No. A25-

IN THE

Supreme Court of the United States

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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 II OF X (PAGES 401a - 800a)

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Court directed the IRC to reconvene and to redraw the boundaries of CD11 "so that it comports with the standard" described in the court's decision. Decision & Order at 17. The court further directed the IRC to complete this court-ordered task by February 6, 2026.[6] The court also enjoined all respondents from conducting any election under the existing map. *Id.* at 18. The court further ordered that the case would "not be deemed resolved until the successful implementation of a new Congressional Map complying with this order." *Id.* at 18.

The Intervenor Respondents and Republican SBOE appealed to this Court and sought an interim stay by an application for interim relief and a stay of Supreme Court's order pending their appeals, as well as leave to appeal to the Court of Appeals. *See* Intervenor Resp'ts' Mem. of Law in Supp. of Emergency Mot. for Interim Stay, Stay & Leave to

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[6] The February 6 deadline was selected based on the Republican SBOE Respondents' representations regarding the election calendar. Decision & Order at 17. The IRC and its members were not named as respondents in the petition and were not parties to the proceeding at the time of Supreme Court's ruling below. After Supreme Court issued the decision below, petitioners filed a motion seeking to join the IRC and its members as parties by order to show cause pursuant to C.P.L.R. 1001(a). *See* Order to Show Cause (Proposed) (Jan. 26, 2026), Sup. Ct. NYSCEF No. 226. As of the date of the filing of this response, Supreme Court had not acted on the proposed Order to Show Cause.

Appeal (Jan. 28, 2026), NYSCEF No. 11 ("Intervenor-Resp'ts' Mem.");

Appellants' Mem. of Law in Supp. of Mot. for Discretionary Stay (Jan. 28,

2026), NYSCEF No. 13 ("Republican SBOE Resp'ts' Mem."). They each

also appealed directly to the Court of Appeals as a matter of right, and

filed similar motions for a stay and emergency interim relief in that

venue. *See* Letter from B. Moskowitz to Hon. S. Rojas (Jan. 30, 2026),

NYSCEF No. 15 ("Moskowitz Letter")).

On January 29, 2026, Judge Cannataro denied appellants' request

for emergency interim relief in the Court of Appeals and ordered the

nonmoving parties to file responses to the motions. *See* Order, APL-2026-

00010 (N.Y. Jan. 29, 2026) (Moskowitz Letter, Ex. A). The Court of

Appeals also informed the parties that it was considering whether it has

jurisdiction over the direct appeals, and provided the parties with an

opportunity to address three questions relating to its jurisdiction. *See*

Letter from Hon. H. Davis to B. Moskowitz, et al. (Jan. 29, 2026)

(Moskowitz Letter, Ex. A).

On January 30, 2026, this Court referred appellants' motions to a

full panel without addressing their requests for emergency interim relief.

See Order (Jan. 30, 2026), NYSCEF No. 17; Order (Jan. 30, 2026), NYSCEF No. 18.

ARGUMENT

I. **ANY STAY ENTERED BY THE COURT SHOULD NOT PRECLUDE THE INDEPENDENT REDISTRICTING COMMISSION FROM TAKING PREPARATORY STEPS TO COMPLY WITH THE ORDER ON APPEAL.**

State Respondents take no position on whether the Court should grant appellants' requested stay of Supreme Court's order pending appeal. However, if the Court were to enter a stay, State Respondents respectfully suggest that any such stay should be crafted so as not to preclude the IRC from engaging in preparatory steps to comply with the order on appeal.

There is no question that the relief requested by the petitioners presents challenges with regard to the upcoming 2026 election calendar. *See* Decision & Order at 16; Intervenor-Resp'ts' Mem. at 49-50; Republican SBOE Resp'ts' Mem. at 29-32. If the Court issues a stay, then ensuring that any such stay does not preclude the IRC from taking preparatory steps to comply with the order below would help mitigate those challenges. Specifically, if the order below is ultimately affirmed on appeal, state officials and entities that need to implement the order would be able to more promptly and efficiently do so if the IRC has, during the pendency of

the appeals, been able to take any preparatory steps that may be needed before any remedial map can be adopted.[7] And putting state officials and entities in the best position possible to promptly implement a remedial map in time for the 2026 election, if the order below is affirmed, will reduce delay and confusion—to the benefit of voters, candidates, and the public interest.

Such preparatory steps are not precluded by any automatic stay that might have been triggered under C.P.L.R. 5519(a)(1) by the Republican SBOE respondents' appeal. *Contra* Intervenor-Resp'ts' Mem. at 49-50; Republican SBOE Resp'ts' Mem. at 15-16. In relevant part, that automatic stay provision "stays all proceedings to enforce the judgment or order appealed from," where the appellant is "any officer or agency of the state or of any political subdivision of the state." C.P.L.R. 5519(a)(1). Here, even assuming the automatic stay is triggered by the Republican SBOE Respondents' appeal, such a stay would apply to "proceedings to *enforce*

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[7] By way of examples, such steps might include (but would not be limited to) developing a timeline and schedule, planning for public hearings (if any), retaining consultants and counsel, and developing draft remedial maps. State Respondents do not take any position on which of these potential preparatory steps might be required.

the judgment or order appealed from." *Id.* (emphasis added). It would "not prohibit the IRC or its members from taking any actions," *Matter of Hoffman v. New York State Indep. Redistricting Commn.*, 40 N.Y.3d 968, 968 (2023), including preparatory steps that may be needed for any remedial map to be implemented if the order appealed from is affirmed.

Nor would allowing such preparatory steps (if the Court grants a stay) prejudice or harm the movants. They would still get effective relief because respondents would not be enjoined from proceeding with the 2026 election under the existing map during the pendency of the appeals.

II. SUPREME COURT CORRECTLY RULED ON SEVERAL LEGAL PRINCIPLES AT ISSUE HERE.

In State Respondents' view, Supreme Court's decision is correct as to several legal principles at issue here. *See generally DeLury v. City of New York*, 48 A.D.2d 405, 405 (1st Dep't 1975) ("A reasonable probability of ultimate success, as well as the prospect of irreparable harm, is sine qua non for injunction pending trial."). State Respondents do not take any position on the correctness of Supreme Court's decision as to other principles or conclusions not addressed herein. Nor do State Respondents

take a position on whether petitioners are ultimately likely on appeal to succeed on the merits of their claims.

A. The New York Voting Rights Act Is Irrelevant Here.

Supreme Court correctly determined that, contrary to petitioners' arguments, the NYVRA's vote-dilution provisions are not relevant to interpreting § 4(c)(1)'s constitutional vote-dilution provisions. As Supreme Court explained, the constitutional amendments that created § 4(c)(1)'s vote-dilution provisions were adopted in 2014, approximately eight years before the NYVRA's enactment in 2022. *See* Decision & Order at 5. See *supra* at 7. And neither the text nor the legislative history of § 4(c)(1) suggests that it was intended to be interpreted as incorporating standards from subsequently enacted state statutory provisions. *See* Decision & Order at 5.

