is a long history of racial appeals in Staten Island politics." PX-1 ¶ 91 (Sugrue Report).

On the other hand, Mr. Borelli concluded that such appeals are not common in Staten Island campaigns, but the novel methodology he used in attempting to identify racial appeals makes clear that his conclusion is entitled to no weight. In Mr. Borelli's report he explained that his methodology for attempting to identify racial appeals was to search for the word "racism" and the word "issues" in the newspaper database newspapers.com in election years from 2000 to 2024. IRX-2 at 53 (Borelli Report).[13] In Mr. Borelli's report and at trial, Mr. Borelli failed to identify a single scholarly source that supported his methodology for identifying racial appeals. Tr. 802:9–12 (Borelli). As Dr. Sugrue explained, "[n]o professional historian could responsibly conduct newspaper research on a topic that touches on advertisements, media, campaigns, and racially charged language or images by using just two keywords." PX-2 ¶ 38 (Sugrue Report). Dr. Sugrue testified that Mr. Borelli's approach "would not capture any number of . . . possible examples" of racial appeals, Tr. 77:3–78:7 (Sugrue)—as evidenced by Mr. Borelli's failure to identify the multiple racial appeals that were described in the articles he cited in his own report.

For example, Mr. Borelli's report discussed the Young Leaders, a Black community group on Staten Island that was founded in the wake of Eric Garner's murder. IRX-2 at 48 (Borelli Report). Mr. Borelli described the Young Leaders as a "group[] that support[s] minority rights" and a group that "held several rallies around the borough in an effort to get voters engaged in the 2020 election." IRX-2 at 48 (Borelli Report). He also cited to an article in *The City* about the Young Leaders, entitled "Their Anti-Racism Marches Were Twisted in a $4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote." IRX-2 at 48 n.119 (Borelli Report). That article described that "[f]ootage of one peaceful [Young Leaders] march — interspersed with

[13] At trial, Mr. Borelli testified that he also searched for the word "racist" but failed to mention doing so in his report. Tr. 800:3–6 (Borelli).

doctored images of police cars ablaze — became the centerpiece of an attack ad touting Assemblymember Nicole Malliotakis and trashing Rep. Max Rose in her successful bid to oust the freshman Democrat from the [sic] Staten Island's House seat." PX-2 ¶ 41 (Sugrue Rebuttal). As Dr. Sugrue explained at trial, "this is a textbook racial appeal," something "I could use in a class to illustrate racial appeals to my students." Tr. 79:19–22 (Sugrue). The advertisement did precisely what the academic literature describes as a racial appeal by linking the Young Leaders' with "[n]egative stereotypical imagery . . . includ[ing] depictions of African Americans as criminals," PX-2 ¶ 41 (Sugrue Rebuttal), even though there was "nothing riotous, criminal, or threatening" about the peaceful marches that they led. Tr. 80:3–6 (Sugrue). Nonetheless, Mr. Borelli failed to identify this advertisement as a racial appeal.

In that same campaign, the Congressional Leadership Fund spent at least $4 million on televising ads focused on the Young Leaders' marches, including another ad "show[ing] some of the Young Leaders . . . and footage of their June 3 march in New Dorp, spliced with violent scenes, while a narrator spoke of 'criminals hailed as freedom fighters.'" PX-2 ¶ 41(Sugrue Report) (quoting Clifford Michel, *Their Anti-Racism Marches Were Twisted in a $4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote*, The City (Nov. 22, 2020)). Mr. Borelli also failed to identify this racial appeal.

C. The Black and Hispanic candidate of choice is usually defeated within CD-11.

1. Relevant legal principles

Petitioners have also demonstrated that the Black and Hispanic candidate of choice is "usually defeated" by the White-preferred candidate. This requirement is common to both the federal VRA and NY VRA, and there is no reason to impose a different standard here. *See NAACP, Inc. v. City of Niagara Falls*, 65 F.3d 1002, 1007 (2d Cir. 1995) (discussing requirement that VRA plaintiffs prove that the White majority will "usually . . . defeat the minority's preferred candidate"

(quoting *Gingles*, 478 U.S. at 50–51)); *see Coads v. Nassau County*, 86 Misc. 3d 627, 651–52, 654 (Sup. Ct. Nassau Cnty. 2024) (explaining that the NY VRA's "usually defeated" threshold "mirrors the third *Gingles* precondition").

Congressional "redistricting analysis must take place at the district level." *Abbott v. Perez*, 585 U.S. 579, 616 (2018). It therefore follows that a petitioner's burden is to show that the minority-preferred candidate is "usually defeated" in the area comprising the challenged district. In *Cooper v. Harris*, 581 U.S. 285 (2017), for example, the Supreme Court evaluated bloc-voting in two congressional districts, and in turn, focused on evidence concerning past elections in those districts—specifically, voting patterns "in the area that would form the core of the redrawn" district. *Id*. at 302–07. The plaintiffs were not required to provide proof that minority-preferred candidates similarly fail to succeed statewide or regionally.

Intervenors and Respondents invent a different—and entirely novel—approach in an effort to evade the fact that Black and Hispanic candidates of choice are usually defeated in CD-11 and within Staten Island. They would have the Court impose a requirement that Petitioners demonstrate that the minority–preferred candidate is "usually defeated" by White majority bloc voting not just in the core of the challenged district, but across the *entire* jurisdiction—here, New York's entire 2024 Congressional Map, or at least all of New York City. Doc. 115 at 21, 26; Doc. 122 at 36–37. The only support they offer is that "the NYVRA's vote-dilution analysis is not district specific by its statutory text," allowing plaintiffs to "reach all over the relevant jurisdiction" to form minority coalitions. Doc. 115 at 21. But that is decidedly not this case, which alleges unconstitutional vote dilution in a single congressional district. *See Coads*, 86 Misc. 3d at 654 ("[T]he legal significance of racial bloc voting depends on the factual circumstances and must be based upon a practical, commonsense examination of all the evidence."). The expert that Intervenors offered on this

issue—Dr. Sean Trende—did not offer any further support for the rule they try to advance. Dr. Trende conceded that he was not actually interpreting the meaning of the New York Constitution or NY VRA—as this Court must—or providing analysis to bring a successor lawsuit; he merely speculated on the possible consequences of a ruling for Petitioners. Tr. 435:14–36:2 (Trende).

To that end, without any textual footing for their novel approach to the "usually defeated" standard, Intervenors resorted to a parade of horribles—or using Dr. Trende's terminology, a "doom loop." Tr. 397:14–25 (Trende). Dr. Trende postulated that if the "usually defeated" inquiry is conducted at the district-level only, it would prompt a never-ending loop of lawsuits whereby one group of disaffected voters sues to redraw their district. Tr. 410:15–11:2 (Trende); *see also* Doc. 115 at 23–24. But as Dr. Trende agreed, any follow-on suit brought under the NY VRA would have to either (i) establish racially-polarized voting or (ii) meet the totality of the circumstances test, while also showing that a group's candidate of choice is "usually defeated." Tr. 436:13–19, 437:25–38:7 (Trende). And he was unable to offer *any* evidence beyond pure speculation that this hyperbolic "doom loop" is anything other than speculation.

Tellingly, Dr. Trende did not testify that this "doom loop" would be at all likely if the Court orders relief in *this* case. This is not surprising—Dr. Palmer testified that, under the Illustrative Map, "White voters are less cohesive" and "more supportive of Black and Hispanic[–preferred] candidates." Tr. 169:12–14, 16–17 (Palmer). Under these conditions, there is no plausible argument that White voters (who would, at least under the Illustrative Map, still constitute a majority voting bloc) could successfully leverage their own vote-dilution claim against a newly drawn CD-11.

Dr. Trende therefore speculated that doom loops might take shape elsewhere—specifically in Brooklyn or upstate New York. *See* Tr. 407:8–08:6 (Trende). Specifically, he testified that he

"dr[ew] some maps that . . . create[d] a district where the White preferred candidate would win" in Brooklyn and Queens. Tr. 408:3–6 (Trende). But he readily conceded that he performed none of the analysis necessary to determine if vote-dilution claims might lie in those areas, including whether voting is racially polarized in those areas or whether the totality of the circumstances would show unequal electoral opportunity—even though he has performed the former analysis in other cases. Tr. 438:8–24 (Trende). Nor did he determine if White voters have a clear candidate of choice in any congressional district outside CD-11. Tr. 439:5–14 (Trende).

Instead, Dr. Trende relied blindly upon *counsel* for the Intervenors' summation of the expert report of Dr. Voss—which Dr. Trende did not even review before submitting his own report—to conclude that current CD-5, CD-8, and CD-9 have racially polarized voting that might support future lawsuits. *See* Tr. 440:9–25 (Trende); IRX-1 at 10 (Trende Report). But there is a major problem with that blind reliance: Dr. Voss himself recanted on the stand the precise conclusion Dr. Trende relied upon. *See* Tr. 667:1–73:2 (Voss). When asked whether his report made any conclusion as to racially polarized voting in these districts, his response was: "I hope I didn't." Tr. 667:7-10 (Voss). And when asked if he would like to "back off" the precise language in his report to that effect, his response was: "Yeah." Tr. 668:1–2 (Voss). He then proceeded to agree with Petitioners' counsel, at length, that White voters were *not* cohesive in the two recent elections he reviewed in those districts, as significant portions of White voters in those districts supported candidates of different parties. *See* Tr. 669:3–73:2 (Voss). Indeed, he testified that, in two of those districts, it is possible that more than *half* of White voters supported the Black and Hispanic candidate of choice in one of the two elections he examined. Tr. 672:7–73:2 (Voss). Ultimately, Dr. Voss's testimony was consistent with Dr. Palmer's conclusion that the evidence did *not* show racially polarized voting in CD-5, 6, and 9. PX-4 ¶ 21 (Palmer Rebuttal).

Dr. Voss's recantation cuts the legs out from under Dr. Trende's string of hypotheticals, as even Dr. Trende agreed. *See* Tr. 441:11–13 (Trende) (agreeing that problems with Dr. Voss's report might change his conclusions as to the risk of a so-called "doom loop").[14] Accordingly, Dr. Trende's "doom loop" opinions "are simply speculation[]," and the interpretation of a "statute cannot depend on the resolution of that kind of hypothetical approach." *Subway-Surface Supervisors Ass'n v. N.Y.C. Transit Auth.*, 56 A.D.2d 53, 58 (1977). The Court should not base its construction of New York law upon such baseless and speculative fearmongering, which rapidly dissolved under basic questioning. *See Acevedo v. Citibank, N.A.*, 83 Misc. 3d 706, 731, 209 N.Y.S.3d 753, 775 (Sup. Ct. Bronx Cnty. 2024) (rejecting statutory construction arguments "based on a hypothetical situation not reflective of the reality of this proceeding"), *aff'd*, 242 A.D.3d 442 (1st Dept. 2025); *cf. Brightonian Nursing Home v. Daines*, 890 N.Y.S.2d 818, 823 (Sup. Ct., Monroe Cnty. 2009) (explaining the invalidity of a statute cannot rely upon "'hypothetical' or 'imaginary' cases").

Moreover, it is Intervenors' approach that produces untenable outcomes. Intervenors' and Respondents' approach would render protections against minority vote dilution (at least at the congressional level) effectively obsolete throughout the state of New York—or at least New York City. By their telling, so long as *some* portion of the state's minority population can elect their candidate of choice, there is no remedy if minority voters elsewhere in the state lack that opportunity. That is not the law. The Supreme Court has squarely "rejected the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater

[14] Unsurprisingly, no witness suggested that White voters in Brooklyn would be able to demonstrate that the totality of the circumstances factors would supporting a finding that they have unequal electoral opportunities. *See* N.Y. Const. art. III, § 4(c)(1).

opportunity to others." *League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 429 (2006). The Court should not chart a different course here.

2. Petitioners' evidence

Viewed through the proper lens, Petitioners' evidence at trial plainly showed that the Black and Hispanic candidate of choice is "usually defeated" in CD-11. Dr. Palmer focused on the existing boundaries of CD-11 to ensure his results appropriately reflected bloc voting and electoral prospects "at the district level," *Abbott*, 585 U.S. at 616, specifically "in the area that [will] form the core of" the new CD-11, *Cooper*, 581 U.S. at 304. In that area, Dr. Palmer found that voting is deeply (and in recent years, increasingly) racially polarized. PX-3 ¶¶ 15–19 (Palmer Report). And of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times, and by very narrow margins. PX-3 ¶ 20 (Palmer Report); Tr. 167:10–68:23 (Palmer) (testifying to these results).

Intervenors' argument that the minimal electoral success Dr. Palmer identified defeats Petitioners' claim, Doc. 115 at 26, is contrary to precedent. And Dr. Trende's testimony that minority-preferred candidates are occasionally (even if not recently) "capable" of winning elections in CD-11 is not the standard. *See* Tr. 434:8–12 (Trende). "Evidence of minority candidates' success does not necessarily negate a finding of bloc voting." *NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 380 (citation modified). The one election the Black and Hispanic–preferred candidate won in 2017 prevailed with *less* than a majority vote in a multi-candidate election. Tr. 168:14–17 (Palmer). And the remaining narrow victories Dr. Palmer identified all occurred during the same 2018 election cycle. Tr. 168:8–13 (Palmer); *see* PX-3 ¶ 20, fig. 3 (Palmer Report). Voting patterns in CD-11 have become increasingly polarized since then, as evidenced by an uninterrupted string of elections between 2019 and 2024 in which there is significant racially

polarized voting and the Black and Hispanic–preferred candidate has been routinely defeated. *See* PX-3 ¶ 20, fig. 3 (Palmer Report). This evidence straightforwardly supports a finding that the Black and Hispanic–preferred candidate is "usually defeated" in CD-11.

D. It is feasible to draw an alternative district that remedies racial vote dilution and that complies with traditional redistricting criteria.

1. Relevant legal principles

Finally, Petitioners established that it is feasible to enact an "alternative" map 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. Elec. Law § 17–206(5)(a)); *see also Serratto*, 86 Misc. 3d at 1172 (same).

That is not a heavy burden. Petitioners need not detail the precise boundaries of an alternative map—or identify the single best iteration of an alternative map—because, ultimately, the New York Constitution provides that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." *See* N.Y. Const. art. III, § 5; *see also* Doc. 203. It is therefore enough for Petitioners to show that such an alternative map *could* be drawn in a way that remedies the challenged racial vote dilution, *see* N.Y. Const. art. III, § 4(c)(1), and that adheres to the other traditional redistricting criteria prescribed by New York law. Those prescribed criteria include equal population, *see id.* art. III, § 4(c)(2); contiguity, *see id.* art. III, § 4(c)(3); compactness, *see id.* art. III, § 4(c)(4); not discouraging competition or favoring one party over another, *see id.* art. III, § 4(c)(5); and consideration of communities of interest and political subdivisions, *see id.* Respondents and Intervenors' arguments about *who* should draw the new map in the first instance—a special master, the IRC, or the Legislature—changes none of this. *See generally* Docs. 205–06.

Similarly, while Respondents and Intervenors spent much of their time at the hearing appraising the relative merits of the 2024 Map and the Illustrative Map, those critiques fundamentally misunderstand the issue before the Court at this stage. Specifically, the Court need only even consider the feasibility of an alternative, remedial map if it first finds that Petitioners have satisfied the elements of their constitutional vote dilution claim. *See supra* Summation § II.A–C (explaining how Petitioners have done so). At that point, the Court will have found that the 2024 Map is unlawful—so how it then measures up against the Illustrative Map under other redistricting criteria is purely academic. For example, the fact that an existing district that unconstitutionally dilutes minority voting power is more compact than an illustrative district does not somehow remedy the current district's unlawfulness. The question for the Court is can the Legislature (or other map-drawer) draw a suitable new map that *both* remedies Petitioners' injury and complies with New York law—regardless of precisely how it chooses to do so. The evidence shows that the Court should answer that narrow and limited question in the affirmative.

2. Petitioners' evidence shows an alternative map would be straightforward to draw.

Petitioners' evidence at trial shows that there is no doubt that the Legislature (or other map drawer) could draw a suitable alternative CD-11 that (1) redresses Petitioners' racial vote dilution injury; and (2) respects other traditional redistricting criteria as set forth in the New York Constitution. Expert demographer Bill Cooper presented one possible formulation of such a map—*see generally* PX-5 ¶¶ 20–25, 42–63 (Cooper Report); Tr. 247–300 (Cooper)—while explaining that many such formulations exist, *see* PX-5 ¶ 25 (Cooper Report) ("[T]he Illustrative Map is just one of many possible plan variations."); Tr. 371:1–10 (Cooper) (agreeing the Legislature would

draw a new map and that the Illustrative Map "is just one way" to do so).[15] Specifically, his report set forth a version of CD-11 combining Staten Island and Lower Manhattan that would allow Black and Hispanic voters the opportunity to elect their candidates of choice, and that otherwise complies with New York redistricting criteria. *See* PX-5 § IV & Ex. H-1 (Cooper Report). While Respondents quibble with certain choices Mr. Cooper made in the Illustrative Map, those criticisms are misguided and ignore that the Legislature (or other decision-maker) is free to make other choices when drawing a remedial district—indeed an illustrative map "[v]ery rarely . . . become[s] a final plan" in most redistricting cases. Tr. 371:1–10 (Cooper). As Mr. Cooper agreed, the Illustrative Map is not a "take it or leave it option," and is just "one way" to grant relief, Tr. 371:7–10 (Cooper), even while it supplies "proof of concept" that a remedial map is readily achievable, Tr. 247:21–23 (Cooper).

a. Petitioners provided an illustrative map that would redress Petitioners' racial vote dilution injury and result in a competitive district.

There is no dispute between the parties that an alternative map could be drawn that results in a competitive district. Respondents' own expert, Mr. Thomas Bryan, opined that that under the Illustrative Map, CD-11 would "become[] a dead heat" district, RX-1 ¶ 194 (Bryan Report); *see also id.* ¶ 201 (Bryan Report), meaning that candidates from different parties—backed by different coalitions of voters—could win in any given election. Mr. Bryan thus *concedes* that a new map

[15] Mr. Cooper is one of the nation's foremost demography and map drawing experts in redistricting cases. He has testified in more than 60 cases over the span of 40 years. Tr. 243:5–244:2 (Cooper). Courts routinely find his testimony highly credible, and no court has ever refused to recognize his expertise or discounted his testimony as unreliable. *See* Tr. 244:3–20 (Cooper). As Mr. Cooper explained, these cases have spanned the nation. *See* Tr. 373:5–18 (Cooper). Moreover, courts have repeatedly credited his testimony over the same experts presented by Respondents and Intervenors. *E.g.*, *Milligan*, 599 U.S. at 31 (summarizing the district court's rationale for crediting Mr. Cooper over Mr. Bryan); *Nairne v. Ardoin*, 715 F. Supp. 3d 808, 850 (M.D. La. 2024) (similar as to Dr. Trende), *aff'd sub nom. Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025).

could grant Petitioners the relief they seek—a more competitive, less polarized district that permits Black and Hispanic voters to have influence in who can be elected to Congress from CD-11.

Dr. Palmer's testimony and report reinforced this point, explaining that an alternative map—such as the Illustrative Map—would lead to less racially polarized voting in CD-11 and be competitive. For example, his report explained that on average 41.8 percent of White voters in the illustrative CD-11 would vote for the Black and Hispanic candidate of choice—a stark contrast to the present, highly polarized map. PX-3 ¶ 25 (Palmer Report). And as he further explained, under the Illustrative Map, the Black and Hispanic candidate of choice succeeds in many—but not all—elections, resulting in a competitive district where different coalitions of voters have a shot at winning. *See* PX-5 ¶ 26, fig. 5, tbl. 3 (Palmer Report). Dr. Palmer and Mr. Bryan therefore agree that an alternative map could de-polarize voting in CD-11, requiring different political coalitions "to pull, haul, and trade to find common political ground" to succeed. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994); *see also Bartlett*, 556 U.S. at 23. Because Respondents and Intervenors do not even dispute the point—and presented expert testimony confirming it—the Court should conclude that Petitioners have shown that an alternative map would redress their injury and satisfy the requirements of Article III, Section 4(c)(1) (prohibiting racial and linguistic vote dilution), and for similar reasons Article III, Section 4(c)(5) (requiring districts not to be drawn to discourage competition).

b. The Illustrative Map and other evidence shows that compliance with the remaining traditional redistricting criteria under New York law is feasible.

The Court should next find that the remaining redistricting criteria are satisfied, as Mr. Cooper explained. PX-5 ¶¶ 50–63 (Cooper Report); Tr. 263:13–64:13, 296:14–97:8 (Cooper).

Equal population. The parties do not dispute that the Illustrative Map ensures that CD-10 and CD-11 maintain equal populations as required by the Constitution. *See* N.Y. Const. art. III,

§ 4(c)(2) ("To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants."); *see also* PX-5 ¶ 26 (Cooper Report); Tr. 263:24–64:1, 296:14–17 (Cooper). Nor do the parties dispute that alternative maps could easily be drawn that preserve equal population. The Court should therefore conclude that it is feasible to draw an alternative map that maintains equal population between districts.

Contiguity. The New York Constitution also requires that districts be contiguous. *See* N.Y. Const. art. III, § 4(c)(3). "A contiguous district requires that all parts of the district be connected," which "is usually measured by whether it is possible to travel to all parts of the district without ever leaving the district." *Harkenrider*, 76 Misc. 3d at 186–87. A district may be contiguous even if sections are connected by water. *See id.* at 187.

The evidence established that it is clearly feasible to draw a contiguous alternative district, whether by combining Staten Island and Lower Manhattan—as the Illustrative Map does—or through a redrawn Staten Island-Brooklyn district. Tr. 264:2–10, 296:18–20 (Cooper). Mr. Cooper's testimony further established that there would be nothing remarkable about relying upon the Staten Island Ferry to link the two parts of a Staten Island-Lower Manhattan District over New York Bay. Tr. 261:9–62:2 (Cooper) (explaining that Staten Island and Manhattan have previously been joined in congressional districts). Such a transit link connected similar congressional districts for much of the twentieth century and presently connects Assembly District 61, confirming that such an approach is suitable and poses no contiguity issues. *See* Tr. 261:9–62:2 (Cooper); PX-5 ¶¶ 38–41 (Cooper Report).[16]

[16] The Court may take judicial notice of the fact that the congressional district containing Staten Island—while changing in number—was joined with Manhattan every year from at least 1902 to 1950, as reflected in this University of Richmond tool. *See* U. of Richmond, *Electing The House of Representatives*, https://perma.cc/TRF3-F96E.

Respondents and Intervenors do not dispute that it is possible to draw an alternative, contiguous district, or that a Staten Island-Lower Manhattan district would be contiguous via New York Bay and the Staten Island Ferry. *See* Docs. 115 & 122 (raising no argument as to contiguity); *see also* IRX-1 (Trende Report) (no argument on contiguity from Dr. Trende); RX-1 ¶ 134 (Bryan Report) (Mr. Bryan conceding the Illustrative Map is contiguous by water). Their criticism on this score is twofold, but ultimately irrelevant.

First, Respondents and Intervenors criticize any configuration of CD-11 that relies upon the Staten Island Ferry—rather than the Verrazano Bridge—to connect the Staten Island portion of CD-11 with another borough. But their criticisms are legally immaterial and supported by little more than idle speculation. For example, Dr. Trende opined that "this bridge versus ferry issue" might weigh on "contiguity" but he conceded that he did not know whether that is true in New York. Tr. 452:1–10 (Trende). Dr. Trende was not even sure if the term "contiguity" appears in his report. Tr. 475:13–18 (Trende). And it does not—not once. *See generally* IRX-1 (Trende Report) (no mention or analysis of contiguity). And he conceded that there are "two exits to get off [Staten] Island"—the ferry and bridge—both of which are used in current assembly districts. Tr. 419:18–21 (Trende).

More importantly, Respondents' and Intervenors' preference for a bridge-connection versus a ferry-connection is just that—a preference. New York law views both as valid ways to meet the contiguity requirement. *See, e.g.*, *In re Schneider v. Rockefeller*, 31 N.Y.2d 420, 430, 340 N.Y.S.2d 889, 897 (1972) ("[T]he requirement of contiguity is not necessarily violated because a part of a district is divided by water."); *Harkenrider*, 76 Misc. 3d at 187 (explaining contiguity can be satisfied through boat link); *cf. Badillo v. Katz*, 73 Misc. 2d 366, 368, 341 N.Y.S.2d 648, 651 (Sup. Ct. Bronx Cnty. 1973) (concluding as to city districts that "the portions of the districts in

Richmond County abutting on the water are also contiguous with the districts lying in the other counties" by water); *cf.* N.Y. City Charter § 52(2) (requiring that districts at the city level "shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service"). And ultimately it is for the Legislature—not Respondents or Intervenors—to determine which is more suitable for a remedial district, as either would produce a contiguous district. *Cf. In re Reynolds*, 202 N.Y. 430, 443, (1911) (recognizing that "[t]he only counties contiguous to Richmond are New York and Kings").

Second, they contend that the Whitehall ferry terminal may in fact be located within CD-10 in Mr. Cooper's Illustrative Map. *See* Tr. 366:6–18 (Cooper) (Mr. Cooper conceding that might be the case, but explaining "it's easily remedied"). Even if true, that is irrelevant for a host of reasons. For one, a separate ferry route *still* links Staten Island to Lower Manhattan via terminals in St. George and Battery Park City—areas indisputably within the Illustrative Map.[17] More importantly, Mr. Cooper confirmed that it would be simple to revise the Illustrative Map—or to draw another map entirely—that includes the Whitehall terminal within CD-11, as there is virtually no population in the relevant census block. *See* Tr. 371:24–72:12 (Cooper) (explaining the Legislature could "easily" draw a map with both Staten Island Ferry terminals within CD-11). Respondents and Intervenors offered no contrary evidence to this obvious fact.

Compactness. The evidence also showed that it is feasible to draw a remedial district that is "as compact in form *as practicable*." N.Y. Const. art. III, § 4(c)(4) (emphasis added). "Practicable," in turn means "reasonably capable of being accomplished" or "feasible in a

[17] The Court may take judicial notice of this public and indisputable fact. *See Routes & Schedules: St. George*, N.Y.C. Ferry, https://perma.cc/LS79-G5S3 (last visited Jan. 16, 2026).

particular situation." *Practicable*, *Black's Law Dictionary* (12th ed. 2024). In other words, compactness must be weighed in view of other requirements in New York law, such as the prohibition on vote dilution, that impact how "feasible" compactness is. *See also* Tr. 249:18–22 (Cooper) (Mr. Cooper explaining redistricting criteria require "constant balancing"). And as Mr. Cooper explained—and as Mr. Trende agreed—compactness is a practical inquiry, rather than a simple numeric test. *See* Tr. 250:16–25 (Cooper); 459:25–60:12 (Trende). Here, the practical reality is that the borough of Staten Island will be just as compact under *any* congressional district configuration. PX-5 ¶¶ 54–58 (Cooper Report); Tr. 374:14–75:9 (Cooper). Because it lacks sufficient population, it must be joined with a neighboring borough across a body of water—most sensibly either Lower Manhattan or Brooklyn—where it is simple and straightforward to draw another compact portion of the borough to join with Staten Island. Tr. 374:14–75:9 (Cooper). Current and past districts show that either formulation would permit the Legislature to draw a relatively compact district; that effectively guarantees the Legislature could draw a remedial map that remains as compact as practicable while also redressing Petitioners' vote dilution injury.

The Illustrative Map shows just one sensible way a compact district could be drawn by the Legislature. Its Reock and Polsby-Popper scores—which the experts uniformly agreed do not provide a bright line measure of compactness, Tr. 250:16–19 (Cooper); Tr. 452:17–53:22 (Trende) (Dr. Trende agreeing there is no "bright line rule" or minimum score for compactness)—confirm Mr. Cooper's view the Illustrative Map is compact. *See* Tr. 264:11–13 (Cooper) (Mr. Cooper testifying the Illustrative Map is "[u]nquestionably" compact). As Mr. Cooper testified, the compactness scores for the Illustrative Map fall within the norm for New York and the nation. Tr. 267:22–68:1 (Cooper). Indeed, the Reock and Polsby-Popper scores for the Illustrative Map score higher than multiple existing districts in New York—districts that presumably satisfy the

New York Constitution's compactness requirement. *See* PX-5, Ex. G (showing the 2024 Plan has numerous districts with lower Reock and Polsby-Popper scores than the Illustrative Map). When combined with New York's historical practices and Mr. Cooper's assessment of the land portions of the Illustrative Map, there is ample basis to conclude that the Illustrative Map provides one example of a compact district. Tr. 265:7–72:5 (Cooper).

In contrast, not a single expert from the Respondents or Intervenors testified that it would be *impossible* to draw a suitably compact remedial map, choosing instead to simply critique the Illustrative Map—notwithstanding Petitioners' and Mr. Cooper's repeated confirmation that it showed just one available configuration of many. *See* PX-5 ¶ 25 (Cooper Report) (noting there are "many possible plan variations"); *see also* Tr. 247:12–47:23, 371:1–72:12 (Cooper) (explaining the Legislature could make many choices as to how to draw a remedial district). Dr. Trende nitpicked Mr. Cooper's methodology for assessing compactness but refused to squarely testify that the Illustrative Map is not compact. Tr. 451:12–20 (Trende) (refusing to opine on whether the Illustrative Map is compact).[18] He also conceded that—notwithstanding his criticism of Mr. Cooper's choice to assess the compactness of individual borough components—Mr. Cooper did in fact calculate district-wide Reock and Polsby-Popper scores. *See* Tr. 461:2–11 (Trende); *see also* PX-5 ¶ 35, fig. 11 (Cooper Report). In contrast to Mr. Cooper, however, Dr. Trende was not sure whether other districts in New York have lower Reock and Polsby-Popper scores. Tr. 461:8–24

[18] Dr. Trende's refusal to testify—one way or another—as to whether particular districts are reasonably compact has previous led courts to discount his opinion as unhelpful. *See, e.g.*, *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1263 (N.D. Ala. 2025) ("Without some explanation of what, in Dr. Trende's view, makes a district reasonably compact, we cannot assign much weight to his opinion that the illustrative districts are not reasonably configured."); *cf. Nairne*, 715 F. Supp. 3d at 850 ("Accordingly, the Court rejects Dr. Trende's approach to addressing compactness and accepts Cooper's approach."). In contrast, Mr. Cooper was in fact willing to state a view—based on his expertise—as to the compactness of the Illustrative Map. *See* Tr. 264:11–13 (Cooper).

(Trende). He acknowledged that there is no requirement for illustrative districts to have similar or higher compactness scores than existing districts. Tr. 453:23–54:1 (Trende). And he further agreed that, in other cases, he had proposed illustrative districts with materially similar scores. Tr. 458:22–59:6 (Trende).[19]

Mr. Bryan, for his part, testified that the Illustrative Map did not satisfy the "eyeball test" in his subjective view. Tr. 510:15–21 (Bryan). But he based that conclusion exclusively on his own interpretation of a federal district court decision, *see* RX-1 ¶¶ 145–47 (Bryan Report), and a proposed district in that case, which he later agreed "looks nothing like Staten Island." Tr. 582:7–22 (Bryan). That compares apples to oranges—as Mr. Bryan *also* conceded. *See* Tr. 582:23–83:4 (Bryan) (agreeing with Dr. Trende "that compactness becomes an apples to oranges comparison when you go across different states and areas"). And he further agreed that both the Illustrative Map and 2024 Plan, at bottom, reach out across bodies of water to grab population from another borough. Tr. 580:21–81:6 (Bryan). The fact that the Illustrative Map does so in a slightly different manner—one employed for past congressional districts and a current assembly district—does not render that formulation non-compact, as Mr. Cooper explained. Tr. 374:25–75:19 (Cooper). Indeed, Mr. Bryan conceded that he did not even apply the eyeball test to past iterations of the congressional district that joined Staten Island and lower Manhattan. *See* Tr. 584:10–22 (Bryan).

At bottom, neither Dr. Trende nor Mr. Bryan meaningfully disputed Mr. Cooper's testimony that the Illustrative Map is compact. Nor did they explain why alternative remedial

[19] Dr. Trende also offered idle commentary suggesting that congressional districts traversing Puget Sound might pose compactness problems, even if connected by ferry. Tr. 415:19–16:7 (Trende). In fact, *two* such districts exist in Washington—CD-2 (which connects the northeastern shore of Puget Sound with the San Juan islands) and Washington CD-6 (which connects Seattle to Vashon Island). *See* Wash. State Redistricting Comm'n, *District Maps & Handouts*, https://perma.cc/BJ62-HCRF. As the history of CD-11 itself confirms, connecting a district by ferry is far from fatal to its compactness. *See* PX-5 § III.

approaches are not practicable either. Ultimately, the question for the Court is not whether the Illustrative Map alone is suitably compact but rather whether the Legislature, if given the opportunity, *could* draw a compact district that (unlike the current map) does not unlawfully dilute Black and Hispanic votes. The Illustrative Map offers one basic configuration of such a district and there is no question that others could be drawn.