Moreover, § 4(c)(1)'s vote-dilution provisions apply to the State's apportionment of congressional, state assembly, and state senate districts. *See* N.Y. Const., art. III, § 4(b). By contrast, the NYVRA's vote-dilution provisions apply only to "boards of elections" and "political subdivisions" of the State, *see* Election Law §§ 17-204(4), 17-206, and not to the State itself. Accordingly, the State's apportionments of congressional, state

assembly, and state senate districts are outside the scope of the NYVRA. *See Town of Greenburgh v. State of N.Y.*, Index No. 76400/2024, slip op. at 13-15 (Sup. Ct. Westchester County July 25, 2025); 13 N.Y.C.R.R. § 501.3(e). The NYVRA is thus irrelevant to petitioners' challenge here, which concerns solely a congressional district.

B.   The New York Constitution Provides Greater Protections Against Vote Dilution Than the Federal Voting Rights Act.

Supreme Court correctly determined that § 4(c)(1)'s vote-dilution provisions are not limited to the federal statutory vote-dilution protections provided under the federal VRA.

Section 4(c)(1) provides 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." N.Y. Const. art. III, § 4(c)(1). State Respondents do not take a position as to the particular standard under which a given petitioner can establish a claim of vote dilution under this state constitutional provision.

But Supreme Court correctly determined that § 4(c)(1) was intended to provide broader rights for affected groups of voters to bring challenges

with respect to voting rights than those provided under federal law. When New York amended its constitution in 2014, including adoption of § 4(c)(1), it did so to stand apart from federal protections and to "guarantee[] the application of substantive criteria that protect minority voting rights." *See* Assembly Mem. in Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S. 2107/A. 2086; *cf.* Election Law § 17-200 ("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"). Thus, § 4(c)(1) may require the adoption of districts to provide racial or language minority groups greater influence over elections under certain circumstances where the federal VRA does not provide such protections.

The contrary interpretation advanced by Intervenor Respondents (*see* Mem. at 28-34) is incorrect. Among other things, it ignores textual distinctions between § 4(c)(1) and the federal VRA that point to the availability of broader relief under § 4(c)(1). *See People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 302 (1986) ("If 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."). For example, § 4(c)(1)

protects "racial or minority language *groups*" from having less opportunity "to elect representatives of *their* choice," N.Y. Const. art. III, § 4(c)(1), whereas the federal VRA refers only to the protection of "a class of citizens" and "its members," 52 U.S.C. § 10301(b). Some federal courts have determined that the federal VRA's reference to a single class suggests that it does not require crossover districts.[8] *See Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc). Section 4(c)(1)'s use of plural language undermines any claim that it should be construed to precisely mirror federal standards.

Moreover, it is well established that States are free to adopt greater voting rights protections than provided by federal law. *See, e.g., Shelby County v. Holder*, 570 U.S. 529, 543 (2013) ("States have broad powers to determine the conditions under which the right of suffrage may be exercised." (quotation marks omitted)). And though the Supreme Court made clear in *Bartlett v. Strickland* that the VRA should not be interpreted to require "crossover" or influence districts, the plurality opinion in that case

[8] There is a split of authority about whether the federal VRA permits aggregation of minority groups. *See Pope v. County of Albany*, 687 F.3d 565, 572 n.5 (2d Cir. 2012) (noting split among the circuits).

explained that the Court's ruling did not control whether States could independently decide to draw "crossover" or influence districts. *See* 556 U.S. 1, 23 (2009) (plurality opinion).

Ultimately, State Respondents take no position as to whether, under the specific circumstances here, petitioners are likely to succeed on their vote-dilution claim. But upon a sufficient record, courts may find grounds to do so under § 4(c)(1), independent of the federal VRA.

C. The Equal Protection Clause Does Not Bar Relief Here.

Assuming, arguendo, that the Court determines that Petitioners are likely to succeed on the merits of their vote dilution claim and are likely entitled to the redrawing of CD11 to address such vote dilution, such a remedy is not categorically foreclosed by the federal Equal Protection Clause. *Contra* Intervenor Resp'ts' Mem. at 38-45; Republican SBOE Resp'ts' Mem. at 25-27.

It is well settled that so long as election district lines are drawn in a manner where race does not *predominate* over traditional redistricting principles—such as compactness and contiguity—the lines are presumptively valid and not subject to heighted scrutiny under the Equal Protection Clause. *See Allen v. Milligan,* 599 U.S. 1, 31 (2023) (plurality op.).

When it comes to considering race in the context of districting, "there is a difference between being aware of racial considerations and being motivated by them" with the former being "permissible" and the latter not. *Id.* (quotation marks omitted). Only where a State has "subordinated race-neutral districting criteria" to racial considerations does the map become subject to strict scrutiny under the Equal Protection Clause. *See Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (quotation marks omitted).

Here, the IRC has been ordered to prepare a map that remedies the constitutional violation found by Supreme Court. *See* Decision & Order at 17-18. Appellants are incorrect in arguing that any remedial map will necessarily be drawn with race as the predominating factor merely because the IRC will likely need to consider race to draw a remedial map that complies with Supreme Court's order. *See* Intervenor Resp'ts' Mem. at 41-42; Republican SBOE Resp'ts' Mem. at 26-27. Such consideration of race, as one factor among many that must be considered in drawing a remedial map, does not, standing alone, subject a remedial map to strict scrutiny. *See Milligan*, 599 U.S. at 31-32 (plurality op.). As the plurality opinion observed in *Milligan*, the first step in the framework for

establishing a vote-dilution claim under the federal VRA requires showing that an additional majority-minority district can be drawn while adhering to traditional redistricting principles—a step that requires consideration of race, among other factors, in drawing an illustrative map. *See id.* at 33 (plurality op.). *See generally Thornburg v. Gingles*, 478 U.S. 30 (1986) (discussing analysis of vote-dilution claims). The Court in *Milligan* upheld this framework and its consideration of race against an Equal Protection Challenge. *See Milligan*, 599 U.S. at 23-30 (majority op.). Likewise, the Equal Protection Clause does not preclude any consideration of race in fashioning a remedy to a § 4(c)(1).

III. IT IS DOUBTFUL THAT THIS COURT HAS THE AUTHORITY TO GRANT LEAVE TO APPEAL.

Both Intervenor Respondents and the Republican SBOE Respondents have also sought leave from this Court to appeal to the Court of Appeals. *See* Intervenor Resp'ts' Mem. at 52-53; Republican SBOE Resp'ts' Mem. at 32-34. State Respondents take no position on this request. However, State Respondents note that the circumstances in which this Court is authorized to grant such leave, *see* C.P.L.R. 5602, do not appear to encompass the circumstances presented here, and

appellants have provided no authority supporting the Court's ability to do so.