Preexisting district boundaries and subdivisions. As the Illustrative Map shows, a remedial district here can also "maint[ain] . . . [the] cores of existing districts" and localities. N.Y. Const. art. III, § 4(c)(5). The Illustrative Map, for example, retains all of Staten Island and simply pulls the additional population necessary to form a complete congressional district from lower Manhattan instead of Brooklyn. The Constitution only requires map-drawers to "consider the maintenance" of such core retention, and the Illustrative Map plainly does. *See* PX-5 ¶ 49 (Cooper Report) (describing "significant" core retention in the Illustrative Map). Consistent with the Constitution's requirement that core retention merely be "consider[ed]," Mr. Cooper explained why core retention cannot be applied too rigidly as a criterion, lest unlawful or flawed districts like the current CD-11 be locked in for perpetuity. *See* Tr. 251:15–52:10, 372:18–25 (Cooper).

The Illustrative Map also shows that it is possible for a remedial district to maintain other kinds of political subdivisions, including neighborhoods and voting precincts. *See* PX-5 ¶¶ 59–63 (Cooper Report); Tr. 249:6–9, 271:1–11 (Cooper). Indeed, the Illustrative Map shows it is possible to *reduce* the number of neighborhoods split by the current configurations of CD-11 and CD-10. *See* PX-5 ¶¶ 61–62, fig. 12. Mr. Bryan agreed that Mr. Cooper's Illustrative Map included a "comparable number of [neighborhood] splits." Tr. 513:5–7 (Bryan). While Mr. Bryan criticized the Illustrative Map for splitting a larger number of precincts (VTDs), he did not dispute Mr. Cooper's testimony that *fewer people* were impacted by those splits than the 2024 Plan. Tr.

295:16–20 (Bryan). Nor did he dispute Mr. Cooper's testimony that neighborhoods are more important subdivisions in a city like New York than voting precincts, which are redrawn every decade. Tr. 249:6–9, 300:10–14 (Cooper). In any event, nothing in New York law prescribes strict limits on VTD splits—a map drawer need only consider them alongside other political subdivisions. N.Y. Const. art. III, § 4(c)(5). The Illustrative Map plainly does and there is no reason the Legislature could not do likewise.

Communities of interest. Finally, Petitioners have shown that an alternative map could respect communities of interest which—like political subdivisions—the New York Constitution requires map drawers to simply "consider." *Id*. Generally, "[c]ourts will find the existence of a community of interest where residents share substantial cultural, economic, political and social ties." *Diaz v. Silver*, 978 F. Supp. 96, 123 (E.D.N.Y. 1997). While Respondents and Intervenors criticized how the Illustrative Map treats communities of interest, that once more misses the point. The question before the Court is not which map *best* considers communities of interest—that is ultimately a question for the Legislature if the Court declares the 2024 Map unlawful. And Respondents and Intervenors introduced no evidence or testimony showing that the Legislature could not give due consideration to such communities when drawing a new map.

In any event, the Illustrative Map shows how a Staten Island-Manhattan configured district could give due consideration to communities of interest and even improve upon the existing plan. For example, testimony and evidence introduced at the hearing noted the strong economic links between Staten Island and Manhattan, including the fact that more Staten Islanders have their place of work in Manhattan than Brooklyn. Tr. 280:9–18 (Cooper); PX-9 (Destination Analysis). Similarly, Mr. Cooper testified to how a Staten Island-lower Manhattan district would have the

salutary effect of bringing nearly all of Assembly District 61 into a single congressional district. Tr. 294:10–95:2 (Cooper).

Most notably, significant evidence showed how the Illustrative Map would preserve the existing connection between two significant Chinese-American neighborhoods—Chinatown and Sunset Park—which courts have previously pointed to as serving a community of interest. *See Diaz*, 978 F. Supp. at 124 (accepting evidence that "Asian communities of Sunset Park and Chinatown" are "mostly of Chinese background" and "regularly work together, attend the same health clinics, and shop in the same stores" to assume a community of interest). The Illustrative Map then goes further, joining these neighborhoods with two more heavily Chinese neighborhoods—Bath Beach and Bensonhurst. PX-5 ¶¶ 24, 44 (Cooper Report); Tr. 291:1–16 (Cooper) (explaining how the Illustrative Map joins together various Chinese-American communities). In doing so, the Illustrative Map addresses a significant criticism of the 2024 Map—that it divides Bensonhurst as a neighborhood and splits Chinese-American neighborhoods between CD-11 and CD-10. *See* PX-10 (Statement of OCA-NY). Indeed, record evidence shows that prominent organizations lobbied *against* the current configuration of District 11, which combines Staten Island with Bath Beach and a divided portion of Bensonhurst. *See* PX-10 (Statement of OCA-NY). As Dr. Wah Lee of OCA-NY (formerly Organization for Chinese Americans) testified to the IRC, "**Bensonhurst and Bath Beach should NOT be with Staten Island**," because "Staten Island does not share a similar concentration of Asians, nor the culture of Asian businesses as Bath Beach/Bensonhurst, nor do residents in Bath Beach/Bensonhurst travel on a regular basis to Staten Island and vice versa." PX-10 at 2 (Statement of OCA-NY). This testimony is consistent with accounts from a recent New York Communities of Interest Report, recounting evidence that Chinese-American Brooklynites protested "splinter[ing]" Asian voters in

Sunset Park, Dyker Heights, Bay Ridge, and Bensonhurst across different city districts. PX-12 at 54 (2023 Report on Communities of Interest in New York). That the Illustrative Map fixes this issue serves as strong evidence that a remedial district could at minimum *preserve*—and likely *improve*—the existing consideration of communities of interest.[20]

The only critique of this fact came from Mr. Bryan, who criticized the Illustrative Map for excluding certain Asian populations in lower Manhattan from CD-10. *See* Tr. 515:9–22 (Bryan). But Mr. Bryan's testimony about how to best preserve Chinese-American communities of interest was undercut by his concession that—while he did review *some* testimony to the IRC—he did *not* review letters from Chinese community organizations about joining their communities together in a congressional district. *See* Tr. 560:2–19, 564:1–25 (Bryan). Mr. Bryan likewise overlooked the evidence in the Communities of Interest Report, PX-12 at 54 (2023 Report on Communities of Interest in New York)—on which he expressly relies, RX-1 ¶¶ 154–56 (Bryan Report)—that directly corroborated Mr. Cooper's testimony and contradicted his own. *See* Tr. 568:15–570:12 (Bryan).[21]

In any event, Mr. Cooper explained that the line he drew around Chinatown was a result of his dutiful adherence to New York City's own neighborhood definition for Chinatown—he agreed the Legislature would be free to make a different choice if this Court orders relief. Tr. 371:11–23 (Cooper). That is because—as Mr. Cooper again agreed—the Illustrative Map is not "a

[20] For the same reason, the Court should take judicial notice of a letter from Homecrest Community Services to the IRC—also cited in *Harkenrider*—urging the IRC to join together Chinese-American communities in Sunset Park, Bensonhurst, and Bath Beach (among others), which are joined by "culture, language and socioeconomic factors." *Harkenrider*, 38 N.Y.3d at 543 (Wilson, J., dissenting) (citing IRC testimony available from https://perma.cc/4AC8-Y6YN)).

[21] This is apparently not the first time that Mr. Bryan has relied on sources that he has not thoroughly reviewed. *See Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *61–62 (N.D. Ala. Jan. 24, 2022) (finding Mr. Bryan "unreliable" in part because he "cite[d] material that he had not reviewed").

take it or leave it option." Tr. 371:7–10 (Cooper). Respondents and Intervenors otherwise offered no meaningful rebuttal to the clear benefits the basic configuration proposed by Mr. Cooper would provide to Chinese-American communities bound by cultural, economic, and linguistic ties. *See also* Doc. 63 at 35–39; PX-10 (Statement of OCA-NY).

Finally, Respondents and Intervenors bemoaned the supposed cultural dissimilarity between lower Manhattan and Staten Island, including through recollections of CBGB—a venue that notably opened in 1973 when the East Village was in the same congressional district as Staten Island.[22] But as Mr. Cooper explained, there is no redistricting principle that requires congressional districts to be culturally homogenous or that prohibits them from having culturally distinct areas. Tr. 373:19–74:1 (Cooper). Indeed, New York's *existing* CD-10 combines the very neighborhoods at issue in lower Manhattan—the East Village, Tribeca, SoHo, and the like—with Brooklyn neighborhoods like Sunset Park, Borough Park, and Windsor Terrace. *See* PX-5, Ex. F-1 (Cooper Report). Such cultural melting pot districts are hardly remarkable—particularly in New York. Indeed, New York law itself simply requires a map drawer to "consider" such possible cultural communities of interest—it does not mandate cultural uniformity. N.Y. Const. art. III, § 4(c)(5).

At the end of the day, consideration of "communities of interest" is a task assigned to the Legislature, which is best able to "to balance the competing political concerns implicated in preserving various communities of interest." *Favors v. Cuomo*, No. 1:11-CV-5632 RR GEL, 2012 WL 928223, at *5–6 (E.D.N.Y. Mar. 19, 2012) (further explaining that "[l]egislators" have the best "understanding and experience" for weighing communities of interest, which often involve "political debates"); *cf. Mirrione v. Anderson*, 717 F.2d 743, 745–46 (2d Cir. 1983) (similar). It is

[22] *See* Lauren Boistvert, *On This Day in 1973, There Ain't No Foolin' Around When CGBG Opens Its Doors in Manhattan*, Vice (Dec. 10, 2025), https://perma.cc/KZ33-MCHG.

enough for this Court to conclude that a remedial map *could* give due consideration to communities of interest—with the Legislature ultimately responsible for discerning precisely how. Petitioners' evidence shows such consideration is plainly possible and, indeed, could result in even greater respect for certain communities of interest.

III. Respondents and Intervenors have not established any affirmative defense.

Respondents and Intervenors also assert, as affirmative defenses, that adopting the Illustrative Map as a remedial district would itself be unlawful, for different reasons. Intervenors say it reflects an unlawful *racial* gerrymander, Doc. 115 at 32–39; Doc. 161 at 15–29, while Respondents suggest it would impose an unlawful *partisan* gerrymander, Doc. 122 at 26–29. Each argument is wrong for the reasons below, but just as importantly they are both premature. There is no remedial map in place yet. *See* Tr. 371:1–10 (Cooper) (Mr. Cooper explaining that "[v]ery rarely would an illustrious plan ever become a final plan"). These affirmative defenses thus put the cart before the horse—Respondents and Intervenors must wait to see what any remedial district actually looks like before hastily declaring it unlawful. *See, e.g.*, *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sep. 02, 2023) (rejecting racial gerrymander defense because "there [is] no specific district under which this Court could evaluate whether racial gerrymandering occurred" and proponents could not show "that *any* remedial district" would "necessarily" be a racial gerrymander), *rev'd on other grounds,* 375 So. 3d 335 (Fla. Dist. Ct. App. 2023). The Court can thus reject them both as premature at this time, though each fails on the merits too.

A. Remedying vote dilution in CD-11 would not be a racial gerrymander.

Intervenors have contended that redrawing CD-11 to remedy the dilution of Black and Hispanic voters would inevitably constitute a racial gerrymander. Doc. 115 at 32–39; Doc. 161 at 15–29; Tr. 27:9–29:6 (Intervenor-Respondents' Opening Statement). According to Intervenors,

the Illustrative Map would be subject to strict scrutiny review because Petitioners have presented it with the "goal of giving Black and Latino voters the benefit of increased electoral 'influence' than under the prior map." Doc. 115 at 33. For that reason, and that reason alone, Intervenors insist the Court must conclude that the Equal Protection Clause prohibits any relief. Well-settled precedent forecloses Intervenors' simplistic and erroneous approach.

1. A remedial map will not automatically trigger strict scrutiny.

Intervenors' argument that a remedial map would trigger strict scrutiny review flouts decades of precedent and disregards the record before the Court. The U.S. Supreme Court "never has held that race-conscious state decisionmaking is impermissible in all circumstances." *Shaw v. Reno*, 509 U.S. 630, 642 (1993). "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (citations omitted); *see also Shaw*, 509 U.S. at 646. The U.S. Supreme Court rejected the state's "contention that mapmakers must be entirely 'blind' to race" when drawing districts to comply with the Voting Rights Act, *Milligan*, 599 U.S. at 33 (plurality opinion), and reaffirmed "[t]he line that we have long drawn . . . between consciousness and predominance" of race, *id.*

Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Diaz*, 978 F. Supp. at 116–17. The racial-predominance inquiry is a "holistic analysis" that cannot turn purely on the fact that a district is drawn to remedy otherwise unlawful dilution of minority voting strength. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017) ("the use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's

districting decision.") (citation modified). And as the U.S. Supreme Court has held, a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Milligan*, 599 U.S. at 31 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices").

The implications of Intervenors' analysis are striking. They contend that strict scrutiny will inevitably apply to any remedial map adopted in response to this case solely because the Court's order means "the 'predominant'—and, indeed, sole—*rationale* for the new district lines . . . would be race-based." Doc. 161 at 16 (emphasis added). In other words, because minority vote dilution is the *reason* CD-11's boundaries must be redrawn, then race inevitably will be the predominant *factor* in crafting the remedial district. By that logic, however, racial vote dilution can *never* be remedied without triggering strict scrutiny on a collateral attack of racial gerrymandering. That is not—and never has been—the law. While accusing Petitioners of "muddy[ing] the predominant-rationale test," Doc. 161 at 17, they pointedly ignore that the Supreme Court has squarely rejected their own take on the doctrine. In *Allen v. Milligan*, the Court declined to adopt the "flaw[ed]" view that districts drawn to remedy vote dilution under Section 2 of the VRA necessarily trigger strict scrutiny because "they were designed to hit 'express racial targets,'" regardless of the mapmakers' treatment of other traditional, race-neutral redistricting criteria. 599 U.S. at 32–33. It recognized the fallacy in that approach: that "racial predominance [would] plague[] *every single*

illustrative map ever adduced" to show vote dilution can be remedied. *Id.* at 33. But as the Court aptly pointed out, "[t]hat is the whole point of the enterprise." *Id.*

It is hardly surprising that Intervenors omit this fatal authority. They apparently reject the "enterprise" of recognizing and remedying minority vote dilution. That is why Intervenors effectively ask the Court to eschew binding authority foreclosing their approach to instead play fortune teller with the Supreme Court's forthcoming decision in *Callais v. Landry*. But New York courts are not "in the business of forecasting the future of United States Supreme Court rulings." *People v. Lopez*, 85 Misc. 3d 171, 180 (Sup. Ct. N.Y. Cnty. 2024). As the law stands, the Fourteenth Amendment—itself arising out of Reconstruction Era–efforts to eradicate the scourge of racial discrimination—can accommodate state and federal efforts to safeguard equal opportunity in the electoral franchise.

Under the appropriate framework, it is hardly a foregone conclusion that race will predominate whenever the Legislature or the Court crafts a remedy in this case. The Illustrative Map Petitioners present does not rely on "the use of an express racial target." *Bethune-Hill*, 580 U.S. at 192. Rather, Mr. Cooper explained at trial that he drew a map that joined Staten Island with lower Manhattan in lieu of southwest Brooklyn. *See* Tr. 247:5–7 (Cooper). Mr. Cooper further testified expressly that he did not consider race when drawing the Illustrative Map. *See* Tr. 337:21–338:6 (Cooper). Just as he did in the *Allen* case, Mr. Cooper "work[ed] hard to give equal weight to all redistricting criteria," *see Milligan*, 599 U.S. at 31 (quotation omitted), and did not "subordinate" any factor to racial considerations. And as Petitioners describe in detail above, *supra* Summation § II.D.2, the Illustrative Map in fact respects all traditional redistricting criteria.

It is worth emphasizing that the Supreme Court has recognized that crossover districts like the one presented in the Illustrative Map "*diminish* the significance and influence of race by

encouraging minority and majority voters to work together toward a common goal," *Bartlett*, 556 U.S. at 23 (emphasis added). The record before the Court is devoid of evidence that race impermissibly predominates in the Illustrative Map.

2. A remedial map would satisfy strict scrutiny.

Even if strict scrutiny were to apply, a map that remedies the dilution of Black and Hispanic voters, like the Illustrative Map, would meet that standard. Whomever draws the remedial district in this case—and it should be the Legislature—will have a compelling reason to consider race in redrawing the map. The Supreme Court has long "assumed that complying with the [federal] VRA is a compelling state interest," *Abbott*, 585 U.S. at 587, and there is no reason to treat compliance with the New York Constitution any differently. Just like the federal VRA, state-level prohibitions on diluting minority voting strength trigger "competing hazards of liability" when it comes to race and redistricting. *See id.* And nothing in the Supreme Court's extensive body of law would justify finding that a state's interest in abiding its *own constitution* is somehow less compelling than respecting federal statutory law.

To justify treating state and federal protections for voting rights differently on this score, Intervenors insist that state legislatures—or in the case of Article III, Section 4(c)(1), the *People* of New York—lack the same authority as the federal government to protect their citizens' voting rights. *See* Doc. 161 at 24–25. This claim is particularly remarkable given states' near-plenary power over redistricting, *see North Carolina v. Covington*, 585 U.S. 969, 979 (2018) ("State legislatures have primary jurisdiction over legislative reapportionment."), as well as the broader principle that "[f]ederal law . . . generally defers to the states' authority to regulate the right to vote," *Ohio Democratic Party v. Husted*, 834 F.3d 620, 626 (6th Cir. 2016). Indeed, the Second Department has already upheld the NY VRA against a facial Equal Protection challenge, notwithstanding that it exceeds the federal VRA's minimum threshold by omitting the first *Gingles*

requirement. *Clarke*, 237 A.D.3d at 37–38 ("[T]he NYVRA need not contain the first *Gingles* precondition . . . to survive a facial challenge to its constitutionality under the Equal Protection Clause," for the Supreme Court "has never said that the *Gingles* test was required by the constitution, as opposed to resulting from a statutory interpretation of section 2.");[23] *see also Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 70 (Cal. 2023) (rejecting argument that, as applied to the California Voting Rights Act, "a majority-minority requirement—or something close to it in the form of a near-majority requirement—is necessary to avoid difficult constitutional questions under the equal protection clause").

A remedial map like the Illustrative Map would also satisfy narrow tailoring. In federal cases, "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott*, 585 U.S. at 587. The body of evidence Petitioners offered affirmatively showing the dilution of Black and Hispanic voting strength in CD-11 plainly supplies such "good reasons" in support of a remedial map. *See Rose v. Sec'y, State of Georgia*, 87 F.4th 469, 477 (11th Cir. 2023) ("In the context of . . . single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-member districts to remove the plan's dilutive effect." (citing *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring)).

Contrast the Illustrative Map with the very cases Intervenors consider instructive. First, in *Cooper*, the Supreme Court considered whether North Carolina had "a good reason" to think it

[23] Intervenors contend that Petitioners' reference to *Clarke* on this issue is "deeply confused." Doc. 161 at 25. Their critique is misplaced. While Petitioners agree that *Clarke* does not address the question whether following the NY VRA—or Article III, Section 4(c)(1)'s similar prohibitions against minority vote dilution—is a sufficiently compelling state interest to engage in race-based redistricting, it *does* hold that the NY VRA itself is not facially unconstitutional. There is, in turn, little reason to treat New York's voting rights laws any different than the federal VRA under the Equal Protection framework discussed here.

would be liable under the VRA if it failed to draw an additional majority-minority district. *See* 581 U.S. at 301; *see id.* at 300 (affirming district court's conclusion that race predominated, and strict scrutiny therefore applied, where map-drawer made decisions "(in his words) to ensure that the district's racial composition would 'add up correctly,'" even though they "deviated from the districting practices he otherwise would have followed). The Court held that the legislature lacked "good reasons" because there was "no evidence" of "effective white bloc-voting," which, like New York law, is required to show a violation of Section 2 of the VRA. *See id.* at 302. And in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Supreme Court held that the Wisconsin Supreme Court misapplied strict scrutiny precedent where it approved an expressly race-based map while "believ[ing] that it had to conclude only that the VRA *might* support race-based districting—not that the statute required it." 595 U.S. 398, 403 (2022).

These cases involved quite different circumstances than those the Court or Legislature would face following a ruling in Petitioners' favor here. Petitioners have already offered a wealth of evidence demonstrating that the current configuration of CD-11 violates the New York Constitution's prohibition on minority vote dilution, *see supra* Summation § II.A–C—and an opinion from this Court granting Petitioners' relief plainly offers a "good reason" to believe a new map is required to comply with state law. That is enough to satisfy narrow tailoring.

B. A remedial map joining Staten Island with lower Manhattan would not constitute a partisan gerrymander.

Respondents, on the other hand, have argued that Petitioners' Illustrative Map (or, presumably, any other district the Court or the Legislature might adopt after a favorable ruling on the merits) would amount to an unconstitutional partisan gerrymander. This argument is without merit. The Illustrative Map was not drawn to increase Democratic performance; it was drawn to

increase Black and Hispanic voters' opportunity to elect their candidates of choice by forming a coalition with White crossover voters while complying with traditional districting criteria.

To prevail on a partisan gerrymandering claim, "[a challenger bears] the burden of proving beyond a reasonable doubt that [a] congressional district[] [was] drawn with a particular impermissible intent or motive—that is, to 'discourage competition' or to 'favor[] or disfavor[] incumbents or other particular candidates or political parties." *Harkenrider*, 38 N.Y.3d at 519 (quoting N.Y. Const. art. III, § 4). And "[s]uch invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results." *Id*. In *Harkenrider*, for example, "invidious partisan purpose" was inferred from "evidence of the largely one-party process used to enact the 2022 congressional map, a comparison of the 2022 congressional map to the 2012 congressional map," and expert testimony that the map "was drawn to discourage competition." *Id*. The Illustrative Map presents none of these circumstances.

Respondents' argument that the Illustrative Map is a partisan gerrymander turns *Harkenrider* on its head. In that case, the Court invalidated the 2022 map where evidence demonstrated that it "was drawn to discourage competition," and the "State respondents' experts . . . concededly did not take into account the reduction in competitive districts." *Id*. at 520. The Illustrative Map, meanwhile, *increases* competition in CD-11. *See* Tr. 171:4–6, 17–19 (Palmer). Respondents themselves have characterized the illustrative CD-11 as a "toss-up" district. Doc. 122 at 27; RX-1 ¶ 194 (Bryan Report) (describing the Illustrative CD-11 as "becom[ing] a dead heat"). Ignoring *Harkenrider* entirely, Respondents have remarkably claimed that "Article III forbids drawing districts to encourage . . . competition." Doc. 122 at 27. That does not accurately reflect the law. *See* N.Y. Const. art. III, § 4(c)(5). And without the sort of evidence

present in *Harkenrider*, the mere fact that the Illustrative CD-11 improves prospects for Democrats, *see* Tr. 537:2–20 (Bryan), is simply not evidence of a partisan gerrymander. And that is particularly so in light of Mr. Cooper's unequivocal testimony that he did not so much as look at partisan data when drawing the Illustrative Map. *See* Tr. 363:22–64:15 (Cooper).

Respondents have also argued that the Illustrative Map is "inconsistent with a bona fide minority-protection remedy." Doc. 122 at 28. This argument entirely ignores that the remedy Petitioners propose is a district that would provide the substantial Black and Hispanic voting population already within Staten Island an equal opportunity to elect their candidates of choice. *See* PX-3 ¶ 26 (Palmer Report) (estimating performance of Black and Hispanic–preferred candidate in the Illustrative CD-11). The Black and Hispanic voting-age population in CD-11 already exceeded 20%, and under the Illustrative Map it climbs to approximately 25%. PX-6 ¶ 5, fig. 9 (Cooper Rebuttal). This population is both substantial and influential, and it is sufficient to elect candidates of choice with the assistance of White crossover voters.

At bottom, although "[r]ace and party are fundamentally linked in American politics[,] the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting." PX-4 ¶ 4 (Palmer Rebuttal); *see also* Tr. 185:14–23 (Palmer) ("[R]egardless of if voters of different groups prefer candidates of different parties or not, that is still evidence that they are preferring different candidates and . . . [it is] evidence of racially-polarized voting regardless of the partisan affiliation of the candidate."). And it cannot be the case that the Constitution's partisan-gerrymandering prohibition precludes otherwise necessary remedies for minority vote dilution that the Constitution also prohibits.

IV. The Court should declare the current CD-11 unlawful and order the Legislature to promptly redraw it.

As explained in Petitioners' remedy brief, once the Court finds that Petitioners have satisfied the foregoing elements, it should first *declare* the current map unconstitutional and *enjoin* Defendants from conducting elections under it. *See* Doc. 203 at 3. This is the default initial remedy in New York redistricting litigation and the Court's authority to grant it is well-established. *See* N.Y. Const. art. III, § 5; *Harkenrider v. Hochul*, 76 Misc. 3d 171, 194 (Sup. Ct. Steuben Cnty. 2022) (finding the 2022 Congressional map "to be void and not usable"); *see also Callais v. Landry*, 732 F. Supp. 3d 574, 613–14 (W.D. La. 2024) (similar).

The next question is how to timely remedy the unlawful configuration of CD-11 ahead of the upcoming primary elections. The Constitution answers this question: "[T]he legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." N.Y. Const. art. III, § 5. The Legislature, in turn, has authority to "modif[y]" a congressional map "pursuant to court order." *Id.* § 4(e). Accordingly, the Court should issue an order instructing the Legislature to adopt a remedial map in time for the 2026 federal primary elections—but not necessarily the Illustrative Map. *See* Doc. 203 at 4–5. The State Respondents in this matter—Governor Hochul, AG James, Senate President *Pro Tempore* Stewart-Cousins, and Assembly Speaker Heastie—agree this is a valid approach. *See* Doc. 95 at 6. And direct remand to the Legislature is preferrable as a remedy because it both would permit the timely redrawing of a new map *and* ensure that any new map is drawn by politically accountable legislators who answer to voters.

-The next most appropriate remedy would be for the Court to remand the matter to the IRC for further proceedings by a firmly set date—a necessary requirement to ensure timely relief. *See* Doc. 203 at 5–6; *see also Hoffmann*, 41 N.Y.3d at 370 (ordering the IRC to act by February 28, 2024). The IRC, like the Legislature, has constitutional authority to draw maps. *See* N.Y. Const.

art. III, § 5-b(a). But there are clear drawbacks to this approach, too, compared to direct remand to the Legislature. Most obviously, referral to the IRC will significantly delay and complicate the drawing of a new map in time for the 2026 elections, potentially prejudicing the Legislature's right to a "full and reasonable opportunity" to amend the map. *See* Doc. 206 at 4 (conceding the IRC process may cause unnecessary delay). And, as *Hoffman* shows, there is a substantial likelihood the Legislature ends up drawing its own remedial map in any event.

Respondents contend that *Hoffman* supports their view, but the issue in that case was that the "IRC failed to discharge its constitutional duty" to promulgate a second set of maps after the *Harkenrider* decision. 41 N.Y.3d at 347. The Court of Appeals ordered that "the IRC . . . be compelled to reconvene to fulfill that duty." *Id.*; *see also id.* at 370 (ordering the IRC to "comply with its constitutional mandate" by submitting a second set of maps to the Legislature). And no party in *Hoffman* asked for direct remand to the Legislature—the entire point of that case was that the IRC had failed to fulfill its constitutional mandate to produce a second set of maps. *See id.* That is not the case here—all parties agree the IRC has now fulfilled that duty. The circumstances of this case therefore supply good cause to remand directly to the Legislature to ensure prompt relief.

Respondents' and Intervenors' remaining arguments on remedy are wrong, immaterial, or clear efforts to prejudice timely relief. For example, Respondents argue that the Court cannot order the Legislature to adopt the Illustrative Map. *See* Doc. 205 at 1. But that is irrelevant—Petitioners have agreed that the Court need not impose a specific map or conditions on the Legislature. *See* Doc. 203 at 5. Respondents and Intervenors also both argue that the Court could consider appointing a special master to redraw CD-11. *See* Doc. 205 at 3; Doc. 206 at 6. But the Court of Appeals has made very clear that appointment of a special master is a last resort when no time remains for the Legislature to provide a remedy. *See Hoffman*, 41 N.Y.3d at 361 ("Court-drawn

judicial districts are generally disfavored because redistricting is predominantly legislative."); *cf. Wise v. Lipscomb*, 437 US 535, 540 (1978) ("[I]t is . . . appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan."). Here, there is currently enough time for the Legislature to draw a map, even after any necessary appeals are taken—neither Respondents nor Intervenors directly dispute this point in their remedy briefs.

Even so, Respondents and Intervenors both seek to weaponize the election calendar to ward off the Court from providing effective relief. Respondents contend that any new map must be in place by February 6, Doc. 205 at 5, and both Respondents and Intervenors insist that any IRC-led redistricting process must be deferred until the 2028 election cycle, Doc. 205 at 5–6; Doc. 206 at 6–7. But the Constitution requires courts to give precedence to redistricting challenges and render a decision on an expedited timeline, reflecting an intent that unconstitutional maps must be remedied in time for the next election. N.Y. Const. art. III, § 5. And in any event, those arguments merely reinforce why direct remand to the Legislature is the most sensible path here—a point Respondents and Intervenors do not meaningfully dispute. And their effort to delay relief to the 2028 election cycle is a non-starter. For one, the Court in *Hoffman* ordered the IRC to act by February 28, 2024—a date which is still readily achievable here as well. *See* 41 N.Y.3d at 370. Further still, it is common for courts to adjust election administration deadlines—such as when candidates can first circulate designating petitions—to remedy unlawful maps. *See, e.g.*, *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 675 F.3d 433, 440 (5th Cir. 2012); *Arbor Hill Concerned Citizens v. County of Albany*, 357 F.3d 260, 263 (2d Cir. 2004). Indeed, the Court of Appeals in *Harkenrider* recognized that the relief it ordered would likely require moving certain

primary election dates—which is precisely what occurred. *See Harkenrider*, 38 N.Y.3d at 522. But plainly a delay in election deadlines is preferable to forcing voters on Staten Island to hold an election under an unlawful congressional map. *See id.* The alternative would be "to subject the People of this state to an election conducted pursuant to an unconstitutional reapportionment"—an outcome the Court of Appeals has decisively rejected. *Id.* at 521.

CONCLUSION

For the reasons provided above as well as those discussed in Petitioners' earlier briefing in this matter, Docs. 63 & 156, Petitioners have demonstrated that the 2024 congressional plan dilutes Black and Hispanic Staten Islanders' voting strength in CD-11 in violation of Article III, Section 4(c)(1) of the New York Constitution. Petitioners therefore respectfully request that this Court issue an order declaring the 2024 Congressional Map unconstitutional, enjoining Respondents from using the 2024 Map in future elections, and allowing "the legislature . . . a full and reasonable opportunity to" adopt a new map that remedies the dilution of Black and Hispanic voters in CD-11 by a date certain. N.Y. Const. art. III, § 5. Given the need to monitor the timing of the remedy and the potential for future litigation regarding the remedy, Petitioners also request that the Court "retain jurisdiction over this action and any challenges to the procedures of the legislature, the procedures of the independent redistricting commission and/or the resulting [congressional] map." *Nichols v. Hochul*, 77 Misc. 3d 245, 257 (Sup. Ct. N.Y. Cnty. 2022).

Dated: January 16, 2026

Respectfully submitted,

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

Andrew G. Celli, Jr. (No. 2434025)
Emily Wanger (No. 5816210)
One Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel.: (212) 763-5000
acelli@ecbawm.com
ewanger@ecbawm.com

ELIAS LAW GROUP LLP

/s/ *Aria C. Branch*
Aria C. Branch*
Christopher D. Dodge (No. 5245907)
Lucas Lallinger (No. 5443460)
Nicole Wittstein*
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel.: (202) 968-4490
abranch@elias.law
cdodge@elias.law
llallinger@elias.law
nwittstein@elias.law

**Admitted pro hac vice*

CERTIFICATIONS

I hereby certify that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within the submission.

/s/ Aria C. Branch

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FIRST JUDICIAL DEPARTMENT

----------X

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners-Appellees,

-against-

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-Appellants,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

Intervenor-Respondents-Appellants.

----------X

Appellate Division Case No. CV-26-00384

Supreme Court, New York County Index No. 164002/2025

MEMORANDUM OF LAW IN OPPOSITION TO APPELLANTS' AND INTERVENORS-APPELLANTS' MOTIONS TO STAY AND IN SUPPORT OF PETITIONERS'-APPELLEES' CROSS-MOTION TO VACATE CPLR § 5519 STAY PENDING APPEAL

[Signature block on the following page]

Andrew G. Celli, Jr. (No. 2434025)
Emily Wanger (No. 5816210)
EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP
One Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel.: (212) 763-5000
acelli@ecbawm.com
ewanger@ecbawm.com

Counsel for Petitioners

Aria C. Branch*
Christopher Dodge (No. 5245907)
Lucas Lallinger (No. 5443460)
Nicole Wittstein*
ELIAS LAW GROUP LLP
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel.: (202) 968-4490
abranch@elias.law
cdodge@elias.law
llallinger@elias.law
nwittstein@elias.law

**Of the bar of the District of Columbia, by permission of the Court*

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PRELIMINARY STATEMENT

After a four-day evidentiary hearing, which featured testimony from eight different expert witnesses, the New York County Supreme Court reached a conclusion thoroughly supported by the record: the current configuration of New York's Eleventh Congressional District ("CD-11") is unlawfully structured in a manner that dilutes the votes of Black and Hispanic voters. That finding was based on extensive evidence that voting in CD-11, which is anchored in Staten Island, is extraordinarily polarized along racial lines, such that the Black and Hispanic candidates of choice are typically defeated. Indeed, uncontroverted evidence showed that for city, state, and federal elections, the Black and Hispanic candidate of choice has not won a majority of voters in CD-11 even *once* since 2018, with White voters acting as a political bloc to consistently defeat those candidates. Further still, Supreme Court heard vast evidence under a "totality of the circumstances analysis" that Black and Hispanic voters in CD-11, and on Staten Island specifically, face severe obstacles to full political participation including, among other things, a sordid history of discrimination, which still impacts present-day reality; the use of discriminatory voting procedures; and severe disparities in education, income, health, employment and homeownership that limit their ability to participate in the political process.

Petitioners' evidence on this score came from well-respected experts whose testimony Supreme Court carefully considered, who Supreme Court asked questions of, and who Supreme Court deemed credible. And while the Respondents[1] and Intervenors[2] offered five experts in

[1] Throughout this memorandum, "Respondents" means Appellants-Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE.

[2] Intervenors means Appellants-Intervenor-Respondents Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba.

response, their testimony was limited, irrelevant, or even walked back in open court. Most notably, their sole expert on the totality of the circumstances test—the defining test for vote dilution in the New York Constitution—was a partisan politician who had never testified as an expert before, and whose testimony consisted significantly of personal anecdotes about Staten Island, rather than rigorous historical or social science analysis.

Faced with this trial record, Supreme Court's conclusion that "that Black and Latino votes are being diluted in the current CD-11" is not surprising. *See* Intervenor-Respondents' Application for Interim Relief, Ex. A (Decision and Order) ("IRX-A") at 13.[3] Nor can it be easily set aside—particularly in a rushed, emergency posture. That is particularly so because the people of New York have, through their Constitution, adopted strong protections against racial vote dilution in the drawing of congressional districts. *See* N.Y. Const. art. III, § 4(c)(1). Supreme Court—tasked with construing the precise contours of these protections in the first instance—adopted a commonsense textualist approach that looked to whether vote dilution was occurring "based on the totality of the circumstances." *Id.* And the Court's application of that standard to the facts here is entitled to substantial deference—it is far from "obvious" that the trial court's "conclusions could not be reached under any fair interpretation of the evidence." *409-411 Sixth St., LLC v. Mogi*, 22 N.Y.3d 875, 876–77 (2013) (explaining the "decision of the fact-finding court should not be disturbed" unless this standard is met, "especially when the findings of fact rest in large measure on considerations relating to the credibility of witnesses" (citation omitted)). Respondents and

[3] For ease of reference, and given the volume of documents filed in Supreme Court, Petitioners' citations to documents filed in the court below will reference the exhibits containing those documents that Intervenor-Respondents' and Respondents' have already filed in Appellate Division docket numbers 11 and 13. Citations to Intervenor-Respondents' Application for Interim Relief with Supporting Documents (Doc. No. 11) will be cited as "IRX-[Exhibit Letter]" and citations to Respondents' Application for Interim Relief with Supporting Documents (Doc. No. 13) will be cited as "RX-[Exhibit Letter]."

Intervenors have little prospect of overturning Supreme Court's finding given this standard, which is reason enough to deny their motions.

Faced with such lopsided trial evidence, and an unfavorable legal standard, Respondents and Intervenors lob a host of outlandish legal theories at Supreme Court's conclusion. In their view, Supreme Court committed a due process violation by—in a case involving a matter of first impression—construing Section 4(c)(1) in a manner that did not rigidly follow one of the competing interpretations offered by the parties. That argument both misreads Supreme Court's order and misrepresents the evidence and arguments below. More fundamentally, it ignores "the distinct role of the courts to interpret the laws to give effect to legislative intent." *Regina Metro. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 348 (2020) (per curiam). Supreme Court did not err in adopting a commonsense construction of Section 4(c)(1) and concluding that the evidence before it satisfied that standard.

The next legal objection the Intervenors (but notably not Respondents) lodge with Supreme Court's order is to say it erred by reading Section 4(c)(1) more broadly than the vote dilution protections in the federal VRA. Not so. Text, precedent, and subsequent legislative enactments make clear that Section 4(c)(1) sweeps more broadly than federal law, and it does not limit vote dilution claims to instances where an alternative majority-minority configuration—the so-called first *Gingles* precondition—can be established. Indeed, the Legislature itself has confirmed that the Constitution's guarantees "exceed the protections [of] the right to vote provided" for in federal law. N.Y. Elec. Law § 17-200. This Court should categorically reject Intervenors' effort to reduce New York's Constitution to mere surplusage that pointlessly mirrors federal law.

Finally, the equities strongly favor Petitioners. The Court of Appeals has made clear that it is unacceptable for "the people of this state" to be subjected "to an election conducted pursuant to

an unconstitutional reapportionment." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521 (2022). Yet that is exactly what will occur if this Court grants the motions to stay and subjects Petitioners and other voters in CD-11 to midterm elections held under unconstitutional lines.

Indeed, in view of *Harkenrider*, this Court is duty-bound to lift any automatic stay that has gone into effect under CPLR § 5519(a). As Respondents and Intervenors agree, that provision does not stay Supreme Court's prohibitionary injunction, but may well stay the other half of the court's order—an instruction to the Independent Redistricting Commission ("IRC") to reconvene with due haste to propose a remedial map, which the Legislature can then accept or revise. Permitting that process to proceed is the only way to ensure proper relief for Petitioners. And while Respondents and Intervenors grouse about the so-called confusion caused by Supreme Court's ruling, the solution to any such confusion is obvious: lift the automatic stay so that the IRC can proceed with its work to draw new maps in a timely fashion and permit orderly elections to occur.

Perhaps sensing that this is the most straightforward path to ensuring that New York has settled, lawful maps, the Respondents and Intervenors insist that it is not feasible to do so before primary elections in late June. That is false. In *Harkenrider*, New York redrew its *entire* congressional map during a midterm election year based on a trial court decision issued on March 31—two and a half months later than Supreme Court's decision here. *See Harkenrider v. Hochul*, 76 Misc. 3d 171 (N.Y. Sup. Ct., Steuben County 2022) (issued March 31, 2022). The decision at issue here not only comes far sooner, but also necessitates a significantly more modest revision to New York's congressional map, as the affirmation filed by Board of Elections Co-Executive Director Stavisky explains. *See* Stavisky Affirmation ¶ 8. Her affidavit further confirms that it is feasible for the IRC and Legislature to draw—or, if necessary, Supreme Court to grant—a remedial district. *See id.* ¶¶ 6–7. Nor, as Co-Executive Director Stavisky further explains, is February 24,

2026, the hard and fast deadline to begin ballot-access petitioning that Respondents and Intervenors suggest it is. *See id.* ¶ 10. Their self-serving timing concerns supply no good reason to deny Petitioners' relief. To the contrary, as Co-Executive Director Stavisky explains, a stay will serve only to *disrupt* the Board's preparations for the 2026 election. *See id.* ¶ 7 ("A stay in this matter literally ensures delay should the lower court remedy be upheld on appeal.").

In sum, the Court should deny Respondents' and Intervenors' motions for a stay, deny their request for immediate appeal to the Court of Appeals, and grant Petitioners' cross-motion to vacate any automatic stay under CPLR § 5519(a) so that the IRC can timely proceed with its work.

BACKGROUND

I. New Yorkers enact robust racial vote dilution protections into the Constitution.

In 2014, "the people of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process," *Harkenrider*, 38 N.Y.3d at 501, including changes that "guarantee[] the application of substantive criteria that protect minority voting rights," Assembly Mem. in Support, 2013 N.Y. Senate-Assembly Concurrent Res. S2107, A2086.

The Constitution's prohibition on vote dilution is contained in Article III, Section 4(c)(1). It provides that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). In addition, "[d]istricts 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." *Id.* These provisions apply specifically to New York's state assembly, senate, and congressional districts. *Id.* § 4(b). The 2014 redistricting amendments list the express prohibition on vote dilution along with other redistricting criteria, including equal population size, contiguity, compactness, maintaining competition and the

"cores of existing districts," as well as a prohibition on partisan or incumbency-based gerrymandering. *See id.* § 4(c)(2)–(5).

By enshrining constitutional protections against minority vote dilution, New York voters seized upon the U.S. Supreme Court's recognition that states may go further than the requirements of the federal Voting Rights Act ("VRA") to protect minority voters. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality opinion); *see also* N.Y. Elec. Law § 17-200 ("[T]he protections for the right to vote provided by the constitution of the state of New York . . . substantially exceed the protections for the right to vote provided by the constitution of the United States . . . .").

II. The existing congressional map, including CD-11, is enacted under fraught circumstances.

The process that produced the 2024 Congressional Map was tumultuous, to say the least. In addition to making substantive changes to redistricting criteria, the constitutional amendments New Yorkers enacted in 2014 also created the IRC, which submits proposed redistricting plans to the Legislature for consideration, as well as detailed procedures by which the Legislature could approve, reject, or modify plans submitted by the IRC. *See* N.Y. Const. art. III, § 4(b).

In the first redistricting cycle following the enactment of the 2014 redistricting amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. *See id.*; *see also Harkenrider*, 38 N.Y.3d at 504–05. As a result, and following a legal challenge to the map eventually passed by the Legislature, the congressional map in place for the 2022 elections (the "2022 Congressional Map") was drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 38 N.Y.3d at 524. The special master admitted in his report that he did not actively

avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided simply because "the largest minority groups . . . are almost always highly geographically concentrated." Rep. of the Special Master at 11, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben County May 21, 2022), NYSCEF Doc. No. 670.

Following additional litigation, the Court of Appeals ordered the IRC to redraw the 2022 Congressional Map to fix the procedural defects by requiring the IRC to submit a second congressional map to the Legislature. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 370 (2023). The IRC ultimately submitted a second map that made very few substantive changes and no changes at all to the configuration of CD-11.[4] The Legislature rejected the IRC's map, *see* 2024 NY Senate Bill S8639, 2024 NY Assembly Bill A9304, and drew its own, but did not make any sweeping substantive changes.[5] The 2024 Congressional Map, which was passed by the Legislature on February 28, 2024, also did not alter the configuration of CD-11. *See* 2024 NY Senate Bill S8653A, 2024 NY Assembly Bill 9310A. Thus, although the enactment of the 2024 Congressional Map fixed the procedural defects identified in *Hoffman*, it did not remedy the unlawful racial vote dilution in CD-11.

III. Petitioners challenge vote dilution in CD-11 based upon the totality of the circumstances.

On October 27, 2025, Petitioners filed this lawsuit challenging the configuration of CD-11 under the 2024 Congressional Map for violating the Constitution's vote-dilution provisions.

[4] *New York Redistricting and You*, https://tinyurl.com/5twthvtr (last visited Feb. 4, 2026).

[5] *New York Redistricting and You*, https://tinyurl.com/3xc9wk8n (last visited Feb. 4, 2026).

A. The current configuration of Staten Island's congressional district does not account for the area's recent demographic changes.

Staten Island, the least populous of New York City's boroughs, does not contain enough people to comprise its own congressional district. IRX-S ¶ 36 (Cooper Report). CD-11 thus joins Staten Island with a portion of southwest Brooklyn—including Fort Hamilton, Dyker Heights, New Utrecht, Bath Beach, and part of Bensonhurst—to obtain the necessary population. IRX-S at 8, fig. 1 & Ex. F-1 (Cooper Report). This configuration, as Petitioners proved at trial, dilutes the voting strength of Staten Island's substantial Black and Hispanic population.

Prior to the 1980s, Staten Island was overwhelmingly White. IRX-Q ¶ 9–12 (Sugrue Report). The Island was home to a small population of Black citizens, but they were confined to the North Shore, particularly the Stapleton area and Sandy Ground. IRX-Q ¶ 9 (Sugrue Report). Both neighborhoods carried deep historical significance for the Black community. Stapleton is "home to Stapleton AME Church, the borough's oldest Black Church," and Sandy Ground is "the oldest free Black settlement on the East Coast, founded by former enslaved people from Maryland in 1828 – the year after New York State abolished slavery." IRX-Q ¶ 9 (Sugrue Report).

Staten Island's demography began to meaningfully change in the 1980s. IRX-Q ¶ 12 (Sugrue Report). New transportation options between Staten Island and mainland New York City, including the opening of the Verrazzano-Narrows Bridge in 1964, helped facilitate waves of immigration to the borough through the late twentieth and early twenty-first centuries. Between 1980 and 2020, Staten Island's population ballooned by approximately 40%. IRX-Q ¶¶ 12–13 (Sugrue Report). During this period, the White population on Staten Island dropped from 85% to 56%, while the combined Black and Hispanic population increased from approximately 12% to nearly 30%. IRX-Q ¶¶ 12–13 (Sugrue Report). While the growth of the Black and Hispanic populations has been significant, it has been unevenly distributed across the Island. Most of Staten

Island's Black and Hispanic residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton. *See* IRX-Q ¶ 16 (Sugrue Report).

Despite the significant demographic changes to the borough, Staten Island's congressional district has remained roughly the same—joining Staten Island with neighborhoods in southern Brooklyn—since the early 1980s. As a result, Staten Island's Black and Hispanic residents remain in a district where they consistently and systematically have less opportunity to influence elections and elect their representatives of choice. With the testimony and expert report of Dr. Maxwell Palmer, Petitioners proved that voting within CD-11 is heavily racially polarized, with Black and Hispanic citizens voting cohesively for the same candidate across 20 district-wide elections in the last six years, and White citizens voting just as cohesively to defeat the Black and Hispanic-preferred candidate. IRX-T ¶¶ 15–19, figs. 1 & 2 (Palmer Report). Dr. Palmer's testimony likewise showed that the Black and Hispanic–preferred candidate is regularly defeated by the White majority's preferred candidate. Across the 20 elections Dr. Palmer reviewed, the Black and Hispanic–preferred candidate won only five. IRX-T ¶ 20, fig. 3 (Palmer Report). Each of those five elections, moreover, was in 2018 or earlier, and voting has become increasingly racially polarized since then. *Id.* Dr. Thomas Sugrue, meanwhile, offered extensive testimony concerning Staten Island's long and sordid history of entrenched discrimination against the borough's Black and Hispanic residents, including, among other things, a history of discrimination; the use of discriminatory voting procedures; and severe disparities in education, income, health, employment and homeownership that limit Black and Hispanic voters' ability to participate in the political process to this day.

B. A reasonably configured district that joins Staten Island with Lower Manhattan would afford Black and Hispanic Staten Islanders an equal opportunity to see their congressional candidates of choice elected.

Joining Staten Island with Brooklyn is not the only historical configuration of the Staten Island-based congressional district. In fact, for the entire first half of the twentieth century, Staten Island was joined with Lower Manhattan to form a congressional district. *See* IRX-P Tr. 262:6–15. Similarly, in 1972, following the 1970 Census, the New York Legislature enacted a congressional map that joined Staten Island with Lower Manhattan in what was CD-17 at the time. *See* IRX-S at 14, fig. 7 (Cooper Report). The district remained in this configuration until the contentious 1982 redistricting battle, following the state's loss of five House seats due to population changes.[6] With the two houses of the Legislature controlled by opposite parties, the parties compromised to redraw the Staten Island–based congressional district to include the Bay Ridge section of Brooklyn instead of the southern tip of Manhattan.[7] The move was transparently partisan, securing Republican advantage on Staten Island for decades to come and effectively unseating the popular Democratic Representative Leo Zeferetti in Brooklyn.[8] Joining Staten Island with Manhattan has a modern precedent, too. During the last redistricting cycle, the Legislature redrew Assembly District 61, which encompasses Staten Island's North Shore, to include the southernmost neighborhoods of Manhattan as well. *See* IRX-S at 13, fig. 6 (Cooper Report). Despite this obvious and known alternative, the Legislature failed to adopt a similar configuration

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[6] *See* Maurice Carroll, *Plan by Democrats Effaces Old 'Silk Stocking' District*, N.Y. Times (Feb. 20, 1982), https://www.nytimes.com/1982/02/20/nyregion/plan-by-democrats-effaces-old-silk-stocking-district.html#:~:text=Political%20practicality%20says%20the%20Democrat.

[7] *Id.*

[8] *Id.*

for CD-11, which, as explained in detail below, would have afforded Staten Island's Black and Hispanic residents an equal opportunity to elect their candidates of choice.

Petitioners presented evidence that a congressional district that once again joins Staten Island with Lower Manhattan would remedy the unlawful dilution of Black and Hispanic voting strength. The Illustrative Map drawn by Mr. Bill Cooper, Petitioners' expert demographer, modified only CD-10 and CD-11 by joining Staten Island with much of Lower Manhattan and reuniting the Brooklyn neighborhoods of Bensonhurst, Bath Beach, and Dyker Heights with Sunset Park and Chinatown in CD-10. Dr. Palmer explained that, in the illustrative CD-11, voting is far less racially polarized, with roughly 40% of White voters supporting the Black and Hispanic-preferred candidate on average. IRX-T ¶¶ 21–25, fig. 4, & tbl. 2 (Palmer Report). And in the illustrative district, the Black and Hispanic-preferred candidate is *often* (but not always) successful. IRX-T ¶ 26, fig. 5 (Palmer Report). In other words, under the Illustrative Map, Black and Hispanic voters would have the same opportunity as their White neighbors "to pull, haul, and trade to find common political ground" to succeed. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994).

Mr. Cooper testified that in drawing the Illustrative Map, he considered and carefully weighed all traditional redistricting criteria—including the Constitution's equal-population requirement, contiguity, compactness, core retention of previous districts, and respect for communities of interest. He testified that the Illustrative Map satisfied each of these criteria: it maintains equal population and respects preexisting neighborhood boundaries; it is contiguous via the Staten Island Ferry, which tens of thousands of New Yorkers use every single day to traverse the Upper New York Bay; it is reasonably compact along all traditional metrics; and it not only respects communities of interest, but *improves* upon the current plan by uniting Chinese American communities in Bensonhurst, Bath Beach, Sunset Park, and Chinatown that are presently split

between CD-10 and CD-11. At the same time, Mr. Cooper's testimony made quite clear that his map represents just *one* way of many to remedy the unlawful vote dilution occurring in the existing CD-11. Presented with the opportunity to redraw the congressional map, the IRC and Legislature would have a range of options at their disposal to correct the defects plaguing the 2024 map.

C. Supreme Court properly held that Petitioners satisfied the elements of a vote-dilution claim under the New York Constitution and were entitled to immediate relief.

After four days of trial testimony from eight different experts, as well as significant post-trial briefing, Supreme Court agreed with Petitioners on both the law and the facts, and it ordered swift relief. On the law, it agreed with Petitioners that Article III, Section 4(c)(1) of the New York Constitution sweeps more broadly than the federal VRA, authorizing relief for minority vote dilution without proof that the minority group would necessarily form the *majority* population in another, remedial district. IRX-A at 5–6. To that end, Supreme Court agreed with Petitioners that the Constitution protects "crossover districts," that is, a district where the minority population is sufficiently "large" and "influen[tial]" to elect their candidates of choice with the assistance of "crossover" voters from the majority racial group. *See* IRX-A at 13–14.

Once it cleared this threshold issue, Supreme Court appropriately adopted a totality-of-the-circumstances test that largely mirrors the applicable legal tests applied by courts in federal VRA and NYVRA cases, save that it also concluded that the majority-minority district requirement the U.S. Supreme Court has found in federal law was not consistent with the People's amendments to the New York Constitution. IRX-A at 7–8 (adopting *Gingles* totality-of-the-circumstances factors, with "the extent of racially polarized voting" as "fundamental" to the analysis); *see also* N.Y. Elec.

Law § 17-206(2)(b)(ii) (establishing that vote dilution is proved through evidence of racially polarized voting and/or assessment of the totality of the circumstances).[9]

Within this framework, Supreme Court assessed and weighed the substantial expert testimony before it—including testimony from no less than *five* experts that Respondents and Intervenors offered to rebut Petitioners' evidence on the extent of racially polarized voting, testimony on the totality-of-the-circumstances factors, and Petitioners' Illustrative Map. Ultimately, Supreme Court credited Petitioners' experts, finding Petitioners met their burden to prove unlawful vote dilution because "racially polarized voting ha[d] clearly [been] demonstrated" in CD-11, as well as a "history of discrimination against minority voters in CD-11 [that] still impacts those communities today." IRX-A at 8–9. The Court also determined that Black and Hispanic voters in CD-11 comprise a "sufficient portion of the district's population," such that "redrawing . . . the congressional lines is a proper remedy." IRX-A at 13.

Finally, Supreme Court ordered swift relief that respected its own role in the state's constitutional structure. The Court properly declared the current map unconstitutional and enjoined its future use. But instead of instituting any further relief on its own, it honored the Constitution's command that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." *See* N.Y. Const. art. III, § 5. To that end, it ordered the IRC to reconvene and propose a new map to the Legislature, consistent with the procedures set out in Article III, Section 5. And in so doing, Supreme Court offered a standard for the IRC and Legislature to apply to assess whether a potential remedial district constitutes a crossover district. And recognizing that

[9] The totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA. *See Gingles*, 478 U.S. at 36–37; N.Y. Elec. Law § 17-206(3).

"time is of the essence" with the 2026 election on the horizon, it ordered the IRC to propose a new map by February 6, 2026.

LEGAL STANDARD

Respondents and Intervenors seek a "discretionary" stay of Supreme Court's prohibitionary injunction under CPLR § 5519(c). *Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990). Such relief is never granted as of right, as "there is no entitlement to a stay." *Id.* "Any relevant factor may be considered by the court in exercising its discretion." Siegel, N.Y. Prac. § 535 (6th ed. 2024). In addition to considering the "apparent merit or lack of merit of an appeal," 8 N.Y. Prac., Civil Appellate Practice § 9:4 (3d ed. 2025), courts are also "duty-bound to consider the relative hardships that would result from granting" a stay, *Musso*, 76 N.Y.2d at 443 n.4. Civil Appellate Practice § 9:4 (3d ed. 2025), courts are also "duty-bound to consider the relative hardships that would result from granting" a stay, *Musso*, 76 N.Y.2d at 443, n.4.

Petitioners, in turn, respectfully ask the Court to lift any automatic stay issued under CPLR § 5519(a), including as to the Supreme Court's remedial order to the IRC. CPLR § 5519(c) permits this Court to "vacate, limit or modify" an automatic stay. It is well accepted that an automatic stay's "[u]ndue hardship" on a petitioner "justif[ies] appellate vacatur." *McLaughlin v. Hernandez*, 4 Misc. 3d 964, 969 (Sup. Ct., N.Y. County 2004) (citation omitted); *see also DeLury v. City of New York*, 48 A.D.2d 405, 405 (1st Dep't 1975) (per curiam) (concluding a court may vacate an automatic stay upon a showing of "a reasonable probability of ultimate success in the action, as well as the prospect of irreparable harm"). Vacatur of an automatic stay is especially appropriate where "the public interest and welfare require" it. *Freeman v. Lamb*, 33 A.D.2d 974, 975 (4th Dep't 1970).

ARGUMENT

I. Petitioners are likely to succeed on appeal.

A. Respondents' and Intervenors' linchpin due process arguments are contrived and misrepresent Supreme Court's order.

Perhaps recognizing that this fact-heavy dispute is ill-suited for emergency review, Respondents and Intervenors strain to creatively conjure up legal errors in Supreme Court's order. They each ground their motions on the notion that Supreme Court violated due process by construing Article III, Section 4 differently than the parties proposed below. *See* Resp. Br., Arg. § I.A; Int. Br., Arg. § I.A. But that argument mischaracterizes Supreme Court's order, which stemmed from the arguments and evidence put forth during a four-day evidentiary hearing. It is also wrong as a matter of basic due process law. There is nothing remarkable about a court exercising its own judgment to construe the meaning of a constitutional or statutory provision—that is the hallmark role of the judiciary. Once these sensationalized due process arguments are set aside, little remains to the requests for a stay beyond a bare ask that this Court substitute its view of the facts for the trial court's findings, which resulted from a comprehensive record and multi-day hearing during which both Supreme Court and counsel for the Parties had the opportunity to question and test each side's evidence.

1. Supreme Court's order is rooted in the evidence and argument presented below.

All parties agree this case presents a matter of first impression about the scope and meaning of Article III, Section 4(c)(1) of the New York Constitution. *E.g.*, IRX-P Tr. 18:13–21 (Intervenors' counsel agreeing this is a "matter of first impression"). Supreme Court acknowledged this "issue of first impression," IRX-A at 13, and proceeded to construe the provision in two parts—*first*, how a Petitioner *establishes* that vote dilution is occurring, *id.* at 4–13; and then, *second*, how the Constitution requires such vote dilution to be *remedied*, *see id.* at 13–17.

As to the first issue, the court adopted a commonsense textualist approach focused on the Constitution's use of the term "totality of the circumstances." N.Y. Const. art. III, § 4(c)(l); *see also* IRX-A at 4–5. Drawing from federal case law, the court applied the "Senate Factors" from the federal VRA analysis, which among other things asks whether there is racially polarized voting in the relevant jurisdiction and set out a list of objective factors relevant to a racial vote dilution claim.[10] *See* IRX-A at 7 (citing *Thornburg v. Gingles*, 478 U.S. 30, 44–45 (1986)). This is the *exact* evidence Petitioners introduced to establish their vote dilution injury: (1) a racially polarized voting analysis from Dr. Palmer (IRX-T; RX-I); and (2) a totality of the circumstances analysis from Dr. Sugrue that examined the topics covered by the Senate Factors, including the history of discrimination in the relevant area, racial appeals in elections, minority electoral success, and socioeconomic factors (IRX-Q; RX-G).

To be sure, Petitioners principally argued that the court should have looked to the NYVRA's framework—which likewise expressly conditions relief on evidence of "racially polarized" voting and the "totality of the circumstances," N.Y. Elec. Law § 17-206(b)(2)(b)(i)—rather than federal law. For purposes of these standards, that is a distinction without a difference—evidenced by Supreme Court's reliance upon the exact evidence put forward by Petitioners to establish unconstitutional vote dilution. Further still, Respondents and Intervenors are simply wrong in asserting that Petitioners hitched their wagon to the NYVRA alone as a possible

[10] The Senate Factors include "the history of voting-related discrimination"; "the extent to which voting . . . is racially polarized"; "the extent to which . . . voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group" are used; "the exclusion of members of the minority group from candidate slating processes"; "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"; "the use of overt or subtle racial appeals in political campaigns"; and "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 44–45.

framework. Petitioners noted in their opening memorandum that they would "readily satisfy" "any possible standard" because they established "racially polarized voting" as well as "strong totality of the circumstances evidence"—long-established standards common to both state and federal law. *See* IRX-I at 19 n.5. Indeed, Petitioners' post-trial memorandum further emphasized that "[t]he totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA," such that New York courts often rely upon federal VRA cases to resolve NYVRA claims. *See* Aff. of Christopher Dodge, Ex. 1, Petitioners' Post-Trial Mem. ("PX-1") at 24 & n.11; *see also, e.g.*, *Serratto v. Town of Mount Pleasant*, 86 Misc. 3d 1167, 1174 (N.Y. Sup. Ct., Westchester County 2025) (analyzing NYVRA totality factors with reference to federal VRA caselaw). And Supreme Court's ultimate conclusion—that "a totality of the circumstances analysis" shows unlawful vote dilution under Article III, Section 4, IRX-A at 12—relied on Petitioners' largely unrebutted evidence and arguments. *See infra* § I.C.2. Thus, even if the Supreme Court charted a slightly different analytical course, it ultimately reached a substantially similar framework to the one proposed by Petitioners and relied upon Petitioners' evidence to find that CD-11 unlawfully dilutes the votes of Black and Hispanic voters.

As to the second portion of the its analysis, Supreme Court explained that—having found vote dilution in CD-11 as currently constituted—it had to "determine . . . the proper remedy for unlawful vote dilution." IRX-A at 13. The court first explained that the New York Constitution sweeps more broadly than the federal VRA, in that it does not require minority groups "to constitute a majority in a single-member district" to remedy vote dilution. *Id.* (quoting *Gingles*, 478 U.S. at 51). That correct conclusion, *see infra* § I.B, is also precisely what Petitioners argued below. *E.g.*, IRX-I at 32–33; PX-1 at 46–47. The court next explained the New York Constitution does impose some limits on vote dilution claims: "minority voters must comprise a sufficiently

large portion of the population of the district's voting population that they would be able to influence electoral outcomes." IRX-A at 13. That, too, is *precisely* what Petitioners showed through their racially polarized voting evidence, which established that Black and Hispanic voters—who comprise roughly 30% of the population on Staten Island—engage in bloc voting. *See* IRX-T; RX-I; *see infra* § II.C.1. And they further presented evidence as to one possible remedial district in which Black and Hispanic voters could elect their candidates of choice—while forming a critical part of the political coalition necessary to elect such candidates. *See* IRX-S; RX-K; *infra* § II.C.3. In other words, Petitioners put forward evidence that Black and Hispanic voters "comprise a sufficiently large portion of the population" in the relevant area "to influence electoral outcomes." IRX-A at 13.

Because Petitioners did not demand a majority-minority district to remedy their vote dilution injury, Supreme Court concluded Petitioners were asserting a so-called "crossover claim." IRX-A at 14. A crossover district is one in which minority group voters can elect their preferred candidate with the aid of "crossover voters"—members of the majority racial group who also vote for the minority-preferred candidate. *See Bartlett*, 556 U.S. at 23 (rejecting such districts as mandatory under the federal VRA, but explaining states are free to exceed federal law in this regard); *see also Cooper v. Harris*, 581 U.S. 285, 303 (2017). Respondents and Intervenors take umbrage with this, insisting that Petitioners never asserted a crossover claim. *E.g.*, Int. Br. at 26. That allegation is befuddling—Petitioners asserted a crossover claim directly on the face of their Petition. *See* IRX-G ¶¶ 8, 46.

It is true that, at times, Petitioners have discussed Black and Hispanic voters' ability to "influence" elections. But that is because, in a properly constituted crossover district, minority voters possess sufficiently substantial electoral *influence* to *elect* their candidates of choice. *See*

IRX-A at 15 (describing a crossover district as one that "increase[s] the influence of minority voters, such that they are decisive in the selection of candidates"). Each and every one of Petitioners' filings in this case is quite clear that that the remedy they seek is a crossover district in which Black and Hispanic voters have the opportunity to *elect* candidates of their choice. *See, e.g.*, IRX-G ¶ 8 (alleging that Article III, Section 4(c)(1) covers crossover district claims); *id.* ¶ 95 ("This Court should order the Legislature to draw a new, lawful CD-11 that pairs Staten Island with Lower Manhattan in order to afford Black and Latino voters the same opportunity as other members of the electorate to . . . *elect* their candidate of choice." (emphasis added)); IRX-I at 8 (stating Petitioners sought a crossover district); *id.* at 16–17 (explaining Petitioners' evidence was directed towards showing availability of crossover district); *id.* at 35 (characterizing the Illustrative Map as a crossover district); *see also* PX-1 at 2 (noting Petitioners seek a district where Black and Hispanic voters could join with White crossover voters to influence elections); *id.* at 10–11 (arguing Section 4(c)(1) permits crossover districts); *id.* at 62 (characterizing the Illustrative Map as a "crossover district[]").

That clear fact that was not lost on Supreme Court (IRX-A at 14 ("Nowhere in their papers do Petitioners assert that a majority-minority district can or should be drawn here; as such, the Court sees this as a crossover claim."). Nor was it lost on others who read Petitioners' briefing. *See* IRX-N at 19 (amici observing that the obvious "thrust" of the Petition was to obtain a crossover district). The notion that Respondents and Intervenors were not fairly apprised of Petitioners' request for a remedy that appears on the face of the Petition, that Petitioners discussed throughout their extensive merits briefing, and that Petitioners serially referenced during their *opening argument* at the hearing (IRX-P Tr. 9:16–22, 11:25–12:8, 12:25–13:21), is pure smoke and mirrors. That counsel may now second-guess strategic choices to tailor their arguments based on

their *own* conception of an "influence district," instead of the relief sought on the face of Petitioners' papers, plainly presents no due process concern.