As relevant here, this Court may grant leave to appeal from an order of Supreme Court only where (a) the order is a final judgment and (b) "the appellate division has made an order on a prior appeal in the action and which necessarily affects the final judgment." C.P.L.R. 5602(a)(1)(ii). Even assuming arguendo the Decision and Order below constitutes a "final judgment," there is no prior appellate division order in this action that necessarily affected that final judgment. And except for C.P.L.R. 5602(a)(1)(ii), State Respondents are not aware of any other authority upon which this Court may grant leave to appeal directly from an order of the Supreme Court. *See, e.g.* C.P.L.R. 5602(a)(1)(i), (a)(2), (b)(1), (b)(2)(i), (b)(2)(iii) (authorizing leave to appeal from orders issued by appellate division in specified circumstances), 5602(b)(2)(ii) (authorizing leave to appeal from a final judgment of a court other than, among others, supreme court).

CONCLUSION

The State Respondents take no position on the appellants' motions to stay, including on whether petitioners are likely to succeed on the merits of their claims. However, if the Court decides to issue a stay, it should be crafted to allow the IRC to engage in preparatory steps to comply with the order on appeal. In considering the motions, the Court should consider that Supreme Court correctly decided that: (i) the NYVRA is not relevant to interpreting the vote-dilution provisions of § 4(c)(1); (ii) § 4(c)(1) is not limited to providing only the same protections provided by the federal VRA; and (iii) the Equal Protection Clause does not categorically preclude the remedy ordered by the court below. Finally, State Respondents take no position on the appellants' motions for leave to appeal to the Court of Appeals, but note that it is doubtful that this Court has the authority to grant such leave in the circumstances presented.

Dated: New York, New York
February 4, 2026

Respectfully submitted,

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  Attorney General
  State of New York
Attorney for Respondents
Hochul, Heastie, Stewart-
Cousins, and James

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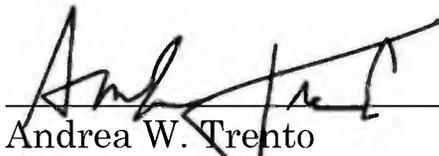
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

Michael Williams, José Ramirez-Garofalo, Aixa Torres, and Melissa Carty, *Petitioners-Respondent,* -against- Board of Election 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; Peter S. Kosinski, in his official capacity as Co-Chair and 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 New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the New York Sate 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 FILE AMICI CURIAE BRIEF

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Professor

Ruth M. Greenwood, dated February 9, 2026, and the accompanying proposed

brief, Professors Ruth Greenwood and Nicholas Stephanopoulos 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 this motion for

leave to file the accompanying brief as *amici curiae* in support of neither party in the above-entitled appeal, and for such other and further relief as the Court may deem just and proper.

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: February 9, 2026
Cambridge, MA

Respectfully submitted

ELECTION LAW CLINIC
AT HARVARD LAW SCHOOL

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To: All Counsel of Record via NYSCEF

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

Michael Williams, José Ramirez-Garofalo, Aixa Torres, and Melissa Carty,
 	
       Petitioners-Respondent,
  -against-
 	
Board of Election 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; Peter S. Kosinski, in his official capacity as Co-Chair and 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 New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the New York Sate 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 PROFESSOR RUTH GREENWOOD IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE

I, Ruth M. Greenwood, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirm the following to be true under the penalties of perjury, pursuant to CPLR 2106:

1.   I am the Director of the Election Law Clinic at Harvard Law School, and the attorney for Professors Nicholas O. Stephanopoulos and Ruth Greenwood with respect to the above-captioned appeal. I am familiar with the facts set forth in this affirmation. I submit this affirmation in support of proposed amici's motion to appear as amici curiae in support of neither party in the above-captioned appeal.

2.   Submitted herewith is a copy of the brief Professors Greenwood and Stephanopoulos wish to submit to the Court.

3.   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. They have each published several law review articles on voting rights law and the mechanics of vote dilution claims under state and federal laws.

4.   On Friday, December 12, Amici filed a motion, by order to show cause, for leave to participate in the action at the New York Supreme Court as Amici Curiae in support of neither party on the petition and motions to dismiss, along with a proposed brief. That motion was granted on January 20, 2026, and the amicus brief was filed on NYSCEF on January 21, 2026. In that brief, Amici explained the development of vote dilution doctrine and outlined the academic research relevant to evaluating Petitioners' claim for a "coalition crossover district." Amici also proposed a test we believe, based on nearly forty years of

federal and state jurisprudence, to be a judicially manageable standard for this type of racial vote dilution claim.

5. The Supreme Court applied Amici's definition of a "crossover coalition district" to classify Petitioners' vote dilution claim. The court also announced Amici's test as the standard for creating a remedial crossover district. The briefs filed in the above-captioned appeal discuss the merits of the crossover district test as adopted by the Supreme Court. Amici would, therefore, like the opportunity to be heard on the scope and application of the test we proposed.

6. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation.

7. No party or its counsel contributed money intended to fund preparation or submission of this brief.

8. No person or entity other than movant or its counsel contributed money intended to fund preparation or submission of this brief.

9. Amici respectfully request permission to appear as amici curiae for the following reasons. First, Nicholas O. Stephanopoulos is the Kirkland & Ellis Professor of Law at Harvard Law School, and 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. They research, write about, and litigate

federal and state voting rights law, and so possess knowledge and expertise that may be of special assistance to the Court. *See Kruger v. Bloomberg*, 1 Misc. 3d 192, 198 (Sup. Ct., N.Y. Cnty. 2003) (amicus brief may be granted when brief would be "of special assistance to the court"); *People by Underwood v. Trump*, 62 Misc.3d 500, 505 & n.1 (Sup. Ct., N.Y. Cnty. 2018) (considering the arguments of three law professors as amici curiae). Second, Judge Pearlman citied Amici's prior brief as providing the basis for his decision on Petitioner's vote dilution claim. Amici believe additional briefing on Petitioners' crossover coalition claim and how the Supreme Court applied its test would prove helpful to this Court in considering this appeal.

10.   Additionally, Amici respectfully request permission to participate in the case because the unusual circumstances of this case create a need for Amici's experience and qualifications in voting rights law. This is the first vote dilution claim brought under the New York Constitution's redistricting amendments. As Petitioners' filings have demonstrated, vote dilution and redistricting doctrines are conceptually challenging. The briefing in this case has presented conflicting definitions of the kinds of vote dilution remedies requested, enhancing the difficulty of deciphering the elements of the claim and the appropriate relief.