Finally, the court rounded out its analysis by offering guidance to the IRC on how to craft a remedial crossover district. *See* IRX-A at 15–16. Specifically, it advised that, in evaluating a remedial district, the IRC should consider (1) whether minority voters can select their candidates of choice in a primary election; (2) whether those candidates are then usually victorious in a general election; and (3) whether a new district can "increase the influence of minority voters" such that they are "decisive in selection of candidates." IRX-A at 15. The court's discussion at this stage of its opinion focused on the scope of its required *remedy*—it was plainly not describing an element of proving the existence of unlawful vote dilution. Indeed, the court explained that the *IRC and Legislature*—politically accountable branches tasked with redistricting under the Constitution—bore the responsibility of implementing these requirements after a "Court find[s] a congressional map invalid." IRX-A at 16. Thus, the court offered this explanation to narrow the scope of any remedial district in a way that ensures minority voters acquire increased political voice in a newly drawn congressional district—consistent with the Constitution's command that racial and linguistic minority groups "not have less opportunity to participate in the political process." N.Y. Const. art. III, § 4(c)(1).

Respondents and Intervenors complain that Petitioners never introduced evidence on the first prong of this rubric, but that argument fundamentally misunderstands the Supreme Court's order. The court never held that it was Petitioners' burden to prove minority primary-election control as an element of a constitutional vote-dilution claim. Indeed, it merely explained that a district "should count" for remedial purposes if it achieves this outcome—an obvious instruction to the IRC. IRX-A at 15. The only thing the Supreme Court required Petitioners to establish as to

remedy is "that minority voters make up a sufficient portion of the district's population," such that they are "able to influence electoral outcomes." *Id.* at 13. And, as explained, Petitioners satisfied this requirement through a combination of racially polarized voting analysis and the proffering of an alternative map illustrating how minority voters could play an influential role in determining the outcomes of elections in any new district. And while Respondents and Intervenors criticized Petitioners' Illustrative Map throughout the evidentiary hearing, Petitioners made clear from the start that this map was not a "take it or leave it option." IRX-P Tr. 371:7–10. Further still, while Respondents and Intervenors made the strategic choice to narrowly focus their criticisms on the Illustrative Map alone, they never meaningfully disputed the obvious fact that the IRC and Legislature have numerous lawful options for redrawing CD-11 in manner that remedies vote dilution and complies with other ordinary redistricting criteria.[11]

[11] In their proposed brief, filed on February 4, 2026, Proposed Amici Ruth Greenwood and Nicholas Stephanopoulos make the same error, assuming that the crossover district standards Supreme Court announced are anything more than guardrails for the IRC and the Legislature to consider when crafting the remedial district. To reiterate, in granting relief, Supreme Court necessarily determined that Petitioners' Illustrative Map established that it was feasible that Black and Hispanic voters "comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes." IRX-A at 13. For that reason, amici are wrong in their idle speculation that there might be "no plausible remedy [that] could improve the representation of minority voters in Congressional District 11." Amici Br. at 13. Supreme Court correctly identified that the voluminous record in this case belies the notion that the proven dilution of Black and Hispanic voters in CD-11 is irreparable. Amici's scholarly concerns are also divorced the procedural posture of this case, where ongoing proceedings under Supreme Court's jurisdiction afford the IRC the opportunity to craft just such a district that "improve[s] the representation of minority voters in Congressional District 11." Amici Br. at 13. In the implausible—indeed, effectively impossible scenario—in which the IRC is somehow unable to do so, Supreme Court will still possess jurisdiction to make proper amendments to its Order. Thus, as explained *infra* § III, the most sensible path forward is therefore to lift the automatic stay to permit the IRC to fulfill its lawful role of crafting just such a district, rendering amici's concerns just what they are—academic.

At bottom, Respondents and Intervenors' due process complaints require this Court to adopt a funhouse mirror view of Supreme Court's order, which straightforwardly sets out how to prove and remedy vote dilution. And Respondents and Intervenors' choice to frontload these due process complaints in their requests for a stay simply highlight their reticence to engage with the trial record. Instead, they would have this Court close its eyes to overwhelming evidence of racial polarization and convincing totality of the circumstances analysis based on a clear misreading of Supreme Court's order. This Court should reject that gambit.

2. Courts have an independent duty to construe the meaning of a constitution or statute, regardless of party argument.

Respondents and Intervenors' due process argument has another problem—what they sensationally label a "Violation of the Due Process Clause," Int. Br. at 22, is decidedly not one as a matter of law. In their view, Supreme Court committed a due process violation by adopting what they call "a new, entirely unbriefed standard" for what constitutes vote dilution under Article III, Section 4. Resp. Br. at 20. As explained, that is factually wrong, because Petitioners proposed the *exact* categories of evidence relied upon by Supreme Court as governing a vote dilution claim. *See* PX-1 at 15 (identifying racially polarized voting, totality factors analysis, and usual defeat of minority-preferred candidates as relevant evidence). But this theory also ignores that courts are "not limited to the particular legal theories advanced by the parties, but rather retain[] the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991); *see also Hankins v. Lyght*, 441 F.3d 96, 104 (2d Cir. 2006) ("We are required to interpret federal statutes as they are written . . . and we are not bound by parties' [positions]."); *cf. Am. Timber & Trading Co. v. First Nat'l Bank of Or.*, 690 F.2d 781, 786 (9th Cir. 1982) ("A party need not plead specific legal theories in the complaint, so long as the other side receives notice as to what is at issue in the case."). Since the founding, courts

have *always* exercised independent judgment "when interpreting the laws." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803)); *see also id.* at 394 (explaining "courts must exercise independent judgment in determining the meaning of statutory provisions"). Any other approach would improperly "relieve [courts] of [their] responsibility to interpret the law correctly." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 41 n.2 (2015) (Thomas, J., concurring) (explaining party argument does not cabin a court's interpretation of law).

That is no less true for New York courts than for federal ones. *E.g.*, *Rogoff v. Anderson*, 34 A.D.2d 154, 157, (1st Dep't 1970) ("The power to construe a law is generally vested in the courts."), *aff'd*, 28 N.Y.2d 880 (1971); *O'Reilly v. City of New York*, 205 A.D. 888, 892 (2d Dep't 1923) ("This court must interpret the law as it finds it."), *aff'd*, 236 N.Y. 614, (1923); *accord Regina Metro. Co.*, 35 N.Y.3d at 348. Thus, New York courts "are not bound by the parties' formulation of the issues," *Wiley v. Altman*, 52 N.Y.2d 410, 414 n.6 (1981), and party argument alone "[can]not intrude upon the judicial function of correctly identifying and applying the law to the facts." *Knavel v. W. Seneca Cent. Sch. Dist.*, 149 A.D.3d 1614, 1616 (4th Dep't 2017) (explaining New York courts are not bound by "the parties with respect to a legal principle"); *see also People v. Berrios*, 28 N.Y.2d 361, 366, (1971) (similar); *Dashnaw v. Shiflett*, 10 Misc. 3d 1051(A), 2005 N.Y. Slip. Op. 51874(U), at *2 (City Ct. of Plattsburgh 2005) ("In determining a matter of law, this Court is bound by the New York Court of Appeals, not by arguments of counsel or parties."); *819 Realty Grp. LLC v. Beast Fitness Evolved LLC*, 65 Misc. 3d 1204(A), 2019 N.Y. Slip. Op. 51496(U) (N.Y. Civ. Ct. 2019) (similar). Accordingly, Supreme Court's choice to decline use of the NYVRA as the formal framework—while adopting a substantially similar framework from federal VRA precedent—fell squarely within its authority when construing Article III,

Section 4. Branding that exercise of ordinary judicial responsibility a due process violation is both legally wrong and histrionic.

The cases that Respondents and Intervenors rely upon are inapposite. Each of them involves an exceptional instance where a court introduced an entirely distinct *claim or defense* into a case—not merely an alternative construction of law. In *United States v. Sineneng-Smith*, for example, a criminal defendant argued that her conduct fell outside the scope of the criminal statute she was charged under. *See* 590 U.S. 371, 377 (2020). She appealed her conviction to the Ninth Circuit, which then appointed several *amici* to address whether the statute Sineneng-Smith was charged under violated the First Amendment as overbroad or the Fifth Amendment as unconstitutionally vague—constitutional defenses she had never raised. *See id.* at 378–79. The Supreme Court recognized that "a court is not hidebound by the precise arguments of counsel," *id.* at 380, but because the defendant herself had never so much as "hint[ed]" at the constitutional defenses introduced by the court, it concluded that the "radical transformation" of the case went "well beyond the pale," *id.* Similarly, in *Clark v. Sweeney*—an unpublished per curiam order—the Fourth Circuit improperly reached beyond the appellant's ineffective assistance of claim to "devise[] a new one," entirely different in form. *See* No. 25-52, 2025 WL 3260170, at *2 (U.S. Nov. 24, 2025) (per curiam).[12]

Petitioners here plainly raised a claim under Article III, Section 4—indeed, that was their sole claim in the Petition. *See* IRX-G at ¶¶ 1, 102. Petitioners and Supreme Court thus identified

[12] And in *Misicki v. Caradonna*, the Court of Appeals declined to consider an argument on appeal made under a state regulation the appellant had never cited before—an ordinary case of forfeiture. *See* 12 N.Y.3d 511, 518 (2009) (explaining appellant had never previously cited 12 N.Y. CRR 23–1.10[b] as a source of law in lower courts).

the relevant "governing law," *Kamen*, 500 U.S. at 99, and nothing about the court's analysis of that law resulted in "radical transformation of th[e] case," *Sineneng-Smith*, 590 U.S. at 380.

B. Intervenors wrongly claim the New York Constitution offers vote dilution protections that are merely duplicative of federal law.

Intervenors' next tack is to say Supreme Court erred by construing the Constitution's vote dilution provision to be more expansive than the federal VRA. Int. Br. at 29–34.[13] Specifically, they criticize the court's conclusion that New York law does not require proving the feasibility of a majority-minority district—the so-called first *Gingles* precondition—but only "that minority voters make up a sufficient portion of the district's population," such that they are "able to influence electoral outcomes." IRX-A at 13. Intervenors' theory—which would render Article III, Section 4 a pointless duplicate to the federal VRA—should be rejected out of hand. *See, e.g.*, N.Y. Laws § 144 ("Statutes will not be construed as to render them ineffective"); *cf. People v. Galindo*, 38 N.Y.3d 199, 205–06 (2022) (declining to read a provision in a manner that would "hold it a legal nullity").

Start with the text of the competing provisions. Section 2 of the federal VRA prohibits states from adopting any "voting qualification or prerequisite to voting or standard, practice, or procedure," that "results in a denial or abridgement of the right of any citizen of the United States to vote" due to race. 52 U.S.C. § 10301(a). It further explains that such a violation can be shown by, among other things, a "totality of [the] circumstances" analysis establishing that the political process is "not equally open to participation by members of *a class of citizens*" protected by the federal VRA. *Id.* § 10301(b) (emphasis added). As the Sixth Circuit has observed, this language "speaks of a 'class' in the singular," which makes clear that the text of Section 2 does not permit

[13] Respondents note in their background section that they raised this argument below, *see* Resp. Br. at 6–7, but do not appear to re-raise it anywhere in their motion.

lawsuits seeking coalition districts where two or more minority groups combine to constitute the majority in a reasonably configured remedial district. *Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc). The court reasoned that if Congress had "intended to sanction [such coalition] suits, the statute would" instead refer to "the *classes* of citizens protected." *Id.* at 1386–87 (emphasis added).

Article III, Section 4, by contrast, *does* use plural language; it states that districts "shall 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) (emphasis added). This use of the plural—which was illustrative in the context of *Kent County*—strongly suggests an "inten[tion] to sanction" districts where more than one group of voters may form a coalition to vote to elect candidates of their choice. 76 F.3d at 1386–87. New York's decision, therefore, to meaningfully vary from the federal VRA's narrower scope by allowing coalition districts, compels likewise departing from the correspondingly narrower first *Gingles* precondition that comes with it. Indeed, the Court of Appeals has explained that "[i]f the language of the State Constitution differs from that of its Federal counterpart, then the court may conclude that there is a basis for a different interpretation of it." *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 302 (1986). That is the case here.[14]

Turn next to precedent. New York courts have already recognized the broader protection that the New York Constitution provides. In *Harkenrider v. Hochul*, for example, Supreme Court found that "according to many experts," Article III's "prohibition against discriminating against

[14] The State Respondents below—including the Governor, Attorney General, and leaders of New York's legislature—agree that "the relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law." IRX-J at 3. Reading Article III, Section 4(c)(1) in line with the federal VRA would render Section 4(c)(1) "a redundancy and the will of New York voters in voting for them would be read out of the State Constitution." *Id.*

minority voting groups . . . expanded the[] protection" against vote dilution as compared to the federal VRA. 76 Misc. 3d at 176, *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022). In the wake of *Harkenrider*, the special master appointed to draw new districts in that case assumed Section 4(c)(1) extends to districts in which the minority population does not constitute a majority. *Cf. Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 31471(U), at *28 & n.22 (Sup. Ct., Steuben County 2022) (special master adopting a coalition district to "follow[] the injunction[] of the State Constitution . . . to not draw districts that would result in the denial or abridgement of racial or language minority voting rights"). To the extent federal courts have opined on the issue, it has been merely to confirm that "States that wish to draw crossover districts are free to do so where no other prohibition exists." *Bartlett*, 556 U.S. at 24. That is precisely what New York has done.

Further evidence of Section 4(c)(1)'s breadth can be found in the NYVRA, which the Legislature enacted in 2022. That law, which applies to local electoral districts, indisputably permits the use of crossover districts and does not require proving the feasibility of a majority-minority district. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14, 25 (2d Dep't 2025) (holding that the NYVRA "does not require the first *Gingles* precondition"), *aff'd*, No. 84, 2025 N.Y. Slip Op. 06359 (N.Y. 2025). Given their similar purpose and goals, there is simply no good reason for concluding the NYVRA permits crossover districts but Section 4(c)(1) does not. To the contrary, the Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to "[s]tate statutory or common law defining the scope of the individual right in question." *People v. Harris*, 77 N.Y.2d 434, 438 (1991). That supports reading the NYVRA and Section 4(c)(1) in parallel—not in direct tension with one another.

That fact is reinforced by the NYVRA's introductory text, which declares that the "public policy of the State of New York" is "[e]nsur[ing] that eligible voters who are members of racial,

color, and language-minority groups shall have an equal opportunity to participate in the [State's] political processes . . . and especially to exercise the elective franchise." N.Y. Elec. Law § 17-200. This policy "recogni[zes] . . . the *constitutional guarantees* . . . against the denial or abridgement of the voting rights of members of a race, color, or language-minority group." *Id.* (emphasis added). And it further explains these constitutional guarantees "exceed the protections [of] the right to vote provided" for in federal law. *Id.* Thus, the NYVRA's own declared purpose is to extend the "constitutional guarantees" in provisions like Section 4(c)(1) to local elections, reinforcing that the two should be read harmoniously. The Legislature's own apparent understanding of Section 4(c), as reflected in the NYVRA's statement of purpose, buttresses Petitioners' view. *See Lallave v. Martinez*, 635 F. Supp. 3d 173, 188 (E.D.N.Y. 2022) ("[A] later act can be regarded as a legislative interpretation of an earlier act in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting, and is therefore entitled to great weight in resolving any ambiguities and doubts." (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972)).

Finally, the fact that Article III, Section 4(c) notes that state redistricting criteria remain "[s]ubject to the requirements of the federal constitution and statutes," does not mean that state constitutional racial vote dilution claims must identically mirror Section 2 of the VRA. That language simply recognizes that the federal constitution and federal law set "a floor" for the minimum protections states must afford voters, *see People v. Stultz*, 2 N.Y.3d 277, 284 n.12 (2004), but it does not prescribe the substantive standards under which racial vote dilution claims must be established. Article III, Section 4(c) recognizes the federal floor, but nothing in its plain language binds or restricts the Constitution's reach to federal redistricting standards. Nor do the

standards that New York imposes conflict with federal standards; they simply provide greater protections—as the U.S. Supreme Court has recognized they may. *Bartlett*, 556 U.S. at 24–25.

Despite the foregoing, Intervenors insist Section 4(c)(1) must be read as a mere carbon copy of the federal VRA, notwithstanding its distinct text, history, and purpose. But their chief tactic is simply scaremongering. Pointing to *Bartlett*, they contend that permitting crossover districts under Section 4(c)(1) would raise federal constitutional problems. Int. Br. at 35. But *Bartlett* itself confirmed that states are free to chart a different course, as New York has. 556 U.S. at 24–25. Accordingly, Supreme Court's proper recognition that Section 4(c)(i) is not duplicative of the federal VRA offers no basis to grant Respondents and Intervenors their stay request.

C. Supreme Court correctly determined—after a four-day evidentiary hearing—that Petitioners established unconstitutional vote dilution based on a totality of the circumstances.

Cleared of the threshold legal disputes discussed above, Supreme Court appropriately construed the totality of the circumstances inquiry the New York Constitution prescribes. The court's approach relied on the nonexclusive factors identified in *Gingles*, requiring Petitioners to show that a "history of discrimination against minority voters" in the target area continues into the present to disenfranchise voters and deprive them of an equal opportunity to elect candidates of choice. IRX-A at 7–9. Of these factors, "the extent of racially polarized voting" is "[f]undamental" to any claim of vote dilution. *Id.* at 8. This standard reflects Petitioners' proposal, and both parties presented significant expert testimony on both the extent of racially polarized voting and the remaining totality factors.

The existence of vote dilution is an intensely factual inquiry that, in this case, turned on Supreme Court's assessment of the live testimony and lengthy reports of *eight* expert witnesses. Supreme Court had the opportunity to weigh the experts' reports and testimony, as well as to assess their credibility on the stand, and draw conclusions therefrom. Where there were disputes about

the evidence, Supreme Court credited the testimony of Petitioners' experts, ultimately concluding that there was strong evidence of racially polarized voting in CD-11, and that the totality of the circumstances factors otherwise demonstrated that Black and Hispanic Staten Islanders lack an equal opportunity to elect their candidates of choice. For the reasons below, these findings "fair[ly] interpret[]" the evidence and are entitled to deference. *Bradley v. St. Clare's Hosp.*, 232 A.D.2d 814, 814 (3d Dep't 1996) ("[W]e accord great weight to [Supreme Court's] resolution of credibility issues as well as its assessment of the weight of the evidence and will not disturb its resolution of these issues when supported by a fair interpretation of the evidence.").

1. Supreme Court properly credited strong evidence of racially polarized voting in which the Black and Hispanic–preferred candidate in CD-11 is usually defeated.

Supreme Court rightly found that Petitioners "clearly demonstrated" that voting in CD-11 is heavily racially polarized. IRX-A at 8. Petitioners' expert Dr. Palmer examined voting patterns in CD-11 using official election data and Census data, and employing a statistical technique called ecological inference, he found that White voters have consistently voted as a bloc to defeat the Black and Hispanic–preferred candidate. *See* IRX-T ¶¶ 5–6, 9–11 (Palmer Report); IRX-P Tr. 157:11–18 (Palmer). Dr. Palmer's analysis of CD-11 demonstrates that Black and Hispanic Staten Islanders have remained "extremely cohesive" over nearly a decade of elections. IRX-T ¶ 15 (Palmer Report). In the two most recent congressional elections—2022 and 2024—Black voters had "a clear preferred candidate," and Hispanic voters shared that choice. *Id.* ¶ 15 (Palmer Report); *see* IRX-P Tr. 163:13–164:3 (Palmer). Across these elections, the Black and Hispanic–preferred candidate (Democrat Max Rose in 2022 and Democrat Andrea Morse in 2024) averaged 89.55% of the Black vote and 88.4% of the Hispanic vote. IRX-T ¶ 15, fig. 1; *id.* at 10, tbl. 1 (Palmer Report). White voters in CD-11, however, voted as a bloc to defeat the Black and Hispanic–preferred candidate in both elections. *Id.*¶ 15, fig. 1, *id.* at 10, tbl. 1 (Palmer Report).

Broadening the lens beyond congressional elections, Dr. Palmer's analysis revealed high levels of racial polarization in CD-11 across *all* state and federal elections he studied over nearly a decade, from 2017 to 2024. In all 20 elections he examined, Black voters supported their preferred candidates with 90.5% of the vote on average. *Id.* ¶ 17 (Palmer Report). Hispanic voters "supported their preferred candidates with 87.7% of the vote." *Id.* ¶ 18 (Palmer Report). White voters, meanwhile, voted just as cohesively against the Black and Hispanic–preferred candidate with an average of 73.7% of the vote. *Id.* ¶ 19 (Palmer Report). In other words, they supported Black and Hispanic–preferred candidates with only 26.3% of the vote. *Id.* ¶ 19 (Palmer Report).

The effect of this bloc voting is unmistakable: of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times. *Id.* ¶ 20 (Palmer Report); IRX-P Tr. 168:8–10 (Palmer). And the few minority-preferred candidates that won prevailed by very narrow margins. *See* IRX-T at 12, tbl. 3 (Palmer Report). These victories are also quite dated. Of the city, state, and district-wide elections that Dr. Palmer analyzed, no Black and Hispanic–preferred candidate has prevailed within CD-11 since 2018, and voting within the district has become increasingly racially polarized since. *Id.* ¶ 20, fig. 3 (Palmer Report).[15]

Unable to refute Dr. Palmer's conclusions on their own terms, Intervenors offered the testimony of Dr. Voss to undermine the credibility of Dr. Palmer's analysis, suggesting that his methods—long regarded as the "gold standard" in redistricting cases, *Ala. State Conf. of NAACP*

[15] Dr. Palmer was cross-examined on his decision not to include the 2018 and 2020 U.S. House races in his analysis, *see* IRX-P Tr. 197:11–199:13 (Palmer), a point Intervenors raise again here, Int. Br. at 11. Dr. Palmer explained that he made this choice because those elections were conducted "under different [district] boundaries." *Id.* at 197:14–15 (Palmer). Even accounting for those elections, however, the Black and Hispanic candidate of choice prevailed within CD-11 in only six of 22 elections. *Id.* at 237:16–25 (Palmer). And it is still the case that no Black and Hispanic–preferred candidate has prevailed within the district since 2018. *See id.*; *see also* IRX-T ¶ 20, fig. 3 (Palmer Report).

v. Alabama, 612 F. Supp. 3d 1232, 1275 n.27 (M.D. Ala. 2020)—were unreliable. But when pressed, Dr. Voss ultimately walked back key conclusions from his report, IRX-P Tr. 667:6–668:2 (Voss), conceded his own analysis produced anomalous results, *id.* at 665:1–8 (Voss), and ultimately conceded that his own analysis likewise showed polarized voting across racial groups, *id.* at 647:5–16 (Voss). Supreme Court—rightly—credited Dr. Palmer's testimony and rejected Dr. Voss's. *See* IRX-A at 8–9 (concluding that Dr. Palmer's testimony "clearly demonstrated" racially polarized voting). And those factual findings are entitled to significant deference in this Court. *See, e.g.*, *Bradley v. St. Clare's Hosp.*, 648 N.Y.S.2d 803, 814 (App. Div. 3d Dep't 1996) ("[W]e accord great weight to [the Supreme Court's] resolution of credibility issues as well as its assessment of the weight of the evidence and will not disturb its resolution of these issues when supported by a fair interpretation of the evidence.").

2. Ample evidence supports a finding that remaining totality factors demonstrate that Black and Hispanic Staten Islanders lack equal electoral opportunities.

After examining all of the evidence adduced in the parties' briefs, expert reports, and at trial, Supreme Court also came to the reasonable conclusion—indeed the only conclusion that the record evidence supports—that under the "totality of the circumstances," the "district lines for CD-11 'result in the denial or abridgement of racial or language minority voting rights.'" IRX-A at 12 (quoting N.Y. Const. art. III, § 4(c)(1)).[16] The court referred to the particular totality of the

[16] In order to examine the totality of the circumstances, Supreme Court looked to the Senate Factors. IRX-A at 7–8. Those factors are nearly identical to the totality of the circumstances under the NYVRA. Both the Senate Factors and the racial vote dilution inquiry under the NYVRA ask courts to consider: the "history of discrimination" in the political subdivision; the extent of racially polarized voting; the history of discriminatory voting practices; the extent to which minority group members bear the effects of discrimination in education, employment, health and other socioeconomic factors, which limit their ability to participate effectively in the political process; the use of racial appeals in elections; and the extent to which minority group members have been elected to public office in the jurisdiction. *See Gingles*, 478 U.S. at 44–45; N.Y. Elec. Law § 17-206(3). In both analyses, to prove racial vote dilution, "there is no requirement that any particular

circumstances factors that engendered its conclusion and the record evidence that supports them, *see* IRX-A at 9–12, ultimately determining that the majority of the factors—including the history of discrimination; evidence of racially polarized voting; the use of discriminatory voting procedures; that Blacks and Hispanics bear the effects of discrimination in factors such as education and employment that limit their ability to participate politically; the use of racial appeals; and the limited success of Black and Hispanic political candidates—all weighed in favor of a finding of racial vote dilution in CD-11.

First, Supreme Court concluded that there is a "history of discrimination against minority voters in CD-11 [which] still impacts those communities today." IRX-A at 9. The court cited the history of government sponsored redlining, of private real estate industry practices that excluded Blacks and Hispanics from White neighborhoods, and of Black and Hispanic segregation in public housing in Staten Island. *Id.* at 9–10 (citing IRX-Q (Sugrue Report)). This conclusion was proper because Dr. Sugrue presented abundant and entirely undisputed evidence of each of the practices mentioned. For example, Dr. Sugrue traced the history of redlining and discriminatory housing practices on Staten Island, *see* IRX-Q at 16–38, including identifying particular neighborhoods in Staten Island that were redlined, *see* IRX-P Tr. 61:5–23 (Sugrue); IRX-Q at 19–22, as well as a "wide body of scholarship by historians, sociologists, public health experts and other social scientists, demonstrating that areas that [were] redlined are more likely today to have various negative socioeconomic indicators, problematic environmental outcomes and problematic health outcomes." IRX-P Tr. 61:24–62:7 (Sugrue); IRX-Q at 21–22. Intervenors' totality of the

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number of factors be proved, or that a majority of them point one way or the other." *Gingles*, 478 U.S. at 45 (citation omitted); *see also* N.Y. Elec. Law § 17-206(3) ("Nothing . . . shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that . . . a violation has occurred."). Indeed, all of the factors that the court relied upon for its conclusion are common to both the federal VRA and the NYVRA.

circumstances expert, Mr. Borelli, confirmed at trial that nothing in his report "challenges this body of scholarship," IRX-P Tr. 796:25–797:6 (Borelli), or the history of discrimination that Dr. Sugrue identified, IRX-P Tr. 788:17–18 (Borelli).

Supreme Court found that as a result of this discriminatory history, on Staten Island today, "de facto segregation remains the norm, with moderate segregation rates between Hispanic and White residents and significant segregation between Black and White residents." IRX-A at 10. This racial residential segregation has "largely confined Black people to neighborhoods north of the Staten Island Expressway with low property values." *Id.* at 9. This finding was well supported; that Staten Island remains racially residentially segregated was demonstrated empirically at trial and was also undisputed.[17]

The court next concluded that Staten Island's prior use of literacy tests have "had a particularly negative impact on Black and Latino New Yorkers." IRX-A at 10. This is evidence of an additional Senate Factor—a history of the use of discriminatory voting practices, *see Gingles*, 478 U.S. at 45—and evidence of this practice was also undisputed. *See* IRX-Q ¶¶ 88–89 (Sugrue Report); IRX-R at 31–32 (Borelli Report) (conceding that "New York required a literacy test in 1921" and noting that "by 1970 the literary test re-emerged as an obstacle to voting").

The court also found that the "long-term effects of" Staten Island's discriminatory history has resulted in significant gaps in the lives of Black and Hispanic populations of Staten Island and the White population to this day, impacting "'housing, education, [and] socioeconomic status' 'all

[17] Using the dissimilarity index, "the most commonly used measure of racial segregation," IRX-Q at 14–15, Dr. Sugrue calculated the measure of racial residential segregation for Hispanics and Whites, which was 42, indicating moderate racial residential segregation, and calculated the dissimilarity value for Blacks and Whites to be 75, indicating that the groups are highly racially segregated. *Id.* at 14–15; IRX-P Tr. 58:22–59:5 (Sugrue). He also demonstrated that the majority of Blacks and Hispanics live North of the Staten Island expressway, or what many minority Staten Islanders refer to as the "Mason-Dixon line." *Id.* Tr. 55:9–20 (Sugrue); IRX-Q at 13.

of which are known to have a negative impact on political participation and the ability to influence elections.'" IRX-A at 10. And the court cited the relevant Senate Factor to which this finding related. *Id.* at 11 (finding that Petitioners presented evidence that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" to a noteworthy extent (quoting *Gingles*, 478 U.S at 44–45.)); *see also id.* at 10 (identifying evidence of disparities in education, per capita income, poverty rates, and homeownership). This conclusion was also amply supported, and the evidence that there remain significant disparities between Blacks and Hispanics as compared to Whites in education, income, employment, and housing, with Blacks and Hispanics significantly disadvantaged, was also undisputed.[18]

Moreover, for each of these factors, Dr. Sugrue identified a "wide body of scholarship" that linked lower levels of education, income, employment, and homeownership with decreased levels of political participation, *see* IRX-P Tr. 62:2–7; 66:4–12; 69:7–13 (Sugrue)—evidence which Mr. Borelli failed to rebut. *See* IRX-P Tr. 67:20–68:7 (Sugrue). Based on these substantial disparities, there are significantly lower voter turnout rates for Blacks and Hispanics as compared to Whites. *See* IRX-T at 9, fig. 6 (Palmer Report) (demonstrating voter turnout disparities of 13%

[18] As to education, both Dr. Sugrue and Mr. Borelli demonstrated that Black and Hispanic Staten Islanders are much more likely to have less than a high school diploma as compared to White Staten Islanders, and Whites are much more likely to have graduated from college. IRX-Q at 39, fig. 7 (Sugrue Report); IRX-R at 38 (Borelli Report). As to housing, Dr. Sugrue presented unrebutted evidence of vast homeownership disparities: Whereas 76.8% of White Staten Islanders own their homes, only 43.7% of Hispanics only 35.8% of Black Staten Islanders do. IRX-Q ¶ 79, fig. 9 (Sugrue Report). Mr. Borelli offered nothing to dispute this evidence. IRX-P Tr. 808:13–25 (Borelli). And both Mr. Borelli and Dr. Sugrue's data presented significant income disparities between Blacks and Hispanics compared to Whites. *See, e.g.*, IRX-R at 44 (showing Blacks and Hispanics have incomes of less than two-thirds than that of Whites). Dr. Sugrue also presented undisputed evidence of higher levels of unemployment for Blacks and Hispanics as compared to Whites. IRX-Q at 39, fig. 8.

and 17% for Hispanics and Blacks respectively as compared to Whites in 2024, and a 20% disparity for both Hispanics and Blacks as compared to whites in 2022). Where, as here, Petitioners establish both socioeconomic disparities and lower minority voter participation, "plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation." S. Rep. No. 97-417, at 29 n.114 (1982); *see also Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1294 (11th Cir. 2020) (holding same).

The court also examined the extent to which minority candidates have been elected to political office in Staten Island and concluded that it was "low." IRX-A at 11; *see Gingles*, 478 U.S. at 45 (examining "the extent to which members of the minority group have been elected to public office in the jurisdiction"). Again, the evidence on this factor was uniformly supportive of this conclusion. In his report, and at trial, Dr. Sugrue explained—and Mr. Borelli did not dispute—that although Black people have lived on Staten Island for more than 200 years, the first Black candidate to obtain electoral success was Debi Rose, elected to the City Council in 2009. Since then, only three Black candidates have been elected to *any* office on Staten Island. IRX-P Tr. 70:17–71:12 (Sugrue); RX-G ¶¶ 48–49 (Sugrue Rebuttal). And only one Hispanic person has been elected to any office on Staten Island in its history. Staten Islanders have never elected a Black member of Congress, Hispanic City Councilperson, or Hispanic judge. RX-G ¶¶ 48–52 (Sugrue Rebuttal). Courts routinely conclude that this factor weighs in Petitioners' favor even where there is greater representation of minority elected officials in the jurisdiction. *See Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1284 (concluding that Senate Factor 7 "weigh[ed] heavily in favor" of plaintiffs where, among other things, only 12 Black officials had ever served in Georgia's congressional delegation), *appeal pending*, No. 23-13914 (11th Cir. argued Jan. 23, 2025).

Finally, Supreme Court found that "both overt and subtle racial appeals are common in campaigns in CD-11." IRX-A at 11; *see also Gingles*, 478 U.S. at 45 (examining "the use of overt or subtle racial appeals in political campaigns"). When "candidates [make] race an issue on the campaign trail . . . the possibility of inequality in electoral opportunities increases." *Soto Palmer v. Hobbs*, 686 F. Supp. 3d 1213, 1230 (W.D. Wash. 2023), *cert. denied*, 144 S. Ct. 873 (2024). The court's decision provided three specific examples of such appeals, IRX-A at 11–12, more than enough on which to base its conclusion. Evidence of additional racial appeals were offered in Petitioners' expert reports and at trial. *See* IRX-Q at 45–52; RX-G at 14–16. Indeed, Intervenors' own expert cited articles in his report that detailed multiple racial appeals in advertisements supportive of Representative Malliotakis in her 2020 congressional campaign. *See* IRX-R at 48 (Borelli); RX-G ¶¶ 39–42 (Sugrue Rebuttal). Dr. Sugrue explained that the advertisements incorporated common tropes in racial appeals, by linking a predominately Black, Staten Island community group—the Young Leaders of Staten Island—with "[n]egative stereotypical imagery . . . includ[ing] depictions of African Americans as criminals," RX-G ¶ 42 (Sugrue Rebuttal), even though there was "nothing riotous, criminal, or threatening" about the peaceful marches that the Young Leaders led. IRX-P Tr. 80:3–6 (Sugrue).