11.   Counsel for Amici emailed counsel for all parties on February 3, 2026

seeking their position on Amici's motion for leave to file an amicus brief, and all

parties took no position on the motion.

WHEREFORE, I respectfully request that the Court grant the Amici leave to file

the *amici curiae* brief, attached as Exhibit A.

I affirm this 9th 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, except as to matters alleged on information and belief and as to those matters

I believe it to be true, and I understand that this document may be filed in an action

or proceeding in a court of law.

Dated: February 9, 2026   Respectfully submitted
Cambridge, MA

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AT HARVARD LAW SCHOOL

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Exhibit A

Supreme Court of the State of New York
Appellate Division – First Department

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

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Dated February 9, 2026

Counsel for Proposed Amici Curiae

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TABLE OF AUTHORITIES

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

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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]

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[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

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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 second 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

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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."). 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 9, 2026
       Cambridge, MA

                                        Respectfully submitted,

ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL

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Dated: February 9, 2026
        Cambridge, MA

/s/ Ruth M. Greenwood

Ruth M. Greenwood

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

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

<div align="center">Petitioner,</div>

- 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,

<div align="center">Respondent.</div>

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INDEX NO.	164002/2025
MOTION DATE	10/27/2025, 12/08/2025, 12/08/2025
MOTION SEQ. NO.	001 006 007

DECISION + ORDER ON MOTION

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

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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

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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"

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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

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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

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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

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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

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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

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

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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

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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

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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

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[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.

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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

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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

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"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

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[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).

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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

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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

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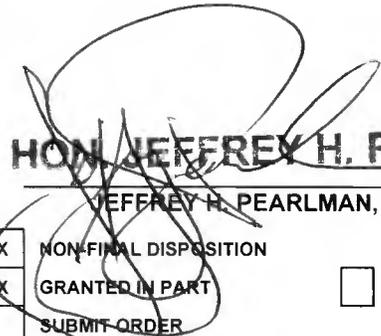
HON. JEFFREY H. PEARLMAN
J.S.C.
JEFFREY H. PEARLMAN, J.S.C.

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

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SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF
(SUBMITTED BY MOVING PARTY)

M-445

Date: 01/28/06   Case # 2026-00384

Title
of
Matter _____   Index/Indict/Docket # 164002/2025

Michael Williams et al. v Board of Elections of the State of New York et al.

Appeal   Order ☑   Supreme ☑   County New York
by Appellants   from Judgment ☐ of Surrogate's ☐
                      Decree ☐   Family ☐   Court entered on 01/22 , 20 26

Name of
Judge Jeffrey H. Pearlman   Notice of Appeal
                                         filed on 01/26 , 20 26

If from administrative determination, state agency N/A

Nature of
action
or proceeding Election Law/Miscellaneous

Provisions of ☑ order
               ☐ judgment   appealed from Appellants appeal from each and every part of
               ☐ decree
the Decision and Order by which they have been aggrieved and seek reversal
of the Decision and Order in its entirety and dismissal of Petitioners' proceeding.

This application by ☑ appellant
                     ☐ respondent   is for an order granting an interim stay and a stay
pending appeal.

If applying for a stay, state reason why requested A stay is necessary to maintain the status quo
pending appeal because Appellants will suffer irreparable harm, the balance of equities
weigh in favor of granting the stay and Appellants are likely to succeed on the merits

Has any undertaking been posted no _____   If "yes", state amount and type _____

Has application been made to   If "yes", state
court below for this relief No   Disposition _____
Has there been any prior application   If "yes", state dates
here in this court No   and nature _____

Has adversary been advised   Does he/she
of this application Yes   consent No

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Christopher E. Buckey, Esq.	

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DISPOSITION

In light of the January 29, 2026 letter from the Chief Clerk of the Court of Appeals to counsel, this motion is referred to a full bench

with the following briefing schedule.

Kelly O'Neill Levy   January 30, 2026
       Justice   KOL   Date

Motion Date 2/9/26   Opposition 2/4/26   Reply 2/9/26 - 10:00 AM

EXPEDITE ✓

ALL MOTION PAPERS TO BE SERVED VIA NYSCEF.
If exempted from e-filing, personal service is required.
                                  Court Attorney

"Revised 08/25"

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SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF
(SUBMITTED BY MOVING PARTY)

M-444

Date: 1/27/2026   Case # 2026-00384

Title   Michael Williams, et al.   Index/Indict/Docket # 164002/2025
of

Matter   Board of Elections of the State of New York, et al.

                    Order   ☑   Supreme   ☑   County New York
Appeal   Judgment ☐   of   Surrogate's ☐
by Intervenor-Res from Decree ☐   Family   ☐   Court entered on Jan 22 , 20 26

Name of
Judge Jeffrey H. Pearlman   Notice of Appeal
                                                    filed on Jan 26   , 20 26

If from administrative determination, state agency _____

Nature of Special Proceedings - Article 4
action
or proceeding _____

                ☑ order
Provisions of   ☐ judgment   appealed from Order granting Petitioners' Order to Show Cause
                ☐ decree
and denying Intervenor-Respondents' Motion to Dismiss

                   ☑ appellant
This application by ☐ respondent   is for See attached addendum.

If applying for a stay, state reason why requested Immediate irreparable harm will result from blocking

the lawfully adopted map, where the election is set to begin on February 24; appellant

has show likelihood of success on the merits.

Has any undertaking been posted No _____ If "yes", state amount and type _____

Has application been made to   If "yes", state
court below for this relief No   Disposition _____
Has there been any prior application   If "yes", state dates
here in this court No   and nature _____

Has adversary been advised   Does he/she
of this application Yes   consent No

(Do not write below this line)

DISPOSITION

In light of the January 29, 2026 letter from the Chief Clerk of the Court of Appeals to counsel, this motion is referred to a full bench

with the following briefing schedule.

Kelly O'Neill Levy   January 30, 2026
                  Justice KOL   Date

Motion Date 2/9/26   Opposition 2/4/26   Reply 2/9/26 - 10:00 AM

EXPEDITE ✓

ALL MOTION PAPERS TO BE SERVED VIA NYSCEF.   _CMK_
If exempted from e-filing, personal service is required.   Court Attorney

"Revised 08/25"

471a

Cullen | Dykman

Cullen and Dykman LLP
80 State Street, Suite 900
Albany, New York 12207
T: 518.788.9440 | F: 518.689.9519

NICHOLAS J. FASO
PARTNER
DIRECT: (518) 788-9416
NFASO@CULLENLLP.COM

January 29, 2016

VIA NYSCEF
Susanna Molina Rojas
Clerk of Court Appellate Division, First Judicial Department
27 Madison Avenue
New York, NY 10010

> *Re:* ***Williams et al. v. Board of Elections of the State of New York et al.,*** **Appellate Division Case No. 2026-00384**

Dear Ms. Rojas:

We represent 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, Anthony J. Casale, in his official capacity as Commissioner of the Board of Elections of the State of New York, and Raymond J. Riley, III in his official capacity as Co-Executive Director of the Board of Elections of the State of New York (collectively, "Appellants").