In sum, there was no clear error in Supreme Court's conclusion that, based almost entirely on upon unrebutted evidence from Petitioners, the totality of the circumstances—including through use of the Senate Factors—show that Black and Hispanic voting strength is being diluted in CD-11.

Intervenors attempt to cast doubt on the court's conclusion by pointing to evidence the court purportedly failed to consider, but all their claims are either factually incorrect or not relevant to the totality analysis. Even if they were true or relevant, they would fall far short of demonstrating

a likelihood of success on the merits. For example, Intervenors repeatedly claim that "there [was] no evidence to support [the court's] assertion" that "de facto segregation remains the norm" on Staten Island, Int. Br. at 28; *see also id.* at 20 (purporting to find it "remakabl[e]" that the Supreme Court "credited Dr. Sugrue's 'testimony' that 'de facto segregation remains the norm'" in Staten Island). These claims are as puzzling as they are demonstrably false. Intervenors' own expert confirmed that Blacks and Whites are *highly segregated*, and Whites and Hispanics are *moderately segregated* on Staten Island. *See* IRX-P Tr. 797:10–98:18 (Borelli). More importantly, present day racial residential segregation was just one part of Petitioners' much larger demonstration of the history and persistence of racial discrimination on Staten Island. *See e.g.*, IRX-Q at 5–52; RX-G at 2–26. As discussed, this comprehensive evidence went almost wholly unrebutted at the evidentiary hearing below.

Intervenors also claim the court erred in failing to discuss that Staten Island has allegedly made "significant progress" "in addressing racial discrimination," "has strived to end hate and discrimination," Int. Br. at 28, and that there are allegedly more hate crimes committed against Blacks in Manhattan than Staten Island, Int. Br. at 12. But, of course, that Staten Island has purportedly made progress or has "strived to end hate and discrimination" does nothing to establish any totality factor and, even if true, does not counter the extensive evidence of historic and current discrimination on Staten Island. And Intervenors' attempt to compare hate crime statistics between Manhattan and Staten Island misunderstands the relevant inquiry under the totality of the circumstances analysis. Courts look to the history of the particular jurisdiction at issue to determine whether the totality factors are satisfied; evidence from other jurisdictions is "irrelevant in assessing the totality of the circumstances in [the disputed] district." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment) (analyzing totality of the circumstances under Section

2 of the VRA).[19] As to hate crimes in particular, the evidence at trial demonstrated 32 arrests from 29 incidents of hate crimes against Black people on Staten Island in the last six years alone. As Mr. Borelli recognized at trial, even a single "hate crime is . . . appalling," IRX-P Tr. 785:9–14.

Finally, Intervenors attempt to make hay about the fact that the court did not mention Mr. Borelli in its decision. *See* Int. Br. at 20. But there is nothing improper about that, especially considering that for each of the totality of the circumstances factors on which the court based its decision, the evidence was largely or entirely unrebutted. Indeed, the implication of Supreme Court's order is clear—it credited Dr. Sugrue's testimony and did not find Mr. Borelli's limited and flawed criticisms to be persuasive.

In addition, there was ample reason in the record for the court to credit Dr. Sugrue over Mr. Borelli. Dr. Sugrue is an award-winning, tenured historian at New York University, whose scholarship has focused on discrimination, urban history, and civil rights for more than thirty years. IRX-Q ¶¶ 1–4 & app. 1. Dr. Sugrue has performed the totality of the circumstances analysis multiple times in racial vote dilution cases, every court has found him qualified, and several have relied on his testimony and analysis. IRX-P Tr. 41:24–42:18 (Sugrue); *see also United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 593–95 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606–07 (N.D. Ohio 2008). Dr. Sugrue's reports followed historical research methodology, and he cited and relied on academic literature relevant to the totality of the

[19] This misunderstanding of the nature of the appropriate inquiry under the totality of the circumstances factors plagued much of the evidence Intervenors presented at trial, which attempted to compare Staten Island with other cities, states, or parts of the country to argue that the discrimination, disparities in socioeconomic conditions, hate crimes, and racial appeals that Dr. Sugrue identified in Staten Island was apparently less bad than the discrimination, disparities, hate crimes or racial appeals elsewhere. *See, e.g.*, IRX-R at 5, 26, 27, 37, 41, 42, 51, 61. But that evidence was useless in the appropriate inquiry, which is an "intensely local appraisal" of Staten Island. *Gingles*, 478 U.S. at 78–79.

circumstances factors that he addressed in his report. IRX-P Tr. 49:1–15 (Sugrue); IRX-Q at 1–52; RX-G at 1–26.

By contrast, Mr. Borelli is a partisan politician with no prior experience in racial vote dilution or civil rights cases, as an expert witness or otherwise. IRX-P Tr. 778:24–779:17 (Borelli). Prior to his engagement in this case, Mr. Borelli had never performed an analysis of the totality of the circumstances factors under the New York Constitution, the NYVRA, or Section 2 of the federal VRA, IRX-P Tr. 779:7–14 (Borelli); indeed, he had never served as an expert in any court case. And Mr. Borelli's testimony was replete with the sort of personal anecdotes common to lay witnesses, not experts. *See, e.g.*, IRX-P Tr. 756:10–22 (Borelli) (discussing selling his "grandmother's house to a Pakistani family who moved in a couple of years ago"). His report was "riddled with errors," "ignore[d] extensive evidence of past and ongoing discrimination in housing and policing," and his opinions were "often not founded upon carefully adduced evidence, reliable data, or accurate reportage." RX-G at ¶ 64.

Respondents do not challenge the court's totality analysis, and Intervenors' critiques of small portions of the evidentiary record fall far short of meeting their burden of demonstrating a likelihood of success on the merits of their challenge. Contrary to their claims, the court came to the only reasonable conclusion that the largely unrebutted evidence supported, which is that the majority of the Senate Factors demonstrate that under the totality of the circumstances the "district lines for CD-11 'result in the denial or abridgement of racial or language minority voting rights.'" IRX-A at 12 (quoting N.Y. Const. art. III, § 4(c)(1)).

3. Petitioners' Illustrative Map demonstrated that vote dilution in CD-11 can be remedied.

Finally, expert demographer Bill Cooper presented a version of CD-11 combining Staten Island and Lower Manhattan, which showed that it is possible to draw CD-11 in a way that allows

Black and Hispanic voters in the district to influence the outcome of elections, where racially polarized voting is substantially mitigated, and the Black and Hispanic–preferred candidate often succeeds. *See* IRX-S § IV & Ex. H-1 (Cooper Report). In so doing, Mr. Cooper did not expressly consider race or seek to achieve any racial target. IRX-P Tr. 337:21–338:1 (Cooper). Instead, while appropriately balancing all traditional districting criteria, Mr. Cooper produced a highly competitive district where an increased Black and Hispanic population is sufficiently large to "influence electoral outcomes" in favor of their candidates of choice. *See* IRX-A at 13. That is all that the law required of Petitioners to demonstrate a new congressional map is the necessary and appropriate remedy.

No party disputed that the Illustrative Map would create a highly competitive district, where if Black and Hispanic voters continue to vote as a bloc for a shared candidate of choice, their preferred candidate will *usually* succeed. Respondents' own expert, Mr. Thomas Bryan, opined that that under the Illustrative Map, CD-11 would "become[] a dead heat" district, RX-1 ¶ 194 (Bryan Report); *see also id.* ¶ 201 (Bryan Report), meaning that candidates from different parties—backed by different coalitions of voters—could win in any given election.

Dr. Palmer's and Mr. Cooper's testimony demonstrated that the Illustrative Map represents a district where "members of the majority help a large enough minority to elect its candidate of choice." IRX-A at 14 (quoting *Bartlett*, 556 U.S. at 13). Dr. Palmer explained that the Illustrative Map would lead to less racially polarized voting, where an average of 41.8 percent of White voters would support the Black and Hispanic candidate of choice—a stark contrast to the present, highly polarized map. IRX-T ¶ 25 (Palmer Report). And under the Illustrative Map, the Black and Hispanic candidate of choice would succeed in many—but not all—elections, resulting in a competitive district where different coalitions of voters have a shot at winning. *See id.* ¶ 26, fig. 5,

tbl. 3 (Palmer Report). Even so, with less than half of the White voters in the illustrative district supporting the Black and Hispanic–preferred candidate—an improvement on the intense polarization under the current CD-11, but a far cry from a full pendulum swing—different political coalitions would need "to pull, haul, and trade to find common political ground" to succeed. *Johnson*, 512 U.S. at 1020. And as Dr. Palmer's testimony shows, Black and Hispanic voters must continue voting cohesively to succeed in the district, ensuring these voters are the decisive factor influencing any electoral victory for their candidate of choice. *See* IRX-A at 13; IRX-T ¶¶ 21–26, figs. 4 & 5 (Palmer Report).

As Mr. Cooper's testimony showed, the Illustrative Map likewise complied with other traditional redistricting criteria, further proving that a remedial district in this case is both possible and required.[20] The Illustrative Map ensures that CD-10 and CD-11 would maintain equal populations, IRX-S ¶ 26 (Cooper Report); it is contiguous via the Staten Island Ferry, on which tens of thousands of New Yorkers traverse Upper New York Bay on a daily basis, *id.* ¶¶ 22, 37; it is reasonably compact according to traditional metrics, particularly as compared to other districts in New York, *id.* ¶¶ 52–58; it respects preexisting boundaries and subdivisions by maintaining the same number of borough splits as the existing map and respecting neighborhood boundaries, *id.* ¶ 61; and it respects existing communities of interest—even improving upon the existing plan by uniting Chinese-American communities of interest across Brooklyn in CD-10 with Sunset Park and Chinatown, consistent with members of this community's advocacy before the IRC, *id.* ¶ 59; IRX-P Tr. 291:1–292:8.

[20] In New York, these criteria include equal population, *see* N.Y. Const. art. III, § 4(c)(2); contiguity, *see id.* art. III, § 4(c)(3); compactness, *see id.* art. III, § 4(c)(4); not discouraging competition or favoring one party over another, *see id.* art. III, § 4(c)(5); and consideration of communities of interest and political subdivisions, *see id.*

To be sure, Respondents' and Intervenors' experts quibbled with how the Illustrative Map measured against these criteria, disputing whether it is the *best* configuration of the district or whether it improves upon the current plan. But all that Petitioners had to show was that another permissible configuration *could* be drawn that would remedy the vote dilution the Supreme Court decisively concluded Petitioners had already proven. *See Clarke*, 237 A.D.3d at 39 (explaining that NYVRA plaintiffs must establish that it is feasible to enact an "alternative" map that "would allow the minority group to 'have equitable access to fully participate in the electoral process'" (quoting N.Y. Elec. Law § 17-206(5)(a))). The Illustrative Map accomplishes just that. And as explained in the section below, Supreme Court's order properly leaves to the Legislature the question of what configuration of CD-11 *best* remedies vote dilution while respecting traditional redistricting criteria.

D. Supreme Court's remedial order properly entrusts the IRC and the Legislature with drawing an appropriate new district and does not violate federal law.

The Constitution requires that when a court invalidates a redistricting plan "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." N.Y. Const. art. III, § 5. It also provides that "at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." *Id.* art. III, § 5-b(a). In recognition of these constitutional provisions—and respecting the Legislature's role in drafting congressional district plans—Supreme Court ordered the IRC to prepare a new congressional districting map for submission to the Legislature. IRX-A at 18. If this Court lifts the automatic stay, the IRC and the Legislature will be able to fully fulfil their constitutional duties and enact a map that does not dilute the voting strength of Black and Hispanic voters.

Respondents and Intervenors make two arguments as to the court's remedy; first, that it violates the Elections Clause of the U.S. Constitution; and second, that the order amounts to an unconstitutional racial gerrymander. Neither claim succeeds.

1. Supreme Court's remedy does not violate the Elections Clause.

Nothing in Supreme Court's order below violates the Elections Clause of the U.S. Constitution. That clause provides that each state Legislature shall "prescribe[]" "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," but reserves to Congress the right "at any time by Law [to] make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4, cl. 1. State legislatures act under the authority granted to them in the Elections Clause when they enact congressional districting plans.

Pointing to the U.S. Supreme Court's recent decision in *Moore v. Harper*, Intervenors wrongly insist that Supreme Court's order transgressed the Elections Clause by intruding up the Legislature's redistricting authority. *See* Int. Br. § I.D. But, as a threshold matter, Intervenors gloss over *Moore*'s primary conclusion; namely, that "State courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause." *Moore v. Harper*, 600 U.S. 1, 37 (2023). That is precisely what occurred here. Indeed, New York law contemplates that state courts will review state redistricting plans for state law violations. Article III, Section 5 empowers state courts "[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts," to invalidate "any law establishing congressional or state legislative districts found to violate the provisions of this article." N.Y. Const. art. III, § 5. Supreme Court's order below properly exercised this review authority, and in doing so complied with *Moore*'s proscription that a "state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws." *Moore*, 600 U.S. at 26 (internal quotation marks and citation omitted).

Nevertheless, Intervenors claim that by reading Section 4(c)(1) to allow for crossover districts to remedy racial vote dilution, the court "impermissibly distort[ed] state law" and "disrespect[ed]" the role of the state Legislature. Int. Br. at 47–48 (citation modified). As explained above, that argument is wrong on the merits. *See supra* § I.B (discussing Article III's text, the legislature's understanding of Article III, and caselaw analyzing Article III's scope, all of which interpret the constitutional provision to be broader than the federal VRA). But more fundamentally, mere disagreement with a state court's interpretation of a state constitution does not amount to an Elections Clause violation, as *Moore* confirms. 600 U.S. at 26. And that is particularly true where, as here, state law expressly charges courts with such a task. *See* N.Y. Const. art. III, § 5. Intervenors' suggestion that Supreme Court's order "disrespected" the Legislature is particularly outlandish, given that Legislature itself confirmed in the NYVRA that New York's "constitutional guarantees" like Section 4(c) "substantially exceed the protections for the right to vote provided by the constitution of the United States." N.Y. Elec. Law § 17-200. Further still, the only legislators who are parties to this case—Senate Majority Leader and President *Pro Tempore* Stewart-Cousins and Assembly Speaker Heastie—share *Petitioners'* view of Section 4(c). *See* IRX-J at 3. Indeed, the only party here that risks disrespecting the Legislature are the Intervenors, who insist that New York enacted Section 4(c) to be nothing more than a pointless redundancy of existing federal law. In contrast, reading Section 4(c) as broader than the federal VRA, and to permit a crossover district remedy, as the decision below did, furthers the Legislature's own interpretation of Section 4(c).

Next, Intervenors erroneously claim that Supreme Court's "sua sponte" interpretation of Section 4(c) constitutes a "radical departure" from New York's principles of constitutional interpretation, and that the court should instead have "examine[d] the law of the State as it existed prior to the action of the state court." Int. Br. at 47–48. This confused argument makes little sense.

First, all parties agree this case presents a matter of first impression, so it is far from clear what preexisting state law Intervenors expected the court below to draw upon. Moreover, Supreme Court *did* root its holding in existing state law, by concluding that Section 4(c)—like the NYVRA—eschews the majority-minority requirement Intervenors and Respondents seek to impose upon it. *See Clarke*, 237 A.D.3d at 25, 37–38 (recognizing that the "NYVRA . . . does not require the first *Gingles* precondition," and that the U.S. Supreme Court "has never said that [*Gingles* factor 1] was required by the constitution, as opposed to resulting from a statutory interpretation of section 2"). It is also unclear what Intervenors mean by "sua sponte"—nothing about the court's decision to interpret Section 4(c) was of its own accord; Petitioners as well as Respondents and Intervenors asked the court to construe Article III in the first instance. Accordingly, there is nothing surprising about Supreme Court's articulation of a legal standard for Section 4(c). And contrary to Intervenors' claims, Supreme Court did not simply invent that standard whole cloth; rather, all of the elements of the crossover district that the court established came from decisions of the U.S. Supreme Court. *See* IRX-A at 13–15 (citing *LULAC v. Perry*, 548 U.S. 399 (2006)).

Nor does the court's remedy here "arrogate[] to [the court] the power vested in state legislatures to regulate federal elections." Int. Br. at 47. The court did not purport to draw new district lines on its own, nor did it simply adopt Petitioners' Illustrative Map. Rather, in recognition of the principal role the IRC and Legislature play in drawing New York's congressional maps, it ordered those bodies to enact a new congressional plan pursuant to the procedures in the Constitution. *See* IRX-A at 15–18.

In sum, Supreme Court properly construed and applied a duly-enacted provision of the New York Constitution—a task consistent with its duties. *See People ex rel. Adsit v. Allen*, 42

N.Y. 378 (1870) ("The constitution, as well as the statutes, is the law of this State, and it is the duty of courts to decide upon and construe the former, as well as the latter."); *see also Moore*, 600 U.S. at 34 ("State courts are the appropriate tribunals . . . for the decision of questions arising under their local law, whether statutory or otherwise." (alteration in original)). While Intervenors complain the court went too far in construing Section 4(c) to permit crossover districts, that hardly amounts to an Elections Clause violation, particularly given the U.S. Supreme Court's recognition that state legislatures are free to provide for the creation of crossover districts "as a matter of legislative choice or discretion." *Bartlett*, 556 U.S. at 23. Here, Supreme Court merely recognized that the Legislature and New York voters accepted *Bartlett*'s invitation to do so. Intervenors' disagreement with the court's construction does not transform its holding into a violation of the Elections Clause.

2. Supreme Court did not order the IRC to propose or the Legislature to enact a racial gerrymander.

Intervenors next contend that Supreme Court effectively ordered the IRC—and ultimately the Legislature—to violate the Equal Protection Clause of the U.S. Constitution by compelling the creation of a racial gerrymander. That argument is both premature and fails on its own terms. To start, Respondents' and Intervenors' equal protection arguments put the cart before the horse—they must wait to see what the remedial district actually looks like before rushing to declare it unlawful. *See, e.g.*, *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sep. 02, 2023) (rejecting racial gerrymander defense because "there [is] no specific district under which this Court could evaluate whether racial gerrymandering occurred" and proponents could not show "that *any* remedial district" would "necessarily" be a racial gerrymander), *rev'd on other grounds*, 375 So. 3d 335 (Fla. Dist. Ct. App. 2023). Supreme Court was therefore right not to consider whether a yet-to-be-drawn district is a racial gerrymander.

And because Respondents and Intervenors do not yet even have any map to challenge, their equal protection arguments stand little chance of success on appeal.

The argument also fails on the merits. Intervenors and Respondents argue that because the court's order below referred to race, whatever district the IRC and Legislature adopt will necessarily trigger strict scrutiny. *See* Resp. Br. at 25–27; Int. Br. at 41. This argument misunderstands remedies in racial vote dilution cases and flouts decades of precedent. The U.S. Supreme Court "never has held that race-conscious state decisionmaking is impermissible in all circumstances." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (emphasis omitted). "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *see also Shaw*, 509 U.S. at 646. The U.S. Supreme Court has therefore rejected the "contention that mapmakers must be entirely 'blind' to race" when drawing districts to comply with the Voting Rights Act, *Allen v. Milligan*, 599 U.S. 1, 33 (2023) (plurality opinion), and reaffirmed "[t]he line that we have long drawn . . . between consciousness and predominance" of race, *id.*

Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Diaz v. Silver*, 978 F. Supp. 96, 116–17 (E.D.N.Y. 1997) (per curiam) (alteration in original), *aff'd*, 522 U.S. 801 (1997). And doing so requires looking at an actual district—not merely an abstraction. The racial-predominance inquiry is a "holistic analysis" that cannot turn purely on the fact that a district is drawn to remedy otherwise unlawful dilution of minority voting strength. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017) ("[T]he use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance.); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation for the drawing of a majority-

minority district, but the 'predominant factor' motivating the legislature's districting decision." (citation modified)). And as the U.S. Supreme Court has held, a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Milligan*, 599 U.S. at 31 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices"). Here, Respondents and Intervenors simply have no idea whether or how the IRC's remedial will comply with traditional redistricting criteria because it does not exist yet.

Respondents wrongly claim that the court's reference to "adding Black and Latino voters from elsewhere" to a remedial district containing Staten Island "alone establishes that race is the predominant" and "determinative" factor in any map that the Legislature will eventually adopt. Resp. Br. at 26. At most, however, that establishes awareness of race, but map drawers will be aware of race in every remedial district created in response to a racial vote dilution claim. *See Allen*, 599 U.S. at 32–33. In *Allen v. Milligan*, the Court declined to adopt the "flaw[ed]" view that districts drawn to remedy vote dilution under Section 2 of the VRA necessarily trigger strict scrutiny because "they were designed to hit 'express racial targets,'" regardless of the mapmakers' treatment of other traditional, race-neutral redistricting criteria. *Id.* at 32–33 (alteration omitted). It recognized the fallacy in that approach: were the Court to credit such an approach, "racial predominance [would] plague[] *every single illustrative map ever adduced*" to show that racial vote dilution can be remedied. *Id.* at 33. But as the Court aptly pointed out, "[t]hat is the whole point of the enterprise." *Id.* That "express racial targets" in *Allen* were insufficient to trigger strict

scrutiny there, makes clear that the court's reference to including an unspecified number of Black and Hispanic voters among the many additional voters that "must be joined" with Staten Islanders to constitute a properly sized and properly constituted congressional district, IRX-A at 12, also does not trigger strict scrutiny.

In addition, nowhere in the decision below did Supreme Court purport to instruct the Legislature to ignore other redistricting criteria. This matters because for strict scrutiny to apply, a challenger "must prove that the State 'subordinated' race-neutral districting criteria such as compactness, contiguity, and core preservation to 'racial considerations.'" *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (citation omitted). To assume that the legislature will invariably do so—as Respondents' and Intervenors' arguments do—flips the operative presumption in racial gerrymandering claims on its head. The Supreme Court has made clear that "in assessing a legislature's work" in a racial gerrymandering claim, courts must "start with a presumption that the legislature acted in good faith." *Id.* at 6. Indeed, "courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Id.* at 7 (internal quotation marks and citation omitted). Assuming the Legislature will do so before it has even attempted to draw a new map ignores these commands.

Nor does Supreme Court's conclusion that minority voters should have influence in the selection of candidates impermissibly "turn[] entirely on the racial composition of the electorate" and therefore purportedly require strict scrutiny. *See* Resp. Br. at 26. That requirement simply ensures that the remedial district will remedy the racial vote dilution by "increas[ing] the influence of minority voters," whose votes the court has already found to be diluted. IRX-A at 27. In this way, the remedy is no different than a remedial district created under the federal VRA. Under the VRA, the purpose of "the creation of [a] majority-[minority] district[]" is to "enhance the influence

of [minority] voters" in that district. *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993). Nevertheless, "[s]trict scrutiny *does not apply* . . . to all cases of intentional creation of majority-minority districts." *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality opinion) (emphasis added); *see also Clarke*, 237 A.D.3d at 22, 34 (For "decades [the Supreme] Court and the lower federal courts . . . have authorized race-based redistricting as a remedy" to racial vote dilution under the Federal Voting Rights Act, but "[n]o court has ever suggested . . . that strict scrutiny applies to section 2 . . . ." (citation omitted) (quoting *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 682 (2006))). So too here. That the standard for the creation of a crossover district ensures that minority voters will have influence in the remedial district does not automatically subject any district created under it to strict scrutiny.

Even if strict scrutiny were to apply, a properly drawn map that remedies the dilution of Black and Hispanic voters could meet that standard. Contrary to Respondents' and Intervenors' claims, *see* Resp. Br at 27, Int. Br. at 43, the IRC, and ultimately the Legislature, would have a compelling interest to consider race in redrawing the map in response to the Supreme Court's order. The U.S. Supreme Court has long "assumed that complying with the [federal] VRA is a compelling state interest," *Abbott v. Perez*, 585 U.S. 579, 587 (2018), and there is no reason to treat compliance with the New York Constitution's racial vote dilution prohibition any differently. Indeed, the state of New York also has a "compelling governmental interest[]" in "eliminat[ing] discrimination against . . . minorities." *N.Y. State Club Ass'n v. City of New York*, 69 N.Y.2d 211, 223 (1987), *aff'd*, 487 U.S. 1 (1988). And the U.S. Supreme Court has made clear that racial discrimination in voting is "an insidious and pervasive evil" that requires "stern[] and . . . elaborate

measures" to fight it. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).[21] Nothing in the U.S. Supreme Court's extensive body of law would justify finding that a state's interest in abiding by its *own constitution* is somehow less compelling than respecting federal statutory law. And Respondents and Intervenors cite none.

Any remedial district the Legislature enacts is also likely to satisfy narrow tailoring. Respondents' and Intervenors' arguments to the contrary omit the U.S. Supreme Court's well-established standard for assessing narrow tailoring in vote-dilution cases. In the VRA context, the Supreme Court has held that "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott*, 585 U.S. at 587 (citation omitted). Put differently, "to meet the 'narrow tailoring' requirement," a state must show "that it had 'a strong basis in evidence' for concluding that the [operative racial vote dilution provision] required its action." *Cooper*, 581 U.S. at 292. As explained *supra* § I.C.2, the legislature would have such a "strong basis in evidence" to draw a remedial map because of Supreme Court's conclusion (based on a substantial body of unrebutted evidence) that under the totality of the circumstances Black and Hispanic voting strength was being diluted in CD-11. This showing plainly supplies the requisite "good reasons" in support of a remedial map. *See Rose v. Sec'y, State of Ga.*, 87 F.4th 469, 477 (11th Cir. 2023) ("In the context of . . . single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-

[21] For this reason, and contrary to Respondents' and Intervenors' claims, the substantial government interest underlying any remedial district would be to remedy the racial vote dilution identified by the court, and would not rely on "generalized assertion[s] of past discrimination." *See* Resp. Br. at 27; Int. Br. at 43.

member districts to remove the plan's dilutive effect." (citing *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring)).

None of the cases cited by Respondents or Intervenors counsel otherwise. For example, this case is unlike *Cooper*, in which the Supreme Court considered whether North Carolina had "a good reason" to think it would be liable under the VRA if it failed to draw an additional majority-minority district. *See* 581 U.S. at 301. There, the Court held that the legislature lacked "good reasons" because there was "no evidence" of "effective white bloc-voting," which, like under New York law, is required to establish racial vote dilution. *See id.* at 302. Here, by contrast, there was extensive evidence of racially polarized voting in CD-11, including that White voters consistently voted as a bloc to defeat Black and Hispanic-preferred candidates. *See supra* § I.C.1; *see* IRX-A at 8–9. And in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Supreme Court held that the Wisconsin Supreme Court misapplied strict scrutiny precedent where it approved an expressly race-based map while "believ[ing] that it had to conclude only that the VRA *might* support race-based districting—not that the statute required it." 595 U.S. 398, 403 (2022). Here, the record confirms that the current configuration of CD-11 violates the New York Constitution's prohibition on minority vote dilution and *must* be altered to remedy it. *See supra* § C.[22] Although

[22] Nor does Respondents' citation to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), move the needle at all here either. Respondents cite *SFFA* for the proposition that the court's redistricting standard lacks any limiting principle, Resp. Br. at 28, but limiting principles abound, including the requirement that petitioners demonstrate racially polarized voting, that the totality of the circumstances demonstrate the minority group has less ability to participate in the political process, and that in a remedial district, minority voters are a decisive voting group. IRX-A at 12; *See also Coads v. Nassau County*, 86 Misc. 3d 627, 645 (N.Y. Sup. Ct., Nassau County 2024) ("[S]eeking to equate [racial vote dilution] to affirmative action programs which have been subject to strict scrutiny . . . is a false equivalence and a misguided approach.").

the remedial map would not properly be subject to narrow tailoring, the evidence provided in support of Petitioners' claim would be enough to satisfy it for a properly drawn map.

II. Petitioners will suffer irreparable harm if this Court grants the motion to stay or leaves any automatic stay in place.

As the foregoing shows, it is *Petitioners*, not Respondents and Intervenors, who are at risk of irreparable harm if this Court grants the motion to stay. Petitioners' votes are being unlawfully diluted by the current configuration of CD-11, and that infringement upon their right to vote is quintessential irreparable harm. *See Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (explaining any impingement on the right to vote is "irreparable harm"); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 97 (2d Cir. 2005) (similar). This is only reinforced by Supreme Court's factual findings and the evidence below, which highlighted how voting on Staten Island is highly polarized by race, *see* IRX-A at 8–9 (crediting Petitioners' evidence of racial polarization), and the difficulties that Black and Hispanic Staten Islanders face in participating in the political process, *see id.* at 9–13 (crediting Petitioners' "testimony" and "empirical data" establishing the ongoing "impacts" Black and Hispanic voters on Staten Island); *see also* IRX-T (Palmer Report); IRX-Q (Sugrue Report).

This irreparable harm is by no means cabined to Petitioners; tens of thousands of other voters on Staten Island are suffering from unlawful racial vote dilution as well. *See* IRX-A at 12–13; *see also Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011) (explaining public also has a strong interest in the preservation of voting rights). That factual finding weighs overwhelmingly in favor of ensuring Petitioners can obtain timely relief. As the Court of Appeals has held, it is simply not acceptable for "the people of this state" to be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider*, 38 N.Y.3d at 521; *cf. Clarke v. Town of Newburgh*, 84 Misc. 3d 475, 485 (N.Y. Sup. Ct., Orange

County 2024) (recognizing the irreparable harm of conducting elections under unlawful district lines). Granting Respondents and Intervenors their requested stay would therefore inflict immediate and irreparable harm on Petitioners and other voters in CD-11, making it all but certain that upcoming elections will be conducted under an unlawful map.

Further compounding the prospect of irreparable harm to Petitioners is the automatic staying of Supreme Court's executory order to the IRC to draw a remedial map. *See* CPLR § 5519(a). Simply put, the prohibitory injunction Petitioners have obtained will be meaningless if a constitutional map cannot be drawn in due course—by either the IRC and/or Legislature—to replace the unlawful current configuration of CD-11. A remedy that never materializes is no remedy at all. *Cf. Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1227–28 (3d Cir. 1995) (explaining in some instances the "the prospect of judicial remedy becomes so temporally remote that it is no remedy at all"). Having proven the existence of unconstitutional vote dilution with overwhelming evidence—credited by Supreme Court—Petitioners are entitled to a map that in fact redresses their harm. *See Harkenrider*, 38 N.Y.3d at 521. Accordingly, as explained below, the automatic stay must be lifted so that the IRC can conduct the work ordered by Supreme Court; delay on this score is monumentally prejudicial to Petitioners, as it risks depriving them of any practical relief before the 2026 elections.

In contrast, Respondents and Intervenors present weak evidence of irreparable harm. Their arguments rely almost entirely on the alleged confusion caused by Supreme Court's order, and specifically the fact that the current map is enjoined but that—due to the automatic stay under § 5519(a)—the IRC is under no active order to draw new maps. *See* Resp. Br. at 30–31; Int. Br. at 49–50. But the solution to any such confusion is as simple as it is obvious: this Court can lift the

automatic stay and permit the IRC to move forward in compliance with Supreme Court's order, such that voters, candidates, and the parties all have clear and settled district lines. *See infra* § III.

The only answer Respondents and Intervenors have to this clean and straightforward solution is to argue it is not practicable to draw a new map in time. That is obviously wrong. In *Harkenrider*, the Steuben County Supreme Court first declared New York's congressional maps unlawful in late March of a midterm election year—more than two months later than Supreme Court's order here—and a remedy was put into place for that election. *See Harkenrider v. Hochul*, 204 A.D.3d 1366 (4th Dep't 2022). While the remedy there required moving the date of New York's congressional primary elections, there is little prospect of similar disruption here given the much earlier date of the Supreme Court's order. *See, e.g.*, Stavisky Aff. ¶ 5(a) (observing the materially later dates of decision in *Harkenrider*). Indeed, Co-Executive Director Stavisky's affirmation more broadly explains why relief here is feasible and why a stay would prove very disruptive to the Board's preparations for the 2026 elections. *See generally* Stavisky Aff.

Finally, Intervenors passingly suggest they further face the prospect of irreparable harm because any district drawn by the IRC will be a racial gerrymander. *See* Int. Br. at 51–52. But as explained elsewhere, those concerns are entirely speculative and premature—no new district even exists at this juncture. Moreover, New York voters—through their adoption of the 2014 redistricting amendments—have designated the IRC and the Legislature as the proper authorities for drawing congressional districts. *See* N.Y. Const. art. III, § 5. Intervenors cannot establish irreparable harm by simply assuming those lawfully-charged bodies will carry out their duties in a harmful manner. *See Lesser v. State*, 27 A.D.2d 642, 642 (4th Dep't 1966) ("We cannot now speculate as to what the State may do or presume that the State will at some future time act unlawfully. If it does the claimant may seek an appropriate remedy at that time."); *see also Linde*

v. Arab Bank, PLC, 706 F.3d 92, 117 (2d Cir. 2013) (rejecting theory of irreparable harm that relies upon speculation). And the IRC—and surely the Legislature—are entitled to a presumption that they will act lawfully and in good faith. *See Magnotta v. Gerlach*, 301 N.Y. 143, 149 (1950) ("The general presumption is that public officials, as well as boards, act honestly and in accordance with law."); *Entergy Nuclear Indian Point 2, LLC v. N.Y. State Dep't of Env't Conservation*, 23 A.D.3d 811, 813–14 (2005) (explaining that "[a]ctions []taken by an administrative entity are cloaked with a presumption of regularity" and thus are "presumed to be valid unless proven otherwise" (first alteration in original) (citations omitted)).

III. The Court should exercise its discretion to lift any automatic stay under § 5519 so that the IRC can implement a proper remedy and prepare for the 2026 elections.

In view of the foregoing, the Court should not only deny Respondents' and Intervenors' motions to stay—it should also lift any automatic stay currently preventing the IRC from completing its duty to draw a remedial map. This Court has discretion under CPLR § 5519(c) to "vacate, limit or modify" automatic stays. Vacatur is warranted where a moving party is likely to prevail on appeal, and the pendency of an automatic stay causes it "[u]ndue hardship." *McLaughlin*, 4 Misc. 3d at 969; *see also see also DeLury*, 48 A.D.2d at 405 (listing irreparable harm and likelihood of success as factors for lifting automatic stay). Vacatur is especially warranted where "the public interest and welfare require" it. *Freeman*, 33 A.D.2d at 975.

This case squarely fits the circumstances warranting vacatur. In addition to being likely to prevail on appeal, *supra* Arg. § I, Petitioners will be irreparably harmed should New York be left without a lawful map in time for the 2026 elections, *supra* Arg. § II. The most orderly way to prevent that irreparable harm is to ensure that the IRC's remedial process can be timely completed

now.[23] Otherwise, Petitioners will be denied an effective remedy and again forced to vote under maps drawn in contravention of the State's constitution, an outcome Intervenors themselves seem to acknowledge. Int. Br. at 4 (suggesting relief will follow only "after the 2026 elections" should Petitioners prevail on appeal).

Respondents, by contrast, will suffer no irreparable harm should the Court vacate the automatic stay, because allowing the IRC to draw a remedial map in accordance with the trial court's order will still permit time to return to the "status quo" in the unlikely event Respondents and Intervenors prevail. *State v. Town of Haverstraw*, 219 A.D.2d 64, 65 (2d Dep't 1996). In other words, permitting the IRC to simply proceed with its work will not necessarily grant Petitioners a "benefit[] from the order . . . while the loser appeals." *Lopez v. N.Y.C. Hous. Auth.*, 178 Misc. 2d 719, 720 (N.Y. Civ. Ct. 1998). In contrast, if Supreme Court's order is later affirmed without undertaking the preparation necessary to enact a remedial map, the impending elections will face the exact kind of "chaos" Respondents and Intervenors warn of. Int. Br. at 49; Resp. Br. at 31. Moreover, holding up the IRC's work does nothing to advance the rationale underlying New York's automatic stay provision, which is to "stabilize the effect of adverse determinations on governmental entities." *Summerville v. City of New York*, 97 N.Y.2d 427, 434 (2002). Here, the only existing threat to the stability of New York's elections is the stay preventing the IRC from even beginning the process of remedying the State's unlawful congressional map.

[23] In the event that the Legislature is unable to pass a remedial map with enough lead time before the 2026 election, judicial remedies may still be available—namely, appointing a special master to implement a new remedial map on its own. The Court of Appeals took that approach in *Harkenrider*, when it invalidated the 2021 congressional and state senate maps as both procedurally and substantively unconstitutional. 38 N.Y.3d at 517, 520. Since then, however the First Department has indicated that court-enacted maps are appropriate only where "time constraints created by the electoral calendar" make a legislative remedy impossible.

This case also presents the precise conditions under which vacatur directly serves the "public interest." *Freeman*, 33 A.D.2d at 975. As an initial matter, the public interest and welfare certainly require New Yorkers to have *some* lawful congressional map in the middle of an election year. *Cf. Perry v. Perez*, 565 U.S. 388, 392 (2012) (per curiam) (noting the federal constitution makes drawing congressional lines "primarily the duty and responsibility of the State"). Second, Petitioners prevailed in their challenge to New York's congressional map under Article III, Section 4(c)(1)—which the public itself voted to adopt into the State's constitution. In outlawing the practice of racial vote dilution, the People declared it the interest of the public to root out electoral maps that result in less opportunity for minorities to participate in the electoral process. N.Y. Const. art. III, § 4(c)(1). If the stay remains, the Board of Elections will be unable to even "prepare for the *contingency*" that, at the conclusion of this litigation, a new map will need to be implemented in time for the 2026 election. *See* RX-R (Aff. Raymond J. Riley, III) ¶ 26 (emphasis added); *see also* Stavisky Aff. ¶ 7 (explaining a stay is "not helpful" to finalizing New York's congressional map because it would "literally ensure[] delay should" Supreme Court's order be affirmed). Delaying such preparations thus generates a substantial risk that the Board will not be able to implement a remedial map in time for the 2026 election. The public interest clearly lies with vacating the automatic stay and allowing the 2026 elections to be conducted under a remedial, constitutional map starting immediately.

IV. The improper requests to bypass this Court should be denied.

Respondents and Intervenors ask this Court to "grant leave to appeal directly to the Court of Appeals" "in addition" to granting an interim stay. Int. Br. at 52; *see also* Resp. Br. at 32. That is an extraordinary request: nothing in New York law purports to authorize direct merits review by the Court of Appeals where the trial court has not entered final judgment. Intervenors cite no statute, rule, case, or constitutional provision that would allow this Court to surrender its appellate

jurisdiction simply because the appealing parties deem their arguments "novel." Int. Br. 53; Resp. Br. 34. Allowing Intervenors and Respondents to bypass this Court's appellate review has no basis in state law and this Court should reject it.

The circumstances allowing for direct appeal to the Court of Appeals are exceedingly narrow, and none authorize what Respondents and Intervenors have asked for here. CPLR § 5601 governs appeals to that Court as of right, but the only provision allowing parties to bypass the Appellate Division requires a "final judgment" and an "order on a prior appeal" from the Appellate Division. CPLR § 5601(2)(d). No final judgment has been entered by the trial court in this case, and this Court has not "made an order on a prior appeal in the action which necessarily affects the judgment." *Id.* Indeed, Intervenors concede that this appeal is interlocutory in nature, rather than from a final judgment. *See* COA Int. Br. 1, n.1.

Nor does CPLR § 5602, which governs permissive appeals to the Court of Appeals, allow Respondents and Intervenors to skip this Court's review based on the importance of the issues raised. Each provision under CPLR § 5602 authorizes permissive appeal to the Court of Appeals only "from an order of the appellate division." CPLR § 5602(a)(1)(i), (a)(2), (b)(1), (b)(2). That includes the lone provision relied upon by Respondents, which simply permits appeal "from an order of the appellate division which does not finally determine an action." Resp. Br. 32 (citing CPLR § 5602(b)(1) (allowing permissive appeal). Without an order from this Court from which Appellants can appeal, this Court cannot certify an appeal under CPLR § 5602. And the clear import of CPLR § 5602 is that the Appellate Division should not even contemplate certifying an appeal to the Court of Appeals until it has reviewed the appealed from order *on the merits*—never mind from the posture of an emergency stay application. Indeed, First Department rules do not even contemplate the prospect that this Court can authorize an appeal to the Court of Appeals

before disposing of the appeal on the merits. *See* CPLR § 1250.16(d)(3)(ii) (explaining that a "motion for leave to appeal to the Court of Appeals shall, to the extent practicable, be determined by the panel of justices *that determined the appeal*" (emphasis added)). Accordingly, this Court should deny Respondents' and Intervenors' improper requests to bypass this Court and resolve this appeal on the merits in due course after proper briefing and argument. In the meantime, it should deny the pending motions for a stay, while also lifting the automatic stay so that the IRC can prepare a remedial map.

CONCLUSION

For the foregoing reasons, the Court should deny Intervenors' and Respondents' motion for a stay and vacate any existing automatic stay of Supreme Court's decision under CPLR § 5519(a).

Dated: February 4, 2026

Respectfully submitted,

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

Andrew G. Celli, Jr. (No. 2434025)
Emily Wanger (No. 5816210)
One Rockefeller Plaza, 8th Floor
New York, New York 10020
Tel.: (212) 763-5000
acelli@ecbawm.com
ewanger@ecbawm.com

ELIAS LAW GROUP LLP

/s/ *Christopher D. Dodge*
Aria C. Branch*
Christopher Dodge (No. 5245907)
Lucas Lallinger (No. 5443460)
Nicole Wittstein*
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel.: (202) 968-4490
abranch@elias.law
cdodge@elias.law
llallinger@elias.law
nwittstein@elias.law

**Of the bar of the District of Columbia, by permission of the Court*

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

Michael Williams, José Ramìrez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners-Respondent,

-against-

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,

Respondent-Respondents,

-and-

Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenors-Respondents.

Appellate Division
Index No.
2026-00384

New York County
Supreme Court
Index No.:
164002/2025

NOTICE OF MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE

PLEASE TAKE NOTICE, upon the accompanying Affirmation of Perry M. Grossman, dated February 4, 2026, the proposed *amici curiae* brief, and upon all the papers and proceedings herein, the undersigned will move this Court, at the

Appellate Division – First Department Courthouse, located at 27 Madison Avenue, New York, New York, on Tuesday, February 17, 2026 or as soon thereafter as counsel may be heard, for an order granting leave to the New York Civil Liberties Union (NYCLU), the NAACP Legal Defense and Educational Fund, Inc., LatinoJustice Puerto Rican Legal Defense and Education Fund, and the Asian American Legal Defense and Education Fund ("proposed *Amici*") to file a brief as *amici curiae* in support of no party. A copy of the proposed *Amici Curiae* Brief is annexed hereto as **Exhibit B**. Proposed amici solicited the positions of all parties on this motion and each party responded that they took no position on amici's motion.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned no later than two (2) days prior to the return date of this Motion.

Dated: New York, New York

February 4, 2026

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

Perry M. Grossman
Molly K. Biklen
125 Broad Street
New York, NY
10004
(212) 607-3300
pgrossman@nyclu.org
mbiklen@nyclu.org

NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.
John Cusick
Michael Pernick
Brittany Carter
Colin Burke
40 Rector Street, 5th Floor
New York, NY 1006
(212) 965-2200
jcusick@naacpldf.org
bcarter@naacpldf.org
cburke@naacpldf.org

LATINOJUSTICE PRLDEF
Miranda Galindo
4700 Millenia Boulevard, Suite 500 Orlando, FL 32839-6019
(321) 754-1935
mgalindo@latinojustice.org

Deuel Ross
700 14th St. NW, Suite 600
Washington, DC 20005
dross@naacpldf.org

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
Leah Wong
Patrick Stegemoeller
99 Hudson Street, 12th Floor
New York, NY 10013
(212) 966-5932
lwong@aaldef.org
pstegemoeller@aaldef.org

Counsel for Proposed Amici Curiae

To: All Counsel of Record via NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

Michael Williams, José Ramìrez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioner-Respondents,

-against-

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,

Respondent-Respondents,

-and-

Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba,

Intervenors-Respondents.

Appellate Division
Index No. 2026-00384

New York County
Supreme Court
Index No.: 164002/2025

AFFIRMATION OF PERRY GROSSMAN IN SUPPORT OF MOTION FOR LEAVE TO FILE PROPOSED BRIEF OF AMICI CURIAE

I, PERRY GROSSMAN. an attorney duly admitted to practice before this Court, affirm under penalty of perjury, including fine or imprisonment, that the following is true and understand that this document may be filed in an action or proceeding in a court of law, pursuant to CPLR 2106:

1. I am a member of the bar of the State of New York. I am the Director of the Voting Rights Project at New York Civil Liberties Union ("NYCLU"). I am not a party to this action. I am in good standing in the Courts of the State of New York.

2. The New York Civil Liberties Union, Asian American Legal Defense and Education Fund, LatinoJustice Puerto Rican Legal Defense and Education Fund, and NAACP Legal Defense and Educational Fund, Inc. (together, "Amici") request permission to submit a brief as amici curiae on the pending motions for a stay (motions #444 and #445) in the above-captioned appeal.

3. On February 3, 2026, I sent an e-mail to counsel of record for all parties of to request their consent to seek leave to submit a brief as amicus curiae in support of no party in this case in this case. Counsel for each party responded promptly by e-mail that they take no position on amici's motion.

Background and Procedural History

4. On October 27, 2025, Petitioner filed their petition against Defendant-Respondents alleging that New York's congressional district map SB S8653A, codified at New York State Law §§ 110-112 (McKinney 2024) creates less of an opportunity for Black and Latino Staten Islanders than other members of the electorate to elect a representative of their choice and influence elections in New York's 11th Congressional District ("CD-11"), in violation of the prohibition against racial vote dilution in Article III, Section 4(c)(1) of the New York Constitution.

5. On December 16, 2025, Amici filed a motion by order to show cause for leave to file a brief of amici curiae in this case, including a copy of the brief attached as an exhibit to the motion. Index No. 164002/2025, NYSCEF Doc Nos. 137-39. Amici's brief urged Supreme Court to adopt a standard that ensures that racial vote dilution claims under the New York State Constitution protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for partisan purposes. No party opposed Amici's motion. Supreme Court granted Amici's motion on January 21, 2026 (*id.* at NYSCEF Doc No. 212) and Amici filed their brief on the docket (*id.* at NYSCEF Doc No. 213).

6. On January 21, 2026, Supreme Court ruled in favor of Petitioner and ordered that the Independent Redistricting Commission reconvene to develop a remedial congressional redistricting plan by February 6, 2026. Decision and Order

on Motion, Index No. 164002/2025, NYSCEF Doc. No. 217. In its Decision and Order, Supreme Court cited and quoted Amici's brief for the proposition that the court should set a legal standard applicable to racial vote dilution claims under the New York State Constitution such that "crossover claims [are not] easily . . . distorted for partisan maximization." *Id.* at 14-15 (citing Index No. 164002/2025, NYSCEF Doc Nos. 139).

7. This case raises the question of whether the racial vote dilution protections in the redistricting criteria of the New York State Constitution provide for more expansive protection against racial vote dilution than the United States Constitution and Section 2 of Voting Rights Act of 1965. In particular, this case addresses whether the State Constitution protects against racial vote dilution even where minority voters must depend on non-minority "crossover" voters to elect the minority-preferred candidate and, if so, what standard is applicable to those claims. The decision on appeal raises the further question of how those standards should be applied in order to ensure that the State Constitution protects the rights of minority voters and frustrates attempts to misuse the voting rights laws for partisan purposes.

8. The parties to this litigation have not made a full and adequate presentation of this issue. To the best of Amici's knowledge, no party has briefed the position that crossover claims are cognizable under the New York State

Constitution and Supreme Court established the correct standard for addressing those claims, but did not apply that standard correctly.

9. Amici's proposed brief elucidates that it is an element of a racial vote dilution claim that a plaintiff demonstrate that their illustrative remedial plan would remedy the alleged dilution. Requiring a showing that a reasonable and effective remedy is available ensures that there is a causal nexus between the alleged vote dilution and the challenged districting scheme and that there is at least one potential remedy that comports with state and federal constitutional requirements. Failure to require such a showing could permit a finding of vote dilution that cannot redressed by any lawful alternative practice.

10. Amici explain the importance of and the authority for requiring a reasonable and effective remedy as an element of liability in vote dilution cases, and they offer a standard for assessing whether that element is satisfied by a proposed "crossover district"—that is, a district in which the protected class is able to wield electoral influence with the assistance of some majority voters who "crossover" to support the protected class's preferred candidates.

11. Amici also identify the ways in which courts have ensured that racial vote dilution claims remain distinct from partisan gerrymandering claims. Courts have long made clear that racial vote dilution should not be an avenue for partisan

maximization. Amici's standards for influence and crossover claims seek to address this concern.

Statement of Interest of Amici

12. Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims on behalf of voters of color and developing voting rights policy. Amici and the communities that they serve have a significant interest in ensuring that the New York State Constitution provides effective protection against racial vote dilution. Amici include counsel who have litigated precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under New York State law (*New York Communities for Change v County of Nassau*, Index No. 602316/2024 [Sup Ct, Nassau County]). Amici submitted a brief earlier in this case, urging Supreme Court to adopt a standard that ensures that racial vote dilution claims protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for

partisan purposes. Amici wish to assist this Court by providing a workable and constitutional standard for the dilution claim at issue here.

13. The NYCLU is the New York State affiliate of the American Civil Liberties Union, and a non-profit, non-partisan organization with more than 112,000 members and supporters. The NYCLU is dedicated to the principles of liberty and equality enshrined in the United States and New York State Constitutions. In support of those principles, the NYCLU has litigated on behalf of voters in cases involving the right of electoral suffrage under New York state law, including *Palla v Suffolk Cnty Bd of Elections* (31 NY2d 36 [1972]); *Amedure v State* (178 NY3d 220 [3d Dept 2022]); *People by James v Schofield* (199 AD3d 5 [3d Dept 2021]); *New York Communities for Change v County of Nassau* (86 Misc3d 627 [Sup Ct, Nassau County]), and in cases involving the proper interpretation of the New York State Constitution, such as *Hernandez v State*, (173 AD3d 105 [3d Dept 2019]).

14. The NAACP Legal Defense and Educational Fund, Inc. ("LDF"), is a non-profit, non-partisan law organization established under the laws of the state of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional and statutory rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation, using

various tools including census data. LDF has represented Black voters as parties in nearly all the precedent setting redistricting cases in the U.S. Supreme Court and lower federal courts related to protecting the ability of Black people and other people of color to fully participate in the political process. See, e.g., *Louisiana v. Callais*, No. 24-109 (U.S.); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023); *Ala. State Conf. of the NAACP v. Allen*, No. 2:21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025); *Singleton v. Allen*, 782 F. Supp. 3d 1092 (N.D. Ala. 2025).

15. The Asian American Legal Defense and Education Fund ("AALDEF") is a national organization, founded in 1974, that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right of Asian American communities across the country to cast an effective ballot and receive fair representation. AALDEF has documented the continued need for protection of Asian voters and has litigated cases under state and federal law, including the John R. Lewis Voting Rights Act of

New York, to protect the ability of Asian American communities of interest to elect candidates of their choice, influence the outcome of the elections, and keep communities whole, often in partnership with Black and Hispanic communities. Notably, several of these lawsuits involve constitutional and statutory challenges to redistricting plans that would dilute the vote of Asian communities. *See, e.g., N.Y. Cmtys. for Change v Cnty. of Nassau*, No. 602316-2024 (Sup Ct., Nassau Cnty, Feb. 7, 2024); *League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-00259-DCG-JESJVB (W.D. Tex. Oct. 18, 2021); *Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012); *Diaz v. Silver*, 978 F. Supp 96 (E.D.N.Y. 1997).

16. LatinoJustice PRLDEF ("LatinoJustice") (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. For over 50 years, LatinoJustice has used and challenged laws to promote a more just and equitable society by transforming harmful systems, empowering our communities, and cultivating the next generation of Latino leaders in the fight for racial justice. LatinoJustice has a long and distinguished history championing unfettered access to the ballot for Puerto Rican, Latino, and limited English proficient voters. LatinoJustice has served as a watchdog against attempts to dilute Latino, Black, and Asian American voting power, most recently helping to secure a historic settlement in *New York Communities for Change v. County of Nassau*, a New York Voting Rights Act case remediating the county's dilution of the

collective voting power of Latino, Black, and Asian community members. LatinoJustice also has a distinguished history of protecting Black and brown New Yorkers from vote dilution under the federal Voting Rights Act. *See e.g. Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012); *Rios-Andino v. Orange Cnty.*, 51 F. Supp. 3d 1215, 1217 (M.D. Fla. 2014); *Garcia v. 2011 Legislative Reapportionment Comm'n*, 559 F. App'x 128, 129 (3d Cir. 2014).

17. The New York Civil Liberties Union hereby discloses that it is a non-profit 501[c][4] organization and is the New York State affiliate of the American Civil Liberties Union. The NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and LatinoJustice PRLDEF disclose that each is a non-profit 501[c][3] organization.

18. No party or party's counsel contributed content to the proposed amicus brief or participated in the preparation of the brief in any other manner. No party or a party's counsel or any other person or entity, other than proposed amici, contributed money that was intended to fund preparation or submission of the proposed amicus brief.

Request to File Proposed Brief

19. *Amici* respectfully request to file the proposed Brief of Amici Curiae, a true and correct copy of which is included with this submission as **Exhibit B.**

WHEREFORE, the proposed *Amici* respectfully requests that they be permitted to file their proposed brief.

Dated: New York, New York
February 4, 2026

Perry Grossman

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

vs.

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.

NOTICE OF APPEAL

Index No.: 164002/2025
Hon. Jeffrey H. Pearlman

Mot. Seq. 001, 006, 007

PLEASE TAKE NOTICE that Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, "Respondents") hereby appeal to the Supreme Court of the State of New York, Appellate Division, First Department from the Decision and Order of the Supreme Court, New York County (Pearlman, J.), dated January 21,

2026 and entered in the office of the Clerk of the Supreme and County Court on January 22, 2026. Respondents hereby appeal from each and every part of said Decision & Order by which they are aggrieved. Copies of the Notice of Entry of the Decision & Order and Informational Statement are attached as **Exhibit A** and **Exhibit B**, respectively.

Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*

Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440
nfaso@cullenllp.com
cbuckey@cullenllp.com

Attorneys for Respondents Raymond J. Riley III, Peter S. Kosinski, and Anthony J. Casale

Exhibit B

Informational Statement

Supreme Court of the State of New York
Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.	For Court of Original Instance
Michael Williams, et al. - against - Board of Elections of the State of New York, et al.	Date Notice of Appeal Filed
	For Appellate Division

Case Type		Filing Type	
☐ Civil Action	■ CPLR article 78 Proceeding	■ Appeal	☐ Transferred Proceeding
☐ CPLR article 75 Arbitration	☐ Special Proceeding Other	☐ Original Proceedings	☐ CPLR Article 78
	☐ Habeas Corpus Proceeding	☐ CPLR Article 78	☐ Executive Law § 298
		☐ Eminent Domain	☐ CPLR 5704 Review
		☐ Labor Law 220 or 220-b	
		☐ Public Officers Law § 36	
		☐ Real Property Tax Law § 1278	

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

☐ Administrative Review	☐ Business Relationships	☐ Commercial	☐ Contracts
☐ Declaratory Judgment	☐ Domestic Relations	■ Election Law	☐ Estate Matters
☐ Family Court	☐ Mortgage Foreclosure	■ Miscellaneous	☐ Prisoner Discipline & Parole
☐ Real Property (other than foreclosure)	☐ Statutory	☐ Taxation	☐ Torts

Appeal

Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

☐ Amended Decree	☐ Determination	■ Order	☐ Resettled Order
☐ Amended Judgement	☐ Finding	☐ Order & Judgment	☐ Ruling
☐ Amended Order	☐ Interlocutory Decree	☐ Partial Decree	☐ Other (specify):
■ Decision	☐ Interlocutory Judgment	☐ Resettled Decree	
☐ Decree	☐ Judgment	☐ Resettled Judgment	

Court: Supreme Court	County: New York
Dated: 01/21/2026	Entered:01/22/26
Judge (name in full):Jeffrey H. Pearlman	Index No.:164002/2025
Stage: ■ Interlocutory ☐ Final ☐ Post-Final	Trial: ■ Yes ☐ No If Yes: ☐ Jury ■ Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? ☐ Yes ■ No
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: ☐ Order to Show Cause ☐ Notice of Petition ☐ Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court	County: Choose County
Judge (name in full):	Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

The appeal is from the Decision and Order of Hon. Jeffrey H. Pearlman (Supreme Court, New York County) dated January 21, 2026, and entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, on January 22, 2026. The relief requested was: (a) a declaration that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the NY Constitution; (b) an order directing the Legislature to adopt a revised congressional redistricting map; (c) a permanent injunction enjoining Respondents from conducting congressional elections under the current map; (d) holding hearings and considering briefing and evidence. The relief was granted

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The issues proposed to be raised on the appeal include, without limitation: (1) whether Supreme Court erred in finding that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York State Constitution; (2) whether Supreme Court improperly established a new legal standard for evaluating vote dilution claims under the New York State Constitution; (3) whether Supreme Court erred in adopting a three-pronged standard for crossover districts under Article III, Section 4(c)(1); (4) whether Supreme Court's remedy ordering the Independent Redistricting Commission to reconvene and complete a new Congressional Map by February 6, 2026 was proper; and (5) whether Supreme Court erred in denying Respondents' Cross-Motion to dismiss. Appellants appeal from each and every part of the Decision and Order to which they have been aggrieved. The relief sought on appeal includes, inter alia, the reversal of the Decision and Order in its entirety and dismissal of Petitioners' proceeding.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Please see attached addendum for party information		
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Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Nicholas J. Faso/ Cullen & Dykman LLP			
Address: 80 State Street, Suite 900			
City: Albany	State: NY	Zip: 12206	Telephone No: 518-788-9416
E-mail Address: nfaso@cullenllp.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 7-8, 10			
Attorney/Firm Name: Andrew G. Celli, Jr./ Emery Celli Brinckerhoff Abady Ward & Maazel LLP			
Address: One Rockefeller Plaza, 8th Floor			
City: New York	State: NY	Zip: 10020	Telephone No: (914) 427-3791
E-mail Address: ACELLI@ECBALAW.COM			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☒ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1-4			
Attorney/Firm Name: Aria Branch/ Elias Law Group LLP			
Address: 250 Massachusetts Avenue - Nw, Suite 400			
City: Washington	State: DC	Zip: 20001	Telephone No: (202) 968-4518
E-mail Address: abranch@elias.law			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☒ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 1-4			
Attorney/Firm Name: Brian Lee Quail/ New York State Board of Elections			
Address: 40 North Pearl Street, Suite 5			
City: Albany	State: NY	Zip: 12207	Telephone No: (518) 474-6220
E-mail Address: brian.quail@elections.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 5-6, 9, 11			
Attorney/Firm Name: Seth J. Farber/ Office of the Attorney General of the State of New York			
Address: 28 Liberty Street, 17th Floor			
City: New York	State: NY	Zip: 10005	Telephone No: (212)416-8029
E-mail Address: seth.farber@ag.ny.gov			
Attorney Type: ☐ Retained ☐ Assigned ■ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 12-15			
Attorney/Firm Name: Misha Tseytlin/ Troutman Pepper Locke LLP			
Address: 875 Third Avenue			
City: New York	State: NY	Zip: 10022	Telephone No: (212) 704-6000
E-mail Address: misha.tseytlin@troutman.com			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 16-20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Perry Maxwell Grossman/ New York Civil Liberties Union Foundation			
Address: 125 Broad Street, 19th Floor			
City: New York	State: NY	Zip: 10004	Telephone No: (212) 607-3347
E-mail Address: pgrossman@nyclu.org			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 22			
Attorney/Firm Name: Ruth Merewyn Greenwood/ Election Law Clinic, Harvard Law School			
Address: 6 Everett Street, Suite 4105			
City: Cambridge	State: MA	Zip: 02138	Telephone No: (202) 560-0590
E-mail Address: rgreenwood@law.harvard.edu			
Attorney Type: ■ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above): 21			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			
Attorney/Firm Name:			
Address:			
City:	State:	Zip:	Telephone No:
E-mail Address:			
Attorney Type: ☐ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice			
Party or Parties Represented (set forth party number(s) from table above):			

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

vs.

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.

ADDENDUM

Index No.: 164002/2025
Hon. Jeffrey H. Pearlman
Addendum

Supplemental Party Information

No.	Party Name	Original Status	Appellate Status
1	Michael Williams	Petitioner	Appellee-Petitioner
2	Jose Ramirez-Garofalo	Petitioner	Appellee-Petitioner
3	Aixa Torres	Petitioner	Appellee-Petitioner
4	Melissa Carty	Petitioner	Appellee-Petitioner
5	Board of Elections of the State of New York	Respondent	Appellee-Respondent
6	Kristen Zebrowski Stavisky in her official capacity as Co-Executive	Respondent	Appellee-Respondent

	Director of the Board of Elections of the State of New York		
7	Raymond J. Riley III in his official capacity as Co-Executive Director of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
8	Peter S. Kosinski in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
9	Henry T. Berger in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York	Respondent	Appellee-Respondent
10	Anthony J. Casale in his official capacity as Commissioner of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
11	Essma Bagnuola in her official capacity as Commissioner of the Board of Elections of the State of New York	Respondent	Appellee-Respondent
12	Kathy Hochul in her official capacity as Governor of New York	Respondent	Appellee-Respondent
13	Andrea Stewart-cousins in her official capacity as Senate Majority Leader and President Pro Tempore of the New York State Senate	Respondent	Appellee-Respondent
14	Carl E. Heastie in his official capacity as Speaker of the New York State Assembly	Respondent	Appellee-Respondent
15	Letitia James in her official capacity as Attorney General of New York	Respondent	Appellee-Respondent
16	Congresswomen Nicole Malliotakis	Intervenor	Intervenor
17	Edward L. Law	Intervenor	Intervenor
18	Solomon B. Reeves	Intervenor	Intervenor
19	Angela Sisto	Intervenor	Intervenor
20	Faith Togba	Intervenor	Intervenor
21	Nicholas O. Stephanopoulos	Intervenor	Intervenor
22	New York Civil Liberties Union Foundation	Intervenor	Intervenor

Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*

Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440
nfaso@cullenllp.com
cbuckey@cullenllp.com

Attorneys for Respondents Raymond J. Riley lII, Peter S. Kosinski, and Anthony J. Casale

Exhibit A

Notice of Entry

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

vs.

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.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001, 006, 007

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of the Hon. Jeffrey H. Pearlman in the above-referenced proceeding, dated January 21, 2026, and entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, on January 22, 2026.

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Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*
Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440
nfaso@cullenllp.com
cbuckey@cullenllp.com

Attorneys for Respondents Raymond J. Riley III, Peter S. Kosinski, and Anthony J. Casale

To: EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL LLP

Andrew G. Celli, Jr., Esq.
Emily Kane Wanger, Esq.
One Rockefeller Plaza, 8th Floor
New York, New York 10020
(914) 427-3791

Attorneys for Petitioners Michael Williams, Jose Ramirez-Garcfalo, Aixa Torres, and Melissa Carty

ELIAS LAW GROUP LLP

Aria Branch, Esq.
Lucas Wilhelm Lallinger, Esq.
Christopher Douglas Dodge, Esq.
Nicole Wittstein, Esq.
250 Massachusetts Avenue - Nw, Suite 400
Washington, DC 20001
(202) 968-4518

Attorneys for Petitioners Michael Williams, Jose Ramirez-garcfalo, Aixa Torres, and Melissa Carty

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NEW YORK STATE BOARD OF ELECTIONS

Kevin Gordon Murphy, Esq.
Brian Lee Quail, Esq.
40 North Pearl Street, Suite 5
Albany, New York 12207
(518) 474-6220

Attorneys for Respondents Board of Elections of the State of New York, Kristen Zebrowski Stavisky, Henry T. Berger, and Essma Bagnuola

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK

Seth J. Farber, Esq.
Assistant Attorney General
28 Liberty Street, 17th Floor
New York, New York 10005
(212) 416-8029

Attorneys for Respondents Kathy Hochul, Andrea Stewart-Cousins, Carl E. Heastie, and Letitia James

TROUTMAN PEPPER LOCKE LLP

Misha Tseytlin, Esq.
Bennet J. Moskowitz, Esq.
Andrew M. Braunstein, Esq.
875 Third Avenue
New York, New York 10022
(212) 704-6000

Attorneys for Intervenors Congresswoman Nicole Malliotakis, Edward L. Law, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

Perry Maxwell Grossman, Esq.
125 Broad Street, 19th Floor
New York, New York 10004
(212) 607-3347

Attorneys for Intervenor New York Civil Liberties Union Foundation

2003\35435950

ELECTION LAW CLINIC, HARVARD LAW SCHOOL

Ruth Merewyn Greenwood, Esq.
6 Everett Street, Suite 4105
Cambridge, Massachusetts 02138
(202) 560-0590

Attorneys for Intervenor Nicholas O. Stephanopoulos

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. JEFFREY H. PEARLMAN** **PART** **44M**

Justice

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INDEX NO. 164002/2025

MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO, AIXA TORRES, MELISSA CARTY,

Petitioner,

MOTION DATE 10/27/2025, 12/08/2025, 12/08/2025

MOTION SEQ. NO. 001 006 007

- v -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN ZEBROWSKI STAVISKY, RAYMOND J. RILEY, PETER S. KOSINSKI, HENRY T. BERGER, ANTHONY J. CASALE, ESSMA BAGNUOLA, KATHY HOCHUL, ANDREA STEWART-COUSINS, CARL E. HEASTIE, LETITIA JAMES,

Respondent.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 52, 53, 56, 59, 60, 61, 62, 63, 95, 98, 142, 143, 144, 145, 154, 167, 168, 175, 186, 187

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 128, 130, 146, 147, 148, 149, 155, 157, 159, 160, 161, 169, 170, 188, 189

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 116, 117, 118, 119, 120, 121, 122, 129, 131, 150, 151, 152, 153, 156, 158, 171, 172, 173, 174, 176, 190, 191

were read on this motion to/for DISMISSAL.