Like Appellants-Intervenors-Respondents ("Intervenors"), Appellants have filed, with this Court and the Court of Appeals, emergency motions seeking an interim stay, a stay pending appeal, and leave to appeal to the Court of Appeals (NYSCEF Doc. No. 13). We write to join in Intervenors' request, as set forth in their letter of today's date (NYSCEF Doc. No. 15), that this Court adopt the same briefing schedule on the stay applications set by the Court of Appeals. Specifically, Appellants respectfully request that this Court set a briefing deadline of February 4, 2026.

We thank the Court for its attention to this matter.

Respectfully submitted,

Nicholas J. Faso

cc: All counsel via email and NYSCEF

troutman pepper locke

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875 Third Avenue
New York, NY 10022

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Bennet J. Moskowitz
D 212.704.6087
bennet.moskowitz@troutman.com

January 29, 2026

Susanna Molina Rojas
Clerk of Court
Appellate Division, First Judicial Department
27 Madison Avenue
New York, NY 10010

Re: **Williams et al. v. Board of Elections of the State of New York et al.,
       Appellate Division Index No.2026-00384**

Dear Ms. Rojas:

We represent Appellants-Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, "Intervenor-Respondents") in the above-referenced special proceeding. We write in furtherance to our correspondence to the Court on January 26, 2026. Intervenor-Respondents have filed an Emergency Motion for Interim Stay and Stay Pending Appeal in this Court, while also including a request for leave to appeal to the Court of Appeals; Respondents filed a substantially similar motion. Intervenor-Respondents and Respondents have also filed nearly identical stay motions—simply excluding the leave to appeal portions—with the Court of Appeals.

Earlier today, the Court of Appeals issued a letter and Order to Show Cause, signed by Hon. Anthony Cannataro, directing Plaintiffs to address by February 4, 2026 at 5:00 p.m. whether a stay should be granted. *See* Court of Appeals Letter dated January 29, 2026, attached hereto as Exhibit A, at 3. The Court of Appeals also directed the parties to brief whether the Court of Appeals has jurisdiction. *Id.* at 1.

Given the identical issues raised in the Appellate Division stay motions and the Court of Appeals stay motions, and the expedited briefing schedule already ordered by the Court of Appeals, Intervenor-Respondents respectfully request that this Court adopt the same briefing schedule. Presumably, Plaintiffs will file identical stay oppositions in both courts, with the exception of the leave to appeal issue. Such an approach would permit this Court to decide the extant stay motions without delay, depending on what action the Court of Appeals takes. Further, Intervenor-Respondents respectfully note that if this Court grants their request to permit them to appeal to

the Court of Appeals, and does so immediately after February 4, that would moot the jurisdictional issues that the Court of Appeals is considering, making it unambiguously clear that the State's highest court can decide this monumentally important, time-sensitive case.

Accordingly, Intervenor-Respondents respectfully request that this Court set a briefing deadline for their Emergency Motion for Interim Stay, Stay Pending Appeal, and Leave to Appeal in the Appellate Division of February 4, 2026. We thank the Court for its attention to this matter.

Respectfully submitted,

Bennet J. Moskowitz

Attachment

CC: Counsel for all Parties by Email

EXHIBIT A

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

January 29, 2026

Sent via e-mail only

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

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

Re: <u>Williams v Board of Elections</u>
APL-2026-00010

Dear Counselors:

The Court has received your respective preliminary appeal statements and proposed orders to show cause. The proposed orders to show cause were reviewed by Judge Cannataro, who signed an order bringing on motions for a stay. No interim stay relief was granted.

You must serve the signed order to show cause as directed therein and provide proof of such service. You must submit the $45 civil motion in a form permitted by Rule 500.3.

The Court is determining whether it has jurisdiction for the appeals (CPLR 5601). The Court is providing you an opportunity to address these jurisdictional questions:

1. whether simultaneous appeals lie to this Court and the Appellate Division from the same order;

2. whether the order appealed from finally determines the action within the meaning of the Constitution;

3. whether the only issue involved is the constitutional validity of a statute so as to support a direct appeal pursuant to CPLR 5601 (b) (2).

All parties may file letters responsive to this inquiry no later than 5:00 p.m. on Wednesday, February 4, 2026, with proof of service on each other party.

Questions may be directed to the Clerk's Office at 518-455-7700.

Very truly yours,
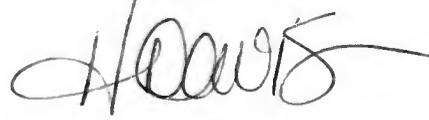
Heather Davis

HD/RMM/ks
cc: Hon. Anthony Cannataro
     Christopher D. Dodge, Esq.
     Kevin G. Murphy, Esq.
     Andrea Trento, Esq.

State of New York
Court of Appeals

Present, Hon. Anthony Cannataro, *Associate Judge*

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 and Intervenors-Appellants having separately appealed to the Court of Appeals and having separately filed proposed orders to show cause seeking to bring on motions to stay the order of Supreme Court, New York County, dated January 21, 2026, in the above-titled matter and requesting interim stay relief as to the same order; and upon due consideration, it is hereby:

ORDERED that respondents are directed to show cause at a motion term to be held on Wednesday, February 4, 2026, why an order should not be entered granting a stay of the January 21, 2026 Supreme Court order; and it is further

ORDERED that appellants and intervenors-appellants serve a copy of this order and all supporting papers upon counsel for all other parties no later than January 29, 2026 by email and overnight service. Any papers opposing the motion shall be served and filed, as directed by the Clerk's Office, no later than 5:00 p.m. on the return date of the motion; and it is further.

ORDERED, that no interim stay relief is granted.

Hon. Anthony Cannataro
Associate Judge, Court of Appeals

Dated: New York, New York
           January 29, 2026

SUMMARY STATEMENT ON APPLICATION FOR
EXPEDITED SERVICE AND/OR INTERIM RELIEF
(SUBMITTED BY MOVING PARTY)

Date: 01/28/06

Case # 2026-00384

Title of Matter: Michael Williams et al. v Board of Elections of the State of New York et al.

Index/Indict/Docket # 164002/2025

Appeal by **Appellants** from

Order ☑
Judgment ☐ of
Decree ☐

Supreme ☑
Surrogate's ☐
Family ☐

County **New York**

Court entered on 01/22 ,20 26

Name of Judge **Jeffrey H. Pearlman**

Notice of Appeal filed on 01/26 ,20 26

If from administrative determination, state agency **N/A**

Nature of action or proceeding **Election Law/Miscellaneous**

Provisions of
☑ order
☐ judgment appealed from
☐ decree

Appellants appeal from each and every part of the Decision and Order by which they have been aggrieved and seek reversal of the Decision and Order in its entirety and dismissal of Petitioners' proceeding.