This election case was heard on an expedited basis, beginning with a hearing on November 7, 2025. The parties submitted briefings on the motions addressed in this Order, including reply memoranda, as well as exhibits including reports from expert witnesses. Additional briefing was provided by Amici Curiae. A trial was held from January 5, 2026 through January 8, 2026, during which Petitioners and Respondents were provided with equal

time to make their cases. After the completion of trial, parties provided additional briefing regarding the remedy in this case, as well as post-trial memoranda.

Background

On October 24, 2025, Petitioner Michael Williams, an elector of the state of New York, residing in Richmond County, Petitioner José Ramírez-Garofalo, an elector of the state of New York, residing in Richmond County, Petitioner Aixa Torres, an elector of the state of New York, residing in New York County, and Melissa Carty, an elector of the state of New York, residing in New York County (Collectively, "Petitioners"), filed a petition pursuant to Article III, Sections 4 and 5 of the New York Constitution, Unconsolidated Laws § 4221 (L 1911, ch. 773, § 1), and Civil Practice Law and Rules 3001, requesting: (1) that the Court declare "that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York Constitution by unlawfully diluting the votes of Black and Latino voters in CD-11;" (2) "Pursuant to Art. III, Section 5 of the New York Constitution, ordering the Legislature to adopt a valid congressional redistricting plan in which Staten Island is paired with voters in lower Manhattan to create a minority influence district in CD-11 that complies with traditional redistricting criteria;" (3) that the Court issue "a permanent injunction enjoining [Respondents] and their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in the 2024 Congressional Map, including an injunction barring [Respondents] from conducting any further congressional elections under the current map;" and (4) that the Court "[hold] hearings, [consider] briefing and evidence, and otherwise tak[e] actions necessary to order a valid plan for new congressional districts in New York that comports with Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 2.* On December 8, 2025 Intervenor-Respondents Congresswoman Nicole Malliotakis' and Individual Voters Edward L. Lai, Joel Medina, Solomon

B. Reeves, Angela Sisto, and Faith Togba ("Intervenor-Respondents") filed a Cross-Motion, seeking to dismiss this matter. *NYSCEF Doc. No. 97.*

On December 8, 2025, Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III ("BOE Respondents", in his official capacity as Co-Executive Director of the BOE filed an additional Cross-Motion, also seeking dismissal. *NYSCEF Doc. No. 116.*

Article III § 4(c) of the New York State Constitution governs redistricting of the state legislative districts and congressional districts, "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Article III § 4(c)(1) states:

> When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. 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.

This case arises out of and relates to Petitioners' claim that that in New York's 11th Congressional District ("CD-11"), "Black and Latino Staten Islanders have less opportunity than other members of the electorate to elect a representative of their choice and influence elections… in violation of the prohibition against racial vote dilution in Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 1.* CD-11 contains the entirety of Staten Island and extends into a portion of southern Brooklyn, reflecting district boundaries that have existed since 1980. *Pet. Exh. C., NYSCEF Doc. No. 62.* In the same period, the racial demographics have shifted drastically, from "85.3 percent white, 7 percent Black, 5.4 percent Latino, and 1.9 percent Asian"

to "56.6 percent white, 19.5 percent Latino,...9 percent Black," and 12 percent Asian, with "[t]he remaining 2.9 percent" largely comprised of "people who consider themselves members of two or more races." *NYSCEF Doc. No. 61*. Petitioners' proposed remedy would move the boundaries of CD-11, grouping Staten Island with a portion of southern Manhattan.

This is an issue of first impression; New York courts have yet to determine the appropriate legal standard to evaluate a vote dilution claim under Article III, Section 4 of the New York State Constitution. Petitioners assert that in evaluating this claim, the Court should utilize the vote dilution framework provided in the 2022 John R. Lewis New York Voting Rights Act ("NY VRA"). Intervenor-Respondents and BOE Respondents both argue that consideration of the NY VRA is impermissible under the state constitution and that the case should be dismissed as a result. *NYSCEF Docs. No 115, 122*. Respondents Kathy Hochul, in her official capacity as Governor of the State 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 the State of New York (collectively, "State Respondents"), for their part, claim that a "totality of the circumstances" standard is appropriate pursuant to the text of Article III Section 4(c)(1) but make no argument as to the result that would be reached under such a standard. *NYSCEF Doc. No. 95*.

Analysis

Article III, Section 4(c)(1) was part of a series of 2014 constitutional amendments regarding redistricting approved by the voters of New York State. As stated by State Respondents, it calls for a totality of the circumstances standard, reading in relevant part: "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." *New York State Constitution, Article III, Section 4(c)(1)* (Emphasis Added). The state constitution provides no guidance as to how to evaluate the totality of the circumstances, nor does the legislative history of the redistricting amendments. Petitioners point to the NY VRA, which bans vote dilution in local subdivisions based on the protections provided by Article III, Section 4, while providing detailed guidance on evaluating the totality of the circumstances. *NYSCEF Doc. No. 1.*

Utilizing the NY VRA, however convenient, is impermissible. Article III, Section 4 specifically states that the redistricting of congressional districts is "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Here, the text of the state constitution directly contradicts the notion that the Court can use the NY VRA, a state statute, to interpret a constitutional vote dilution claim. Not only was the NY VRA passed years after the redistricting amendments were ratified, the provision names "the federal constitution and statutes" and "state constitutional requirements," with no mention of state statutes. *Id.* That the phrase "the federal constitution" is paralleled "state constitutional requirements" while federal statutes receive no such mirror implies that state legislation was excluded on purpose and it should not be used to interpret Article III, Section 4. Moreover, there is no legislative history that provides any evidence that Article III, Section 4(c)(1) should be influenced by legislation that would be passed after the amendment took effect, even if that legislation is meant to bolster efforts against vote dilution.

That conclusion, however, does not end the inquiry, as Petitioners *are* correct in their assertion that the New York State Constitution provides greater protections against racial vote dilution than the federal constitution or the federal Voting Rights Act. That the protections of

Article III, Section 4 are broader than those provided by the federal constitution and federal statutes can be gleaned from the text itself and from case law regarding state legislation. Assertions that the federal Voting Rights Act controls simply do not hold up under a basic logical analysis. Article III, Section 4(c) says "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements," that under Section 4(c)(1), "[d]istricts 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." These provisions, taken in conjunction, simply imply that the protections provided by the redistricting amendments should not violate federal or state constitutional requirements or the state constitution, not that these protections cannot expand on those provided by the federal government. *See Harkenrider v. Hochul,* 38 N.Y.3d 494, 509 (2022) ("In construing the language of the Constitution as in construing the language of a statute, ... [we] look for the intention of the People and give to the language used its ordinary meaning"). Were the redistricting amendments simply meant to establish that the federal constitution and federal statutes should be used to protect voting rights in New York, the amendments would have no purpose. *See People v. Galindo,* 38 N.Y.3d 199, 205–206 (2022) (a statute should not be read in a way that "hold[s] it a legal nullity.") Moreover, under *People v. P.J. Video, Inc.*, "[i]f the language of the State Constitution differs from that of its Federal counterpart, then the court may conclude that there is a basis for a different interpretation of it." 68 N.Y.2d 296, 302 (1986). As pointed out by State Respondents, there are differences between the Voting Rights Act (52 U.S.C. § 10301(b)), which uses phrases referring to particularized groups including "a class of citizens" and "its members" and Article III, Section 4(c)(1), which protects the ability of "racial or minority groups [from having] less opportunity to participate in the political process than other members of the

electorate and to elect representatives of their choice." Here, the state's expansion on federal protections can be observed in language that literally expands on that included in the Voting Rights Act.

As a case of first impression, it falls on the Court to establish a standard for evaluating the totality of the circumstances. The Court notes that Article III, Section 4(c)(1) states "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" (emphasis added). This language is key, as it does not demand that a district suppress minority voters who could make up a majority under different lines in order to find that opportunity has been denied. Instead, it must be shown that the lines unfairly reduce their impact on electoral outcomes as drawn. While Article III, Section (4)(c) goes beyond the scope of the federal Voting Rights Act, the VRA is still instructive. As such, the Court turns to case law regarding the VRA to establish factors that can be evaluated in this analysis. In *Thornburg v. Gingles*, the United States Supreme Court utilized factors laid out by the United States Senate during the passage of the VRA to evaluate a vote dilution claim. 478 U.S. 30, 44-45. Those factors included "the extent to which voting in the elections of the State or political subdivision is racially polarized;…the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction." *Id.* This list is not intended to encompass the entirety of what factors should be considered in a vote dilution claim, nor is there any specific threshold that must be met to establish that a totality of the

circumstances has been met. *Id.* The Court elects to follow these principles in evaluating a vote dilution claim under Article III, Section 4(c)(1).

Fundamental to this claim is the extent of racially polarized voting in CD-11. As a racial vote dilution claim is predicated on the notion that minority voters cannot elect their candidate of choice, it is vital that Petitioners show that there is, in fact, a predominant choice among minority voters in a congressional district. Not only that, but it must also be demonstrated that White voters vote as a bloc that usually defeats minority-preferred candidates. *See Gingles* 478 U.S. at 56. Racially polarized voting must be observed as a pattern; a single election is not a sufficient basis to satisfy this portion of the claim. *Id.* This allows room for elections that break from the general pattern (such as a minority-preferred candidate winning or racially-polarized voting blocs breaking from one another) without reading these exceptions as negating said general pattern. *Id.* That voting is racially polarized can be proven through mere correlation between the race(s) of a voting bloc and need not rise to the level of causation. *Id.*

Here, racially polarized voting has been clearly demonstrated. Dr. Maxwell Palmer, an expert witness from New York University who testified in this case, showed in his report and shared on the record that across federal, state, and city elections from 2017 to 2024, Black voters in CD-11 voted together an average 90.5 percent of the time, while Latino voters voted together 87.7 percent of the time.[1] *NYSCEF Doc. No. 60.* Asian voters voted for the Black and Latino-preferred candidates 58.93 percent of the time, displaying less cohesion than Black or Latino voters but still demonstrating a consistent preference. *Id.* White voters, meanwhile, voted against the candidates preferred by Black and Latino 73.7 percent of the time. *Id.* Across the 20 most recent elections in CD-11 used in the analysis, the Black and Latino-preferred candidates won merely

[1] The Court notes that the expert witness' analysis does not include either state Assembly or state Senate races.

five (5) races. Respondents raised doubts as to the significance of this number on the record, asserting that roughly 30 percent of the population saw its preferred candidate win roughly 25 percent of the time. The Court does not read a racial vote dilution claim so simply. Vote dilution claims do not turn on whether minority-preferred candidates win elections at a rate that matches the relative population of minority groups in a district. A demonstration of racially polarized voting shows that the minority groups at issue vote as a bloc, as do White voters, and that the minority-preferred candidates "usually" lose. *See Gingles* 478 U.S. at 56. Petitioners have demonstrated that here.

Petitioners have also shown through testimony and by empirical data that the history of discrimination against minority voters in CD-11 still impacts those communities today. Staten Island has a long history of racial discrimination. Expert witness Dr. Thomas J. Sugrue reports that "Staten Island has a long history of racial segregation, discrimination, and disparate treatment against Blacks and Latinos." *NYSCEF Doc. No. 61.* Staten Island was the subject of intense redlining, a process in which the federal government enforced segregation by drawing race-based lines around different neighborhoods and ensured that Black people would not be allowed to obtain loans or mortgages. *Id.* This process largely confined Black people to neighborhoods north of the Staten Island Expressway with low property values and lowered the property values in areas where Black people resided, even majority-White neighborhoods. *Id.* These neighborhoods also had significant environmental hazards, leading to long-term health issues for residents over time. *Id.* Black and Latino people were often excluded from public housing in predominantly White neighborhoods and the real estate industry worked to keep them away from private property in White neighborhoods. *NYSCEF Doc. No. 61*. Even as racial protections were codified at a federal

level, Black and Latino Staten Islanders experienced harsh racial intimidation, violence, and hate-crimes. *Id.*

In the 1920s, New York state began requiring literacy tests to vote, a practice specifically designed to target immigrants and non-English speakers and prevent them from voting; this practice had a particularly negative impact on Black and Latino New Yorkers. *NYSCEF Doc. No. 61.* The long-term effects of this history has resulted in significant gaps in the lives of Black and Latino populations of Staten Island and the White population to this day, impacting "housing, education, [and] socioeconomic status…—all of which are known to have a negative impact on political participation and the ability to influence elections." *Id.* White Staten Islanders enjoy notably higher education rates than Black and Latino residents; "[m]ore than 1 in 5 Latinos and 1 out of 9 Blacks but only 1 in 14 Whites are not high school graduates" and "[a] little less than a quarter of Latinos and a little more than a quarter of Blacks, but more than one-third of Whites, have obtained at least a bachelors' degree." *Id.* White Staten Islanders have a per capita income of $52,273.00, Black Staten Islanders' per capita income is $31,647.00 and Latinos' is $30,748.00. *Id.* Moreover, where the White poverty rate on Staten Island is 6.8 percent, the Latino poverty rate is 16.3 percent, and the Black poverty rate is 24.6 percent. *NYSCEF Doc. No. 61.* Over 75 percent of White Staten Island residents own homes while only 43.7 percent of Latino residents, and 35.8 percent of Black residents do. *Id.* According to Dr. Sugrue's testimony on the record, de facto segregation remains the norm, with moderate segregation rates between Hispanic and White residents and significant segregation between Black and White residents.

The impact of discrimination is not only social and economic, political, as Black, Latino, and Asian Staten Islanders' political representation and participation in politics still lags behind White Staten Islanders. Expert witness Dr. Palmer's report analyzes voter turnout on Staten Island

the 2020, 2022, and 2024 elections, showing that while White voter turnout averaged 65.3 percent across those races, Black voter turnout averaged 48.7 percent, Latino turnout averaged 51.3 percent, and Asian turnout averaged 47.7 percent. *NYSCEF Doc. No. 60.* In the same years, the average voter turnout was 58.7 percent. The election of minority candidates in CD-11 presents more complexity, though representation still low.[2] Staten Island has elected a minority candidate to represent the district in Congress: Intervenor-Respondent Representative Nicole Malliotakis, became the first elected official of Latin American descent elected in Staten Island when she won a race for the New York State Assembly in 2010. *NYSCEF Doc. No. 61.* The first Black elected official in Staten Island, won a North Shore council race in 2009. *Id.*. Petitioners have shown that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" to a noteworthy extent. *Gingles*, 478 U.S at 44-45.

Petitioners have additionally shown that both overt and subtle racial appeals are common in campaigns in CD-11. The Court lends this less relative weight than other factors given the prevalence of racial appeals in political campaigns across the country. However, as a part of the broader suite of factors considered in a totality of the circumstances analysis, it is still meaningful. Dr. Palmer's report provides strong examples of racial appeals in Staten Island politics. For instance, in the 1960s, there was strong opposition to minorities moving to the island, with one popular political cartoon decrying "ghetto areas" being delivered by Mayor John Lindsay. *NYSCEF Doc. No. 61.* In the 1990s, a movement advocating for the secession of Staten Island from New York City rose, driven in part by frustration at minority New Yorkers moving from other boroughs into public housing on Staten Island. *Id.* More recently, the first Black elected

[2] It is important to note that the election of minority candidates is distinct from the election of minority-preferred candidates. Here, the Court analyzes the former factor.

official on Staten Island was the subject of racially charged political attacks during her 2017 reelection campaign. *Id.* One Facebook page critical of her campaign accused her of supporting "a 'welfare hotel full of criminals and addicts' and turning a property into 'a heroin/methadone den.'" *Id.* This follows common trends linking Black candidates to negative stereotypes associated with Black people. *Id.*

Based on the facts presented by the expert witness reports and on the record, it is clear to the Court that the current district lines of CD-11 are a contributing factor in the lack of representation for minority voters. In state and local races, Staten Island is allowed be divided in a way that has enabled Black and Latino voters to show some political power, however insufficient. *See Sugrue Report, NYSCEF Doc. No.* 61. In the redistricting process, a county can only be broken up to draw congressional districts if that country has a population greater than the "ideal population size" for a district. *Cooper Report, NYSCEF Doc. No.* 62. Because "the ideal population size for a congressional district in New York is 776,971" and Staten Island's population is 495,747, "[Staten Island] must be joined with a neighboring portion of another New York City borough." *Id.* Under the historic makeup of CD-11, which links Staten Island to southern Brooklyn, however, Black and Latino voters, who are already affected by a history of discrimination in the political process, education, housing, and more, are essentially guaranteed to have their votes diluted. *Id; Sugrue Report, NYSCEF Doc. No. 61.*

In this case, a totality of the circumstances analysis indicates that as drawn, the district lines for CD-11 "result in the denial or abridgement of racial or language minority voting rights minority voters," particularly Black and Latino voters, violating Article III, Section 4(c)(1) of the New York State Constitution. Petitioners have shown strong evidence of racially polarized voting bloc (including preferences from Asian voters that align with Black and Latino voters, though the latter

two are the subject of Petitioners' arguments), they have demonstrated a history of discrimination that impacts current day political participation and representation, and they have shown that racial appeals are still made in political campaigns today. Taken together, these circumstances provide strong support for the claim that Black and Latino votes are being diluted in the current CD-11. Moreover, it is evident that without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely.

The Court must next determine, then, the proper remedy for unlawful vote dilution. Although Petitioners have shown a violation of the state constitution, their remedy must align with the law. Petitioners request that the Court mandate a new set of district lines for CD-11, shifting the boundaries from the entirety of Staten Island and a portion of Brooklyn to the entirety of Staten Island and a portion of Southern Manhattan; this map would redraw Congressional District 10 so that it would retain the Chinatown neighborhood and the portion of Brooklyn it currently holds while extending down into the portions of Southern Brooklyn currently contained in CD-11. *NYSCEF Doc. No. 62.*

To determine whether ordering a redrawing of the congressional lines is a proper remedy, Petitioners must first show that minority voters make up a sufficient portion of the district's population. Under *Gingles*, the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. at 51. Because the New York State Constitution is more sweeping that the VRA, such a high bar need not be cleared under a vote dilution claim in this state. *See supra.* Still, minority voters must comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes. However, the Court can still find guidance from the federal jurisprudence. In *Bartlett v. Strickland*, the United States Supreme Court differentiated between

"majority-minority" districts, where minority voters make up a majority of the electorate and "crossover" districts, where "members of the majority help a 'large enough' minority to elect its candidate of choice."[3] 556 U.S. 1, 13 (2009); Cooper v. Harris, 581 U.S. 285, 303 (2017) (quoting Bartlett, 556 U.S. at 13). Nowhere in their papers do Petitioners assert that a majority-minority district can or should be drawn here; as such, the Court sees this as a crossover claim.

While crossover claims were rejected under the VRA in *Bartlett*, the Article III, Section 4(c)(1)'s language indicated that they are allowed in actions in the state of New York. In *LULAC v. Perry*, Justice David Souter proposed a bar for crossover claims as establishing a district where "minority voters . . . constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election." 548 U.S. 399, 485-86 (2006) (Souter, J., concurring in part and dissenting in part). Based on this opinion, and on legal scholarship, Amici Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos propose the following standard for a crossover claim: "a proposed district should count as a crossover district if minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election." *NYSCEF Doc. No. 135*. Also in *LULAC,* Justice Stephen Breyer went a step beyond Justice Souter's proposed definition, arguing that a crossover claim should "show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election" (*LULAC*, 548 US at 485-86) (Breyer, J., dissenting in part). Based on Justice Breyer's opinion, Amici New York Civil Liberties Union, NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and Center for Law and Social Justice propose that the Court follow a similar

[3] A majority-minority district may come in the form of a simple majority or a "coalition" district, where multiple minority voting groups form a majority of voters. *Bartlett*, 556 U.S. 1, 13 (2009).

logic so that "crossover claims [are not] easily…distorted for partisan maximization." *NYSCEF Doc. No. 139*

The Court adopts a three-pronged standard for evaluating a proposed crossover district in a vote dilution case pursuant to Article III, Section 4(c)(1) of the New York State Constitution. First, a proposed district should count as a crossover district if minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election. Second, these candidates must usually be victorious in the general election. Third, the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates.

The Court emphasizes two aspects of this standard for clarity. First, the minority-preferred candidates must "usually" win the general election so that the standard for establishing a crossover district closely mirrors the standard for establishing vote dilution, which says that minority-preferred candidates must "usually" fail. *See Gingles* 478 U.S. at 56. "Usually be victorious" should only be interpreted to the extent that minority-preferred candidates win more often than not. Second, that prong three requires minority voters to be "decisive" in primary races so that crossover districts cannot be used to achieve vote dilution in favor of a different political party. As stated above, racial vote dilution claims should not be used for the purpose of simply bolstering a political party's power and influence. Otherwise, it would be relatively simple to use vote dilution claims to establish districts in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not.

While Petitioners offer new district lines for the Court to adopt, the New York State Constitution points the Court in a different direction. Under Article III, Section 5 of the New York

State Constitution, "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities," should the Court find a congressional map invalid. In *Harkenrider v Hochul*, the New York State Court of Appeals found that, where the election calendar's start was imminent and the Independent Redistrict Commission ("IRC") process was in disarray, it was appropriate to appoint a special master to draw new congressional maps, as the redistricting plan was unconstitutional and "incapable of a legislative cure." 38 NY3d 494, 523 (2022). In *Hoffmann v New York State Ind. Redistricting Commn*, the Court of Appeals built on this, stating that "[c]ourt-drawn judicial districts are generally disfavored because redistricting is predominantly legislative." 41 NY3d 341, 361 (2023). Instead, the Court pointed to Article III, Section 5(b), which states that "at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." *Hoffman*, 41 NY3d 341, 360 (2023). Under a Court-ordered IRC redistricting process, the redrawing of the maps is considered "adopted by the IRC and legislature." *Id.*

As in *Harkenrider*, time is of the essence to fix congressional lines in this case. *Harkenrider v. Hochul,* 38 NY3d 494, 523. Respondent New York State Board of Elections has stated that to properly implement a new congressional map, a multiagency process including county boards, borough staff, central New York City staff, the New York City Department of Planning, and the Board itself, would need to be completed. *NYSCEF Doc. No. 204*. This includes the redrawing of election districts, which is a city-wide process, and requires as much time as possible before the election calendar begins on February 24, 2026. *Id.* Unlike *Harkenrider*, though, the IRC has not had the chance to redraw maps, meaning that constitutionally, they should receive an opportunity to do so. *Harkenrider*, 38 NY3d at 523. Therefore, in keeping with the precedent established

Hoffman, and following the requirements of Article III, Section 5(b) of the New York State Constitution, the proper remedy in this case is to reconvene the IRC to redraw the CD-11 map so that it comports with the standard described above. 41 NY3d 341, 360. Per the request of the Board of Elections, new congressional lines must be completed by February 6, 2026. The Court has considered Respondents additional arguments, including regarding the Elections clause and laches, and finds them unavailing.

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Based on the reasoning above, the parties' arguments on the record, and the documents submitted to the Court, it is hereby **ORDERED** that the configuration of New York State's 11th Congressional District under the 2024 Congressional Map is deemed unconstitutional under Article III, Section 4(c)(1) of the New York State Constitution; and it is further

ORDERED that Respondents are hereby enjoined from conducting any election thereunder or otherwise giving any effect to the boundaries of the map as drawn; and it is further

ORDERED that the Independent Redistricting Commission shall reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026; and it is further

ORDERED that this case shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order.

HON. JEFFREY H. PEARLMAN J.S.C.

1/21/2026
DATE

JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:	☐	CASE DISPOSED		☒	NON-FINAL DISPOSITION	
	☐	GRANTED	☐ DENIED	☒	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER		☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN		☐	FIDUCIARY APPOINTMENT	☐ REFERENCE

EXHIBIT B

Appellate Division – First Department Index No. 2026-00384

New York Supreme Court

Appellate Division – First Department

MICHAEL WILLIAMS, JOSÉ RAMÌREZ-GAROFALO, AIXA TORRES, and MELISSA CARTY,

Petitioner-Respondents,

- against -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK; et al.,

Respondent-Respondents.

- and -

NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA, SOLOMON B. REEVES, ANGELA SISTO, and FAITH TOGBA,

Intervenor-Respondents.

PROPOSED BRIEF OF AMICI CURIAE THE NEW YORK CIVIL LIBERTIES UNION, THE NAACP LEGAL DEFENSE AND EDUCATION FUND, LATINOJUSTICE PRLDEF, AND THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

IN SUPPORT OF NO PARTY

(Counsel for Proposed Amici listed on next page)

Dated: February 4, 2026 New York, N.Y.

New York County Supreme Court Index No. 164002/2025

Perry M. Grossman
Molly K. Biklen
NEW YORK CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street,
19th Floor,
New York, N.Y. 10004
(212) 607-3300
pgrossman@nyclu.org
mbiklen@nyclu.org

Deuel Ross
NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.
700 14th St. NW, Suite 600, Washington, D.C. 20005
dross@naacpldf.org

John Cusick
Michael Pernick
Brittany Carter
Colin Burke
NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.
40 Rector Street, 5th Floor, New York, N.Y. 10006
(212) 965-2200
jcusick@naacpldf.org
bcarter@naacpldf.org
cburke@naacpldf.org

Leah Wong
Patrick Stegemoeller
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street, 12th Floor
New York, N.Y. 10013
lwong@aaldef.org
pstegemoeller@aaldef.org

Miranda Galindo
LATINOJUSTICE PRLDEF
4700 Millenia Blvd, Suite 500
Orlando, F.L. 32839
(321) 754-1935
mgalindo@latinojustice.org

Counsel for Proposed Amici Curiae

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INTEREST OF AMICI CURIAE

Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims on behalf of voters of color and developing voting rights policy. Amici and the communities that they serve have a significant interest in ensuring that the New York State Constitution provides effective protection against racial vote dilution. Amici include counsel who have litigated precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under New York State law (*New York Communities for Change v County of Nassau*, Index No. 602316/2024 [Sup Ct, Nassau County]). Amici submitted a brief earlier in this case, urging Supreme Court to adopt a standard that ensures that racial vote dilution claims protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for partisan purposes. Amici wish to assist this Court by providing a workable and constitutional standard for the dilution claim at issue here.

INTRODUCTION

Supreme Court identified the correct standard and elements for proving the State Constitutional racial vote dilution claim at issue. The State Constitution provides more expansive protection against racial vote dilution than federal law. Unlike federal law, the State Constitution protects against racial vote dilution even where minority voters must depend on non-minority "crossover" voters to elect the minority-preferred candidate. Thus, this Court should affirm the lower court's recognition that such "crossover" claims are cognizable under the State Constitution.

Supreme Court, however, ignored an essential prerequisite to proving vote dilution: evidence that there is an effective remedy for the alleged dilution. To satisfy this prerequisite, a plaintiff must present a lawful nondilutive remedy against which the challenged scheme can be measured against. This requirement serves three important salutary functions. First, it confirms that the challenged redistricting scheme—and not other factors—is the *cause* of the racial dilution. Second, it ensures that the alleged racial vote dilution is redressable with a remedy that is both adequate and appropriately tailored to state and federal laws. Third, Supreme Court itself correctly agreed with and quoted *Amici* in recognizing that this requirement

guarantees that "crossover claims [are not] easily . . . distorted for partisan maximization."[1]

In the context of a crossover claim, this requirement requires proof from a petitioner that it is possible to draw a reasonable crossover district that would enable the minority group to elect their candidates of choice. A proposed district that merely allows non-minority voters to dictate electoral outcomes at the expense of minority-preferred candidates in primary elections and general elections would not satisfy this standard.

But Supreme Court skipped this necessary step in its liability analysis. The court correctly considered evidence of racially polarized voting and other factors in its totality of the circumstances analysis (Slip Op. 7-12). But it failed to analyze whether petitioners' illustrative district would *increase* the ability of minority voters to elect their candidates of choice, as opposed to serving as a vehicle for partisan maximization.

While the court acknowledged that petitioners had submitted an illustrative remedial plan, it failed to evaluate whether that plan would be a reasonable or effective remedy under the applicable standard. Instead, the court moved directly to

[1] *Williams v. State Board of Elections*, Index No. 164002/2025, NYSEC Doc No. 217 at 14-15 [Sup Ct, New York County Jan. 21, 2026] ["Slip Op."].

ordering the Independent Redistricting Commission to propose a remedial plan (Slip Op. 15-16).

Before otherwise ruling on the merits of this case then, this Court should first require Supreme Court to conduct a complete analysis. Supreme Court should have the opportunity, in the first instance, to determine whether plaintiffs' illustrative plan includes an effective remedial crossover district that otherwise complies with state and federal laws.

As Supreme Court recognized, proper application of this illustrative-map requirement is necessary to prevent the abuse of "racial vote dilution claims . . . for the purpose of simply bolstering a political party's power and influence" (Slip Op. at 15). This is important because efforts to maximize partisan advantage in redistricting have at times resulted in racial vote dilution (*see e.g. Pope v County of Albany*, 94 F Supp 3d 302, 317-18, 348-49 [ND NY 2015] [finding that a Democratic-controlled legislature "packed" Black voters into a few districts to protect white Democratic incumbents]; *Coads v Nassau County*, 86 Misc 3d 627 [Sup Ct, Nassau County 2024] [denying summary judgment on claims that redistricting plan enacted by Republican-controlled legislature packed and cracked Black, Latino, and Asian voters in enacting a partisan gerrymander]).

Accordingly, while *Amici* agree that the Supreme Court identified the correct standard for addressing racial vote dilution claims under the New York State

Constitution, this case should be remanded to the Supreme Court for a proper evaluation of whether the petitioners' illustrative plan provides for an adequate remedial crossover district.

ARGUMENT

I. Supreme Court Correctly Recognized that the New York Constitution Protects, and in Some Circumstances Requires, Crossover Districts.

Supreme Court properly recognized that the New York Constitution offers more expansive protection against racial vote dilution than federal law. States have a special role in serving as "laborator[ies]" in vindicating the fundamental interest in maintaining an equitable, functional democratic process (*New State Ice Co. v Liebmann*, 285 US 262, 311 [1932] [Brandeis, J., dissenting]). And "it is characteristic of our federal system that States retain autonomy to establish their own governmental processes" (*Arizona State Legislature v Arizona Indep. Redistricting Comm'n*, 576 US 787, 816 [2015]). The State Constitution reflects New York's deeply held value of equitable and inclusive democracy through, among other provisions, the express protection for the right to vote (NY Const art II, § 1); the presumption against disfranchisement (*id.* art I, § 1); and a broader guarantee of equal protection under the law than the federal Constitution (*id.* art I, § 11). Consistent with these values and given the textual differences with federal voting laws, the court correctly ruled that the State Constitution permits petitioners to bring

"crossover" claims even though such claims are unavailable under the federal Voting Rights Act (Slip Op. 5-7, comparing text of NY Const art III, § 4[c][1] to 52 USC § 10301[b]).

This holding squares with federal precedent. In recognition of states' roles and independent interests in regulating democracy, states are allowed to draw crossover or influence districts even when a specific minority community could not comprise a majority in a given district (*see Bartlett v Strickland*, 556 US 1, 23 [2009] ["Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion."]).

Moreover, the U.S. Supreme Court has recognized that, while Section 2 of the federal Voting Rights Act does not require crossover districts, the statute's guarantee of equal electoral opportunity does not mandate that remedial districts must be majority-minority minority. The federal VRA says nothing about the form in which equal electoral opportunity must be provided (*see Abrams v Johnson*, 521 US 74, 93 [1997]; *cf. Voinovich v Quilter*, 507 US 146, 155 [1993] [noting Section 2 "says nothing about majority-minority districts"]). Accordingly, remedies short of majority-minority districts that secure the electoral opportunity that the federal law guarantees are permissible (*see e.g. Singleton v Allen*, No. 21-CV-1291, 2023 WL 6567895, at *16 [ND Ala Oct. 5, 2023] [adopting "opportunity" district that is "not majority Black"]; *Ala. State Conf. of NAACP v Allen*, No. 2:21-CV-1531-AMM,

2025 WL 3227673, at *5, *12 [ND Ala Nov. 17, 2025] [adopting 43.9% Black remedial district]; *Montes v City of Yakima*, No. 12-CV-3108, 2015 WL 11120964, at *9, 12 [ED Wash Feb. 17, 2015] [remedial district with a 46% Latino citizen population]; *see also Cooper v Harris*, 581 US 285, 305-306 [2017] [the federal VRA is satisfied with existing crossover district]; *Lawyer v Department of Justice*, 521 US 567, 573, 581-83 [1987] [court-approved settlement map including crossover district satisfied the federal law].)