This application by
☑ appellant
☐ respondent is for **an order granting an interim stay and a stay pending appeal.**

If applying for a stay, state reason why requested **A stay is necessary to maintain the status quo pending appeal because Appellants will suffer irreparable harm, the balance of equities weigh in favor of granting the stay and Appellants are likely to succeed on the merits**

Has any undertaking been posted **no**   If "yes", state amount and type _____

Has application been made to court below for this relief **No**

If "yes", state Disposition _____

Has there been any prior application here in this court **No**

If "yes", state dates and nature _____

Has adversary been advised of this application **Yes**

Does he/she consent **No**

479a

Name Cullen & Dykman LLP   Name **Elias Law Group LLP**

Address 80 State Street, Suite 900   Address 250 Massachusetts Avenue NW, Suite 400

                                                         Washington D.C. 20001

Tel. No. 518-788-6416   Tel. No. 202-968-4518

Email nfaso@cullenllp.com   Email abranch@elias.law

Appearing by Nicholas J. Faso, Esq.   Appearing by Aria Branch

Christopher E. Buckey, Esq.

(Do not write below this line)

DISPOSITION

_____   _____
                      Justice   Date

Motion Date _____ Opposition _____ Reply _____

EXPEDITE _____

ALL MOTION PAPERS TO BE SERVED VIA NYSCEF.   _____
If exempted from e-filing, personal service is required.   Court Attorney

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.*	**AFFIRMATION OF NICHOLAS J. FASO** Appellate Division Index No: 2026-00384 NY County Index No.: 164002/2025

I, NICHOLAS J. FASO, ESQ., affirm this 28th day of January, 2026, under the penalties

of perjury under the laws of New York, which may include a fine or imprisonment, that the

35438575

foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

1.   I am a partner with the law firm of Cullen and Dykman LLP, counsel for Respondent-Appellants 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, "Respondent-Appellants"). I submit this affirmation in support of Respondent-Appellants' motion for a stay of the Decision and Order of the Honorable Jeffrey H. Pearlman, A.J.S.C., dated January 21, 2026.

2.   Attached as **Exhibit A** is a copy of the Petition filed on October 27, 2025 in the Supreme Court, New York County (Index. No. 164002/2025, NYSCEF No. 1).

3.   Attached as **Exhibit B** is a copy of the transcript of the proceedings before the Honorable Jeffrey H. Pearlman, Supreme Court, New York County on January 5, 2026.

4.   Attached as **Exhibit C** is a copy of the transcript of the proceedings before the Honorable Jeffrey H. Pearlman, Supreme Court, New York County on January 6, 2026.

5.   Attached as **Exhibit D** is a copy of the transcript of the proceedings before the Honorable Jeffrey H. Pearlman, Supreme Court, New York County on January 7, 2026.

6.   Attached as **Exhibit E** is a copy of the transcript of the proceedings before the Honorable Jeffrey H. Pearlman, Supreme Court, New York County on January 8, 2026.

7.   Attached as **Exhibit F** is a copy of Thomas J. Sugrue's Expert Report dated November 17, 2025.

8.   Attached as **Exhibit G** is a copy of Thomas J. Sugrue's Rebuttal Expert Report dated December 18, 2025.

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9.   Attached as **Exhibit H** is a copy of Maxwell Palmer's Corrected Expert Report dated November 18, 2025.

10.   Attached as **Exhibit I** is a copy of Maxwell Palmer's Rebuttal Expert Report dated December 18, 2025.

11.   Attached as **Exhibit J** is a copy of William Cooper's Corrected Expert Report dated January 1, 2026.

12.   Attached as **Exhibit K** is a copy of William Cooper's Rebuttal Expert Report dated December 18, 2025.

13.   Attached as **Exhibit L** is a copy of Sean P. Trende's Expert Report dated December 8, 2025.

14.   Attached as **Exhibit M** is a copy of Joseph C. Borelli's Expert Report dated December 8, 2025.

15.   Attached as **Exhibit N** is a copy of D. Stephen Voss's Corrected Rebuttal Expert Report dated December 8, 2025.

16.   Attached as **Exhibit O** is a copy of Thomas M. Bryan's Corrected Expert Report dated January 2, 2026.

17.   Attached as **Exhibit P** is a copy of John Alford's Expert Report dated December 8, 2025.

18.   Attached as **Exhibit Q** is a copy of the Decision and Order of the Honorable Jeffrey H. Pearlman dated January 21, 2026.

19.   Attached as **Exhibit R** is a copy of the Affirmation of Raymond J. Riley, dated January 12, 2026.

Dated: January 28, 2026
     Albany, New York

<div align="right">

<u>/s/ *Nicholas J. Faso*</u>

</div>

Exhibit A

Petition
October 27, 2025

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. _____

Petitioners,

PETITION

-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.

---X

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

and through their counsel, Emery Celli Brinckerhoff Abady Ward & Maazel LLP and Elias Law

Group LLP, for their petition against Respondents the Board of Elections of the State of New

York; Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board

of Elections of the State of New York; Raymond J. Riley, III, in his official capacity as Co-

Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his

official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New

York; Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of

Elections of the State of New York; Anthony J. Casale, in his official capacity as Commissioner

of the Board of Elections of the State of New York; Essma Bagnuola, in her official capacity as

Commissioner of the Board of Elections of the State of New York; Kathy Hochul, in her official

capacity as Governor of New York; Andrea Stewart-Cousins, in her official capacity as 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, allege as follows:

PRELIMINARY STATEMENT

1.　　Petitioners bring this action to challenge New York's congressional district map,

SB S8653A, codified at New York State Law §§ 110-112 (McKinney 2024) (the "2024

Congressional Map"). 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 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.

2.　　While the enactment of the 2024 Congressional Map remedied the procedural

defects of the map drawn immediately following the 2020 decennial census, it still perpetuates a

fatal substantive defect: it dilutes Black and Latino voting strength in CD-11.

3.　　Staten Island's Black and Latino populations have increased significantly over the

last several decades. From 1980 to 2020, the combined Black and Latino population on the Island

climbed from approximately 11% to nearly 30%. During the same period, the Island's white

population dropped from 85% to 56%, meaning racial minorities have been a significant driver of Staten Island's population growth in recent years.

4.   However, the current configuration of CD-11 does not account for these demographic changes or modern communities of interest. CD-11's antiquated boundaries instead confine Staten Island's growing Black and Latino communities in a district where they are routinely and systematically unable to influence elections for their representative of choice, despite the existence of strong racially polarized voting and a history of racial discrimination and segregation on Staten Island. Instead of reflecting the demographic changes, the 2024 Congressional Map ensures that the growth of CD-11's Black and Latino populations will not translate to increased political influence at the federal level. This configuration stands in stark contrast to the current New York State Assembly map, which links communities of interest in Staten Island's North Shore and southern Manhattan.

5.   The 2024 Congressional Map fails entirely to account for a long history of discrimination facing Black and Latino residents of Staten Island. Staten Island is one of the most segregated parts of New York, with the vast majority of Black and Latino residents confined to the Island's North Shore while white residents occupy the more affluent South Shore. That segregation has consequences: Black and Latino voters generally live in areas where Black and Latino residents make up a significant majority, and many of those neighborhoods have significant populations that are classified as low-to-moderate income.

6.   In 2014, New York voters approved constitutional amendments (the "Redistricting Amendments") that expressly prohibit race discrimination and racial vote dilution in voting in state assembly, senate, and congressional elections. In particular, Article III, Section 4(c)(1) provides that: "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or

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abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). Further, "[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.*

7.   In 2022, the New York Legislature passed new legislation that extended the Constitution's prohibition on voter suppression and vote dilution to local political subdivisions— the John R. Lewis Voting Rights Act of New York (the "NY VRA"). *See* N.Y. Elec. Law § 17-200. The language of the NY VRA mirrors the language of the constitutional prohibition against vote dilution in Article III, Section 4(c)(1): it provides that "[n]o voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy shall be enacted or implemented by any board of elections or political subdivision in a manner that results in a denial or abridgment of the right of members of a protected class to vote." *Id.* § 17-206(1)(a). Further, "[n]o board of elections or political subdivision shall use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcomes of elections, as a result of vote dilution." *Id.* § 17-206(2)(a).

8.   Through these enactments, New York has become a national leader in protecting voting rights, heeding the Supreme Court's guidance that states are free to go above and beyond the minimum requirements of the federal Voting Rights Act to safeguard their citizens' rights to exercise the franchise. *Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality op.). And by protecting influence, or "cross-over" districts, New York's Constitution advances the goal of "diminish[ing] the significance and influence of race by encouraging minority and majority voters to work together toward a common goal." *Id.*

9.   Together, Article III, Section 4(c)(1) and the NY VRA reflect New Yorkers'

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commitment to safeguarding the right to vote for the state's minority populations by prohibiting vote dilution in redistricting across *all* maps used in the State of New York, at each level of government. These provisions work in tandem to ensure that there are consistent, robust protections for New York's minority voters across local, state, and federal elections.

10.   The NY VRA thus informs the scope of the constitutional protections against minority vote dilution. The NY VRA protects coalition and minority influence districts, or districts where racial minorities do not form a numerical majority but can form coalitions with other racial minorities and white voters to influence elections and elect their representatives of choice. N.Y. Elec. Law § 17-206(2)(c)(iv).

11.   The NY VRA also provides detailed standards outlining how voters can prove a racial vote dilution claim: they must show that candidates preferred by members of the protected classes would usually be defeated and either (a) voting is racially polarized in the political subdivision, *or* (b) under the totality of the circumstances, the ability of the protected classes, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. *Id.* § 17-206(2)(b)(ii). The law provides a non-exhaustive list of factors ("totality of the circumstances factors") that a court may consider in its assessment. *Id.* § 17-206(3).

12.   Consistent with these standards, had Respondents complied with Article III, Section 4(c)(1)'s prohibition against racial vote dilution, they would have constructed CD-11 as 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. Given the presence of racially polarized voting on Staten Island and the persistence of many of the totality of the circumstances factors, Respondents' failure to create such a district violates Article III, Section 4(c)(1) of the New York Constitution.

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13.   Accordingly, Petitioners seek an order (i) declaring that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York Constitution; (ii) permanently enjoining Respondents from using the 2024 Congressional Map in any future elections; (iii) ordering the Legislature to create a minority influence district that pairs Staten Island with lower Manhattan, thereby providing Black and Latino Staten Islanders with an opportunity to elect a representative of their choice in CD-11; and (iv) providing any such additional relief as is appropriate.

PARTIES

14.   Petitioners are citizens of the United States and registered to vote in New York.

15.   Petitioner Michael Williams is a Black registered voter in Staten Island, New York. He resides in CD-11. He could reside in a properly constructed remedial district that complies with traditional redistricting criteria and allows Mr. Williams and other minority voters to have an opportunity to influence elections and elect their representative of choice.

16.   Petitioner José Ramírez-Garofalo is a Latino registered voter in Staten Island, New York. He resides in CD-11. He could reside in a properly constructed remedial district that complies with traditional redistricting criteria and allows Mr. Ramírez-Garofalo and other minority voters to have an opportunity to influence elections and elect their representative of choice.

17.   Petitioner Aixa Torres is a Latina registered voter in Manhattan, New York in CD-10. She could reside in a properly constructed remedial district that complies with traditional redistricting criteria and allows Ms. Torres to form a coalition with other minority voters in CD-11 to have an opportunity to influence elections and elect their representative of choice.

18.   Petitioner Melissa Carty is a white registered voter in Manhattan, New York in CD-10. She could reside in a properly constructed remedial district that complies with traditional

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redistricting criteria and allows Ms. Carty to form a coalition with minority voters in a district that allows them an opportunity to influence elections and elect their representative of choice.

19. Respondent Board of Elections of the State of New York is an Executive Department agency with the authority and responsibility for administration and enforcement of the election laws of the State of New York.

20. Respondent Kristen Zebrowski Stavisky is sued in her official capacity as Co-Executive Director of the Board of Elections of the State of New York.

21. Respondent Raymond J. Riley, III is sued in his official capacity as Co-Executive Director of the Board of Elections of the State of New York.

22. Respondent Peter S. Kosinski is sued in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York.

23. Respondent Henry T. Berger is sued in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York.

24. Respondent Anthony J. Casale is sued in his official capacity as Commissioner of the Board of Elections of the State of New York.

25. Respondent Essma Bagnuola is sued in her official capacity as Commissioner of the Board of Elections of the State of New York.

26. Respondent Kathy Hochul is sued in her official capacity as Governor of New York.

27. Respondent Andrea Stewart-Cousins is sued in her official capacity as New York State Senate Majority Leader and President *Pro Tempore* of the Senate.

28. Respondent Carl E. Heastie is sued in his official capacity as the Speaker of the New York State Assembly.

29.   Respondent Letitia James is sued in her official capacity as Attorney General of New York.

JURISDICTION AND VENUE

30.   This Court has jurisdiction over this action pursuant to Article III, Section 5 of the New York Constitution, Unconsolidated Laws § 4221, and New York Civil Practice Law and Rules 3001.

31.   Article III, Section 5 provides that "[a]n apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe." N.Y. Const. art. III, § 5.