Having correctly established that crossover claims are cognizable under the New York Constitution, Supreme Court then analyzed petitioners' claims in this case as a crossover claim. After considering evidence of racially polarized voting and the historical and ongoing discrimination faced by Black and Latino Staten Islanders, Supreme Court concluded that the evidence "provide[d] strong support for the claim that Black and Latino votes are being diluted in the current CD-11" (Slip Op. 13).

But in reaching that conclusion, the court failed to consider an element of the claim: It did not assess whether the petitioners had demonstrated that their illustrative remedial district would provide the electoral opportunity the challenged district allegedly denies. Although Supreme Court acknowledged that the petitioners had submitted an illustrative remedial plan, the court neglected to evaluate that plan as part of its liability analysis and instead proceeded to order a remedy (Slip Op. 15-16). Yet, as the following section explains, the existence of a reasonable alternative

district is an essential element of a vote dilution claim, without which petitioners were not entitled to a remedy. Supreme Court thus erred in finding liability without making a determination as to this essential element.

II. Supreme Court Erred in Not Requiring Petitioners to Demonstrate the Existence of a Reasonable Remedy Necessary to a Vote Dilution Claim.

Racial vote dilution claims require plaintiffs to show that an alternative to the challenged electoral scheme exists that would remedy the alleged dilution. "After all, 'the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured'" (*Clarke v Town of Newburgh*, 237 AD3d 14, 27 [2d Dept 2025], quoting *Reno v Bossier Parish School Bd.*, 520 US 471, 480 [1997]). Thus, to prevail on a claim of vote dilution, a plaintiff must prove not only racially polarized voting and a lack of minority electoral success, but must adduce "illustrative maps—that is, example districting maps that [New York] could enact" as the benchmark of an "undiluted" plan (*Allen v Milligan*, 599 US 1, 20 [2023]).

The reason this requirement of a reasonable alternative practice is intrinsic to the liability determination in a vote dilution case is simple: Unless some reasonable and legally permissible alternative electoral mechanism exists that would remedy the allegedly dilutive effect of the challenged practice, it cannot be said that "the protected class … has less ability to elect its preferred candidate or influence the

election's outcome than it would have if the [challenged] system had not been adopted." (*Clarke*, 237 AD3d at 27, citing *Pico Neighborhood Association v City of Santa Monica*, 15 Cal 5th 292, 314-15 [2023] ("*Pico*")).

Authority from state and federal courts supports the principle that proffering a reasonable alternative practice is part of a vote-dilution plaintiff's liability showing. The California Supreme Court recognized and endorsed the necessity of proving the existence of an effective remedy as an element of liability in racial vote dilution cases. In *Pico*, the California Court addressed whether a plaintiff must prove as an element of a racial vote dilution claim that their illustrative remedy would effectively address the dilution. The *Pico* Court concluded that proving "'dilution' requires not only a showing that racially polarized voting exists, but also that the protected class thereby has less ability to elect its preferred candidate or influence the election's outcome than it would have if the at-large system had not been adopted" (*Pico*, 15 Cal 5th at 314-15). To make that showing, a racial vote dilution plaintiff "must identify a reasonable alternative voting practice to the existing … electoral system that will serve as the benchmark 'undiluted' voting practice" (*id.* at 315 [citations and internal quotation marks omitted]). A legal standard that omitted this element of the vote dilution claim, the court explained, "would allow a party to prevail based solely on proof of racially polarized voting that could not be remedied or ameliorated by any other electoral system" *(id.)*.

Federal law under Section 2 of the Voting Rights Act similarly recognizes that the possibility of an effective remedy is an essential element of a vote dilution claim. In *Gingles,* the U.S. Supreme Court first required the plaintiffs in VRA litigation to demonstrate that "there exists a minority group that is sufficiently large and compact to constitute a single-member district" (*Thornburg v Gingles*, 478 US 30, 49 n16 [1986]). "If it is not" possible to draw a reasonable remedial district, then the challenged plan "cannot be responsible for minority voters' inability to elect its candidates" (*id.* at 50). More recently, in *Milligan*, the Court reaffirmed that plaintiffs must present a "reasonably configured" illustrative plan that "comports with traditional districting criteria, such as being contiguous and reasonably compact" (599 US at 18). It is enough that a plaintiff present "at least one illustrative map that comport[s] with [federal court] precedents" (*id.* at 33 [plurality]; *see also id.* at 43-44 & n2 [Kavanaugh, J., concurring]).

Finding these state and federal authorities persuasive, in *Clarke*, the Second Department construed a state statutory racial vote dilution protection to require plaintiffs 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.'" (237 AD3d at 39, quoting Election Law § 17-206 [5] [a]).

This Court should affirm Supreme Court's conclusion that vote-dilution claims, including a crossover or influence claims, are cognizable under the New

York Constitution. This Court should further hold that an prerequisite requirement for proving racial vote-dilution under the New York Constitution is evidence of "a reasonable alternative practice as a benchmark against which to measure the existing voting practice" (*Pico Neighborhood Assn*, 15 Cal 5th at 314-15). Here, the "reasonable alternative practice" would be a remedial crossover district where minority voters would be able to elect their candidate of choice; and *not* a plan where non-minority voters will continue to control and pick the winners in both primary and general elections (Slip. Op. 15-16).

But Supreme Court did not analyze whether petitioner's illustrative remedial plan satisfies this standard, and thus neglects to address whether this element of a racial vote dilution claim had been met here. This Court should remand for Supreme Court to make that determination in the first instance, applying the principles outlined below.

III. Supreme Court Must Assess whether Petitioners' Proposed Remedy Provides Greater Electoral Opportunity for Voters of Color and their Proposal Comports with the Federal and New York Constitutional Requirements.

When evaluating whether a plaintiff has met their obligation in supplying a reasonable illustrative remedy, courts must analyze whether (i) the proposed remedy both provides greater electoral opportunity for the protected class and (ii) comports with state and federal law, including constitutional requirements.

A. Supreme Court's Proposed Remedial Standard Provides the Appropriate Test for Assessing Electoral Opportunity in a Crossover Claim.

Supreme Court adopted a standard for assessing whether a remedial map addresses the identified vote dilution in a crossover case. Although the Supreme Court did not apply this standard in assessing liability, the opinion below offers an appropriate framework for analyzing the "reasonable alternative practice" element of a vote dilution claim in crossover cases.

Under Supreme Court's standard, a proposed crossover district would satisfy the "reasonable alternative practice" requirement if it meets three requirements. First, the protected class of minority voters (including a coalition of voters from two or more minority groups) must be able to select their candidates of choice in the primary election (Slip Op. 15). Second, the candidates preferred by the protected class must usually (but not always) be victorious in the general election (*id.)*. Third, the remedial district should also increase the influence of minority voters, such that they are "decisive in the selection of candidates" *(id.)*.

In elucidating this standard, Supreme Court ensured it contained appropriate guardrails. It explained that, under the second prong of its proposed standard, the requirement that minority candidates of choice "usually" win a general election is satisfied "to the extent minority-preferred candidates win more often than not." As Supreme Court noted, the standard is the mirror image of the requirement to show

that, under the challenged practice, minority-preferred candidates are "usually" defeated (Slip Op. 15, citing *Gingles*, 478 US at 56). It also comports with federal law under Section 2 of the VRA (*cf. Abrams v Johnson*, 521 US 74, 94 [1997] [noting that a majority-Black district should be maintained when reducing the BVAP resulted in Black-preferred candidates winning less than half of elections]; *Abbott v Perez*, 585 US 579, 617 [2018] [finding that plaintiffs' alternative map "would not enhance the ability of minority voters to elect the candidates of their choice" when the minority-preferred candidate won "7 out of the 35 relevant elections"]).

Supreme Court also emphasized that its standard should be applied to prevent racial vote dilution claims from being leveraged solely for partisan electoral gain—that to ensure "crossover districts cannot be used to achieve vote dilution in favor of a different political party" (Slip Op. 15). One potential way to satisfy this "gatekeeping condition" would be to require Petitioners to "show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election" (*League of United Latin Am. Citizens v Perry*, 548 US 399, 485-86 [2006] ["*LULAC*"] [Breyer, J., dissenting in part] [proposing standards for adjudicating a crossover claim]). Alternatively, Petitioners could show that the minority-preferred candidate can win both contested primary and general elections in the illustrative district (*cf. id.* at 444 [rejecting a crossover claim where the plaintiffs could not show

that a white Democrat was the Black-preferred candidate in both primary and general elections]).

In the absence of such evidence, crossover claims can easily be distorted for partisan maximization. For example, without this requirement, a plaintiff could argue for the creation of purported crossover districts in which white bloc voting by the putative "crossover" voters usually defeats minority-preferred candidates in primary elections, but minority voters support the white-preferred candidates in general elections (*cf. e.g.*, *Gingles*, 478 US at 59; *Pope*, 94 F Supp 3d at 336-37). Justice Souter recognized this problem in his dissent in *Georgia v Ashcroft* (539 US 461, 508 [2003]). There, Georgia Democrats had created "influence" districts by breaking up opportunity-to-elect districts (*id.* at 470). Justice Souter noted that, although this approach might maximize partisan advantage for Democrats, it would do so at the expense of minority voters' ability to elect their preferred candidates: "if the proportion of [white] Democrats is high enough, the minority group may well have no impact whatever on which Democratic candidate is selected to run and ultimately elected" (*id.* at 508 [Souter, J., dissenting]).

Supreme Court likewise emphasized that its standard would not be satisfied by a district "in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority candidates of choice regardless of whether those minority were drawn into a new district or not" (*id.*; *see also e.g.*,

Georgia v Ashcroft, 539 US 461, 508 [2003, Souter, J., dissenting] [opportunity districts should not be dismantled to create influence districts in which the protected class "hav[ing] no impact whatever on which Democratic candidate is selected to run and ultimately elected"]).

And Amici suggest a further clarification of the Supreme Court's standard to avoid partisan manipulation: In analyzing whether proposed crossover districts provide greater electoral efficacy to the protected class, courts must assess more of the map than only the challenged district. An alternative plan that increases minority opportunity in a new crossover district while reducing opportunity elsewhere in the plan does not show that the challenged district is dilutive (*cf. LULAC*, 548 US at 429-30 [2006] [Section 2 plaintiff must show that it is possible to draw more than the existing number of opportunity districts]). A myopic focus only on the challenged district could permit district lines to be manipulated to create a new crossover district while dismantling an existing opportunity district for partisan gain (*cf. Ashcroft*, 539 US at 496-97 [Souter, J., dissenting]).

B. The Proposed Crossover District Must Comport with Federal and State Constitutional Requirements in that Race Did Not Predominate in its Creation.

Supreme Court recognized that alternative electoral processes proposed to remedy vote dilution must comport with the requirements of the New York State Constitution (Slip Op. 12, 13 [noting that remedial congressional districts must not

divide counties that do not exceed the ideal size of a district]). To satisfy the element of a vote dilution claim requiring a reasonable non-dilutive alternative, a proposed crossover district must also comport with the U.S. Constitution, including the "one-person, one-vote" principle and the Equal Protection Clause. The U.S. Supreme Court has suggested that race must not be the predominant consideration in the creation of illustrative plans offered to satisfy the first *Gingles* precondition. (*Milligan*, 599 US at 30-32 [plurality]). The mere fact that a plaintiff seeks to establish racial vote dilution by offering an illustrative district does not demonstrate racial predominance or undermine the validity of the claim or the eventual remedy (*Clarke*, 237 AD3d at 33-38). In *Milligan*, the U.S. Supreme Court explained that "[t]he very reason a plaintiff adduces a map at the first step of Gingles is precisely *because of* its racial composition—that is, because it creates an additional majority-minority district that does not then exist" (499 US at 34 n7). The mere fact that an illustrative district is drawn with a racial target in mind does not alone subject a district to strict scrutiny (*see id.* at 30-31; *see also North Carolina v Covington*, 585 US 969, 977-78 [2018]; *Bethune-Hill v Va. State Bd. of Elections*, 580 US 178, 192 [2017]).

In the redistricting context, federal courts review race-conscious decision-making differently than in other state action contexts (*Shaw v Reno*, 509 US 630, 645 [1993]). Creating a district that provides greater minority electoral opportunity

is not inherently suspect nor does it per se mean that race predominated. Thus, proposing an effective remedy as an element of a vote-dilution claim does not automatically trigger strict scrutiny (*Milligan*, 599 US at 34 n7; *Miller v Johnson*, 515 US 900, 915-916 [1995]). This doctrinal distinction reflects the U.S. Supreme Court's recognition that map drawers will almost always be aware of racial demographics during the map-drawing process (*Miller*, 515 US at 915-916), as well as the fact that map drawers may need to consider race to a limited degree to comply with federal law and protection of equal rights, (*Milligan*, 599 US at 30 [plurality]).

Moreover, while some consideration of race is constitutionally permissible, remedying racial vote-dilution may be accomplished through entirely race-neutral means that do not require classifying voters by race or assigning them to districts on that basis. Plaintiffs may offer proposed non-dilutive alternative maps drawn based solely on traditional districting principles. New York's redistricting criteria generally align with those that federal courts have identified as "traditional districting criteria" (*Milligan*, 599 US at 20 [referring to compactness, contiguity, and respect for existing political subdivisions]). New York's notable additions are prohibitions on partisan gerrymandering, incumbency protection, or anything that discourages competition (see NY Const art III, § 4[c][5]). Remedial crossover districts drawn based solely on these non-racial traditional districting principles and without consulting racial data could satisfy the vote-dilution claim's requirement of

a reasonable, non-dilutive alternative in an entirely race-neutral manner (*cf.*, *Milligan v Allen*, No. 2:21-CV-01530, 2025 WL 2451593, at *4 [ND Ala Aug. 7, 2025] [noting that a remedy under the federal VRA was "drawn race-blind" based on communities of interest and socioeconomic data]); (*NAACP*, 2025 WL 3227673, at *1 [adopting remedial plan drawn without viewing race data]).

Because Supreme Court did not evaluate whether petitioners' proposed remedial plan either provided greater electoral opportunity or comported with constitutional principles, this Court should remand for application of the correct legal standard. Amici take no position on whether petitioners' illustrative map would satisfy these standards.

CONCLUSION

At the heart of racial vote dilution claims are the experiences of how a lack of electoral opportunity and representation affects the everyday lives of the community, not partisan politics. Indeed, efforts to maximize partisan advantage in redistricting have at times actually led to racial vote dilution.

To ensure that does not happen here, this Court should affirm the Supreme Court's recognition of vote dilution claims, including crossover claims, under the state constitution, but remand for consideration of whether petitioners have satisfied their burden of demonstrating that a reasonable and effective remedy exists for the

unequal electoral opportunity the Supreme Court found in its totality of the circumstances analysis.[2]

Dated: New York, New York
February 4, 2026

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

Perry M. Grossman
Molly K. Biklen
125 Broad Street
New York, NY 10004
(212) 607-3300
pgrossman@nyclu.org
mbiklen@nyclu.org

NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.
John Cusick
Michael Pernick
Brittany Carter
Colin Burke
40 Rector Street, 5th Floor
New York, NY 1006
(212) 965-2200
jcusick@naacpldf.org
bcarter@naacpldf.org
cburke@naacpldf.org

Deuel Ross
700 14th St. NW, Suite 600
Washington, DC 20005
dross@naacpldf.org

Miranda Galindo
LATINOJUSTICE PRLDEF
4700 Millenia Boulevard, Suite 500 Orlando, FL 32839-6019
(321) 754-1935
mgalindo@latinojustice.org

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
Leah Wong
Patrick Stegemoeller

[2] The New York Civil Liberties Union hereby discloses that it is a non-profit 501[c][4] organization and is the New York State affiliate of the American Civil Liberties Union. The NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and LatinoJustice PRLDEF disclose that each is a non-profit 501[c][3] organization. No other person or entity has contributed to the preparation or submission of this brief. Additionally, no party or party's counsel contributed money that was intended to fund preparation or submission of this brief.

99 Hudson Street, 12th Floor
New York, NY 10013
(212) 966-5932
lwong@aaldef.org
pstegemoeller@aaldef.org

Counsel for Proposed Amici Curiae

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NEW YORK STATE SUPREME COURT
APPELLATE DIVISION – FIRST DEPARTMENT

Michael Williams, et al.

Petitioners,

-against-

AFFIRMATION OF KRISTEN ZEBROWSKI STAVISKY

Board of Elections of the State of New York, et al

App. Div #: **26-00384**

NY County Index No.: 164002/2025

Respondents,

-and-

Representative Nicole Malliotakis, et al

Intervenor-Respondents.

I, **KRISTEN ZEBROWSKI STAVISKY**, affirm this 4th day of February, 2026, under penalties of perjury under the laws of the State of New York, which may include a fine or imprisonment, that the following is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Capacity of Affiant

1. I am a respondent in this matter. I am over the age of 18 and have personal knowledge of all the facts stated herein, except those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth herein.

2. I am the Co-Executive Director of the New York State Board of Elections, having served in that capacity since 2021. In that role, I am directly involved in the application and implementation of state and federal laws relating to elections. I previously served as Commissioner of Elections at the Rockland County, New York, Board of Elections for nine years. Accordingly, I am intimately familiar with ballot access, redistricting and board of elections operations in New York.

Purpose of Affidavit

3. I make this affidavit in opposition to the instant motions for a stay of proceedings in this matter pending appeal. While an expeditious review of this matter is very important to the orderly unfolding of the mechanics of New York's ballot access regimen, a stay at this time would not be helpful.

No Material Disruption to Petitioning Process If District Lines Are Known By February 24, 2026 – First Day for Designating Petitioning

4. Any change in electoral maps on the eve of an election based on those maps is not ideal because there are a number of steps involved in the administration of the election that are disrupted by map changes. But it is not the case, as certain respondents assert, that New York cannot conduct an orderly ballot access process under the current calendar unless all change to the boundaries to

Congressional District 11 are known by February 6, 2026. In fact, changes to district boundaries frequently require modification of the designation time frames, and courts and the legislature have prioritized lawful districts over all other considerations.

5. New York has a long history of new district lines not being known until immediately before or quite close to the beginning of petitioning. A review of that recent history is illustrative:

(a) **2022 Congressional Districts**. In 2022, the Court of Appeals cancelled the June Primary election for Congress and State Senate by order issued in ***Harkenrider v. Hochul*** (NY Slip Op 02833) on April 27, 2022. Two days later on April 29, 2022, the trial court ordered the *de novo* redrawing of all 26 congressional district maps and all 63 state senate district maps by a Special Master, to be finalized by May 20, 2022. By subsequent order dated May 11, 2022, the court further ordered a bipartisan recommendation of the New York State Board of Elections that set the new truncated petitioning period (in addition to other methods of ballot access) to commence on May 21, 2022, "***1 day after the district lines are finalized and published***." *Harkenrider v Hochul*, Steuben County, E2022-0116CV, Doc. # 524). When concerns at that time were raised about how petitioning could unfold before boards of elections had amended their voter registration lists to reflect the changes, the bipartisan advice was very simple:

use voter lists sorted by street address and follow the maps as to where to petition, until such time as updated district data is reflected in the voter files. This type of *ad hoc* management is less than ideal, but doable, and indeed, has been done, repeatedly.

(b) **2012 Congressional Districts**. In 2012, a three judge panel of the United States District Court set New York's congressional district map by order dated March 19, 2012 – a day before the scheduled March 20, 2012 start of petitioning. ***Favors v. Cuomo, No. 11-CV-5632, 2012 WL 928223 (E.D.N.Y. Mar. 19, 2012).*** The 2012 Federal Political Calendar is here https://elections.ny.gov/system/files/documents/2023/10/2012-federal-political-calendar.pdf

(c) **2002 Congressional Districts.** New York adopted congressional districts as Chapter 86 of the Laws of 2002 on June 5, 2002. Designating petitioning would have begun on June 4, 2002, but the legislature moved the petitioning period by virtue of Chapter 56 of the Laws of 2002, so that it began on June 18, 2022, two weeks after the scheduled start and thirteen days after the lines were adopted. When the adoption of district lines was delayed, the legislature moved the petitioning period as needed. They did not give up having lawful lines.

(d) **1992 Congressional Districts.** In 1992, congressional districts were finally set on June 12, 1992. The new map was subject to preclearance and

therefore became effective on July 2, 1992. A federal court had adopted another Special Master-created contingency plan that was to go into effect tentatively if New York's legislatively adopted lines were not precleared by July 8 of that year. That order was vacated when the legislatively approved districts went into effect on time. However, petitioning was delayed from its normal statutory start date of June 9, 1992 to instead commence on July 9, 1992. These facts are recited in *Puerto Rican Legal Defense and Education Fund v Gantt*, 796 F. Supp. 698 (EDNY 1992).

6. The bottom line is that redistricting is often disruptive to the designating process calendar. In response to redistricting exigencies, New York has done various things historically including making tight petitioning turnarounds work, providing legislative adjustments to the calendar, or court-ordered adjustments. Some of these have been significant like the aforementioned political calendar order in ***Harkenrider***.

7. The best way to ensure an orderly designation process is a quick disposition of the instant matter on the merits. A stay preventing the lower court's remedy from being advanced (i.e. drawing the new lines that would conform to the lower court order) is not helpful to that end. A stay in this matter literally ensures delay should the lower court remedy be upheld on appeal.

8. It is also my considered opinion that the lower court order need not stay all congressional designating activities across the state. The map that the court enjoined from use ***singularly*** was that of the 11th Congressional District. To the extent this matter requires clarification or further remedial definition, motion practice is readily available.

9. Moreover, the trial court has articulated a strong intention to move this matter so that the creation of new lines will occur quickly, hopefully before petitioning begins on February 24, 2026. The court provided the redistricting commission process deference until February 6, 2026 to produce initial new lines. It is not reasonable to expect that if they do not do so the trial court will simply do nothing. For example, indeed, as the ***Puerto Rican Legal Defense*** case demonstrates, courts can adopt a backstop plan to spring into existence should preferred legislative avenues fail to render Constitutionally-sound district lines.

10. It is preferable that this litigation result in final lines prior to February 24, 2026, because if new lines are adopted by then, the current political calendar can function as intended on the trajectory adopted by the legislature. History tells us that even if the litigation stretches well beyond that date, courts can and have fashioned more aggressive remedies that cause greater challenges to implement but which are nonetheless very much possible.

11. Respectfully, no stay should be issued in this matter.

Executed on February 4, 2026, at Albany, New York

KRISTEN ZEBROWSKI STAVISKY

Supreme Court of the State of New York
Appellate Division – First Department

No. 2026-00384

MICHAEL WILLIAMS, et al.,

Petitioners-Respondents,

v.

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, et al.,

Respondents-Respondents,

PETER S. KOSINSKI, et al.,

Respondents-Appellants,

NICOLE MALLIOTAKIS, et al.,

Intervenors-Appellants.

MEMORANDUM OF LAW FOR RESPONDENTS HOCHUL, HEASTIE, STEWART-COUSINS & JAMES IN RESPONSE TO APPELLANTS' MOTIONS FOR A STAY

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondents Hochul,
Heastie, Stewart-Cousins & James
28 Liberty Street
New York, New York 10005
(212) 416-8656
andrea.trento@ag.ny.gov

BARBARA D. UNDERWOOD
Solicitor General
JUDITH N. VALE
Deputy Solicitor General
ANDREA W. TRENTO
Assistant Solicitor General
of Counsel

Dated: February 4, 2026

Supreme Court, New York County – Index No. 164002/2025

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PRELIMINARY STATEMENT

In this proceeding, Supreme Court, New York County (Pearlman, J.) issued a decision and order declaring that New York's Eleventh Congressional District (CD11) unconstitutionally dilutes the votes of Black and Latino voters in violation of Article III, § 4(c)(1) of the New York Constitution. The court enjoined respondents from conducting any election under or giving effect to the boundaries of the existing congressional map. The court also ordered a nonparty, the Independent Redistricting Commission (IRC), by February 6, 2006, to convene and to complete a new congressional map that remedies the constitutional violation that the court found. *See* Decision & Order at 18 (Jan. 21, 2026).[1]

Appellants are two sets of respondents below—Republican members and officials at the State Board of Elections (the "Republican SBOE Respondents"), and several individuals—including the district's current congressional representative and several voters—who intervened

[1] The Decision and Order is attached as Exhibit A to Affirmation of Bennet J. Moskowitz in Support of Motion for Stay, Interim Stay, & Leave to Appeal (Jan. 27, 2026), NYSCEF No. 11 ("Moskowitz Affirm.")). Unless otherwise indicated, NYSCEF docket numbers refer to filings in this Court.

as respondents below ("Intervenor Respondents").[2] Appellants have moved this Court for a stay of Supreme Court's order pending their appeals, and have also sought leave to appeal to the Court of Appeals from this Court.[3]

This Office represents the State Respondents—Governor Kathy Hochul, Senate Majority Leader and President Pro Tempore Andrea Stewart-Cousins, Assembly Speaker Carl E. Heastie, and Attorney General Letitia James—in this proceeding. The State Respondents take no position on the appellants' ultimate request for a stay of Supreme Court's order pending appeal, or from the appellants' request for leave to appeal to the Court of Appeals. Instead, the State Respondents submit this response to set forth their position on certain issues that may bear

[2] The Republican SBOE Respondents are Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III. The Intervenor Respondents are Congresswoman Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba.

[3] Appellants also filed notices of appeal directly to the Court of Appeals pursuant to C.P.L.R. 5601(b)(2), but those notices were all returned for correction (Sup. Ct. NYSCEF Nos. 228, 230, 232, 238, 241, 244) and have sought stays pending appeal in that venue. See *infra* at 10-11.

on the Court's consideration of appellants' motions and the scope of any stay, if the Court were to issue one.

First, if the Court issues a stay pending appeal (an issue on which State Respondents take no position any such stay should be crafted to allow the IRC to take necessary preparatory steps to move forward during the pendency of the appeal, given the potential need for contingency planning, and prompt action to implement redrawn district lines, should the order on appeal be affirmed. Second, the court below correctly determined that the New York Voting Rights Act is not relevant to interpreting the vote-dilution provisions of § 4(c)(1). Third, Supreme Court also correctly concluded that § 4(c)(1)'s vote-dilution provisions are not limited to providing the same protections provided by the federal Voting Rights Act. Fourth, the Equal Protection Clause of the Federal Constitution does not preclude the remedy ordered by the court below. Finally, it is doubtful that this Court has the authority to grant leave to appeal directly from an order of the Supreme Court under the circumstances presented here. State Respondents take no position on other issues not addressed herein, or on whether petitioners are ultimately likely to succeed on the merits of their claims.

BACKGROUND

On October 24, 2025, Petitioners[4] commenced this proceeding alleging that the current congressional map, which was enacted into law in 2024, unconstitutionally dilutes the votes of Black and Latino voters in CD11 in violation of Article III, Section 4(c)(1) of the New York Constitution. Pet. at 2, 14-18 (Oct. 24, 2025) (Moskowitz Affirm., Ex. G)). *See generally* State Law § 111 (statutory codification of congressional map challenged here).

That state constitutional provision states that "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements," certain "principles shall be used in the creation of state senate and state assembly districts and congressional districts." N.Y. Const. art. III, § 4(c). One of the listed principles is: "[w]hen drawing district lines, the [IRC] shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the

[4] Petitioners are four individual voters, Michael Williams, Jose Ramirez-Garofalo, Aixa Torres, and Melissa Carty.

purpose of, nor shall they result in, the denial or abridgement of such rights." *Id.* § 4(c)(1). The constitutional provision then states that: "[d]istricts 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." *Id.*

Petitioners argued that § 4(c)(1)'s constitutional provisions—which were part of constitutional amendments adopted in 2014—should be read to effectively incorporate the New York Voting Rights Act's (NYVRA) separate and distinct vote-dilution provisions. *See* Pet. at 3, 13-14; Mem. of Law in Support of Pet. at 14-19 (Nov. 19, 2025), Sup. Ct. NYSCEF No. 63; *see also* 2012 N.Y. Senate/Assembly Concurrent Resolution No. S. 6698/A. 9526 (Mar. 15, 2012) (amending Constitution article III). The petitioners made this argument even though the NYVRA was enacted in 2022, approximately eight years after § 4(c)(1)'s enactment, and does not apply to congressional or state legislative districts. See *infra* at 15-16.

As relief, the petitioners sought, inter alia, declaratory relief stating that CD11 unconstitutionally dilutes the votes of Black and Latino voters in violation of § 4(c)(1); injunctive relief enjoining respondents from

conducting any election or otherwise enforcing or giving effect to any of the boundaries under the current congressional map; and an order compelling the Legislature to adopt a congressional map in which CD11 extends from Staten Island into lower Manhattan (instead of into southern Brooklyn, as it does currently) to create a "minority influence district in which Black and Latino voters on Staten Island could combine with diverse communities of interest in lower Manhattan to elect their candidate of choice." Pet. at 5; *see id.* at 27-28; Decision & Order at 2.

Supreme Court presided over a four-day trial in early January 2026, at which both the petitioners and the participating respondents—the Intervenor Respondents and the Republican SBOE Respondents—presented evidence and arguments as to their claims and defenses, respectively. State Respondents took no position on the merits of petitioners' claims. State Respondents provided their views with respect to various legal principles at issue in the case in a pretrial letter response to the petition. *See* Letter from S. Farber to Hon. J.H. Pearlman (Dec. 8, 2025) (Moskowitz Affirm., Ex. J).[5]

[5] The Democratic members and officers of the SBOE (the "Democratic SBOE Respondents"), who were also named as respondents

On January 21, 2026, Supreme Court issued a decision and order concluding that CD11 unconstitutionally dilutes the votes of Black and Latino voters in violation of § 4(c)(1). The court rejected petitioners' argument that the NYVRA's vote-dilution standards should be effectively incorporated into § 4(c)(1)'s constitutional provisions. Decision & Order at 5. The court explained that the NYVRA was enacted years *after* the constitutional amendments that adopted § 4(c)(1), and that neither § 4(c)(1)'s text or legislative history suggested that its scope should be interpreted based on subsequently enacted state statutes. *Id.*

Supreme Court then ruled that § 4(c)(1) nevertheless provides for a vote-dilution claim, like petitioners' claim here, that alleges that district lines improperly reduce the influence of voters who are members of protected racial groups—where members of those groups are not alleged to make up the majority of a differently drawn district. *See id.* at 7. In so ruling, Supreme Court reasoned that § 4(c)(1) should be interpreted to

in the petition, filed a separate pretrial letter joining in the State Respondents' letter. *See* Letter from B. Quail to Hon. J.H. Pearlman (Dec. 8, 2025), Sup. Ct. NYSCEF No. 98. The Democratic SBOE Respondents were not (and are not) represented by this Office in this proceeding. Neither the State Respondents nor the Democratic SBOE Respondents participated at trial.

provide greater protection against vote dilution than the federal VRA. *Id.* at 5-6.

The court further reasoned that such a vote-dilution claim exists under § 4(c)(1) where, based on the totality of the circumstances, racial or language minority groups have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice. *Id.* at 5 (quoting § 4(c)(1)). The court stated that, in assessing the totality of circumstances, it looked to the nonexhaustive totality-of-the-circumstances factors considered in evaluating federal VRA claims—which the court considered relevant though not binding. *Id.* at 7-8. The court found various of these factors to be present here. *Id.* at 8-12.

The court further stated that, to determine whether "redrawing of the congressional lines is a proper remedy," petitioners "must first show that minority voters make up a sufficient portion of the district's population." *Id.* at 13. The court concluded that this standard could be satisfied under § 4(c)(1) where minority voters do not constitute a majority of the voters in the district but do "comprise a sufficiently large portion of the

population of the district's voting population that they would be able to influence electoral outcomes." *Id.* at 13.

The court then stated that this standard could be satisfied where: (i) "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election"; (ii) "these candidates must usually be victorious in the general election"; and (iii) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates." *Id.* at 15. The court found these standards satisfied here, concluding that the totality of the circumstances indicated that the district lines as currently drawn resulted in the dilution of Black and Latino voters' votes, *see id.* at 12-13, and suggesting that petitioners' proposed remedial map was one that satisfied the standard it had articulated, *see id.* at 15.

Although Supreme Court concluded that redrawing CD11 was a proper remedy, it rejected petitioners' request to order the Legislature to adopt petitioners' proposed remedial map. *Id.* at 15-17. Instead, based on the approach taken by this Court in *Matter of Hoffman v. New York State Independent Redistricting Commission*, 41 N.Y.3d 341 (2023), Supreme