32.   Unconsolidated Laws § 4221 provides that "[a]n apportionment by the legislature shall be subject to review at the suit of any citizen, upon the petition of any citizen to the supreme court" in the designated county for the "judicial department where at least one petitioner resides." N.Y. Unconsol. Law § 4221. These include New York County for the first judicial department; Westchester County for the second judicial department; Albany County for the third judicial department; or Erie County for the fourth judicial department. *Id.*; *see also id.* § 4225 ("No limitation of the time for commencing an action shall affect any proceeding hereinbefore mentioned . . . .").

33.   Venue is proper in New York County because this petition challenges "[a]n apportionment by the legislature" and two petitioners, Aixa Torres and Melissa Carty, reside in the first judicial department. *See* N.Y. Unconsol. Law § 4221(a); *see also* N.Y. Const. art. III, § 5.

34.   Venue is also proper in New York County because Petitioners Aixa Torres and Melissa Carty reside in New York County. *See* N.Y. C.P.L.R. 503(a).

35.   Under Section 5 of Article III of the New York Constitution, this action shall be

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given precedence over all other causes and proceedings, and this Court shall render its decision within sixty days after the date of filing of this petition. N.Y. Const. art. III, § 5.

LEGAL BACKGROUND

I.   In 2014, New York voters amended the Constitution to explicitly prohibit racial vote dilution in redistricting.

36.   In 2014, New York voters approved constitutional amendments to reform the congressional and state legislative redistricting processes.

37.   Not only did the Redistricting Amendments alter many aspects of the map-drawing procedure and approval process, they also made "historic changes" that "guarantee[] the application of substantive criteria that protect minority voting rights." *See* Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086.

38.   In particular, the Redistricting Amendments prohibit racial vote dilution in redistricting. N.Y. Const. art. III, § 4(c)(1). Article III, Section 4(c)(1) states that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. Further, "[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.* The Redistricting Amendments specifically apply to New York's state assembly, senate, and congressional districts. *Id.* § 4(b).

39.   No court has yet ruled on the substantive standards applicable to a constitutional vote dilution claim in the context of redistricting. This case thus presents the first opportunity for a court to interpret this important provision and the applicable legal standard.

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II. **The New York Legislature subsequently passed the New York Voting Rights Act, which provides expansive protections for minority voting rights and detailed standards for proving racial vote dilution.**

40.   In 2022, the Legislature passed the NY VRA, which codified detailed standards for proving racial vote dilution and contains similar language as the relevant constitutional provisions. Several courts have interpreted the application of the NY VRA in the context of redistricting litigation and vote dilution. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14, 26 (2d Dept. 2025) (explaining that the NY VRA "permits 'influence' claims, and does not require . . . that the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district"); *Coads v. Nassau County*, 86 Misc.3d 627, 652 (Sur. Ct., Nassau County 2024) (noting that the NY VRA "addresses influence districts"); *Serratto v. Town of Mount Pleasant*, 86 Misc.3d 1167, 1172–74 (Sur. Ct., Westchester County 2025) (holding that genuine issues of material fact precluded summary judgment as to Hispanic voters' claim that town's at-large election system impaired Hispanic voters' ability to influence outcome of town elections).

41.   Like Article III, Section 4(c)(1), the NY VRA's protection against vote dilution is expansive. The purpose of the NY VRA is to "[e]nsure that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the political processes of the state of New York." N.Y. Elec. Law § 17-200. The law further provides that "all statutes, rules and regulations . . . shall be construed liberally in favor of . . . ensuring voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process in registering to vote and voting." *Id.* § 17-202. The NY VRA specifically prohibits "method[s] of election" that have "the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution." *Id.* § 17-206(2)(a).

42.   Vote dilution can be established by showing "that candidates . . . preferred by members of the protected class would usually be defeated and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; *or* (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." *Id.* (emphasis added).

43.   Racially polarized voting occurs when "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." *Id.* § 17-204(6). Black and Latino voters are considered members of a protected class. *Id.* § 17-204(5).

44.   In determining whether, under the totality of the circumstances, vote dilution has occurred, 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 [access] 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

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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.

Id. § 17-206(3).

45.   The NY VRA sweeps more broadly than federal law. The NY VRA requires proof only of racially polarized voting *or* a showing that the totality of the circumstances factors have been met. *Id.* § 17-206(2)(b)(ii).

46.   In addition, the NY VRA does not require the plaintiff to show that a district could have been drawn that would have a majority of residents of a single protected class. A plaintiff need only show that the current district map is responsible for the protected class's lack of electoral *influence* based on the existence of racially polarized voting or the totality of the circumstances. In other words, "the NY VRA 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

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majority in a single-member district." *Clarke*, 237 A.D.3d at 38; *see* N.Y. Elec. Law § 17-206(c) (explaining, for the purpose of demonstrating that unlawful vote dilution has occurred, "where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined"); *id.* § 17-206(2)(a) ("No board of elections or political subdivision shall use any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections, as a result of vote dilution."). Thus, under certain circumstances, the NY VRA requires the creation of coalition and minority influence districts, or districts in which racial minorities can form coalitions with other racial minorities and white voters to influence elections and elect their representatives of choice.

47.   By passing the 2014 Redistricting Amendments and enacting the NY VRA, the voters of New York and the New York Legislature made the choice to go beyond the scope of the federal Voting Rights Act and protect coalition and crossover districts. *See Bartlett*, 556 U.S. at 23 (observing that Section 2 "allows States to choose their own method of complying with the Voting Rights Act, and we have said that may include drawing crossover districts").

III.   The vote dilution prohibitions in the NY Constitution and NY VRA are similar, and the same standards should apply.

48.   Although the language of the constitutional prohibition on minority vote dilution is expansive, no court has yet ruled on what precisely constitutes impermissible vote dilution under that provision. This case thus presents an issue of first impression for New York courts.

49.   Even so, New York courts have suggested that Article III, § 4(c)(1), like the NY VRA, is more protective of minority voting rights than federal law. *See Harkenrider v. Hochul*, 173 N.Y.S. 3d 109, 112 (Sur. Ct., Steuben County 2022) ("The prohibition against discriminating

against minority voting groups at the least encapsulated the requirements of the Federal Voting Rights Act, and according to many experts expanded their protection."), *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022). And since the 2014 Redistricting Amendments, map-drawers have assumed that the state constitution protects minority coalition districts—even if federal law does not. *Cf. Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 31471(U), 2022 WL 1951609, at *17 & n.22 (Sup. Ct., Steuben County May 20, 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").

50.   Against this backdrop, and given the NY VRA's similar vote dilution provision, this court should apply the same standards set forth under the NY VRA to adjudicate Plaintiffs' constitutional claim. Interpreting the Constitution's protections against vote dilution in tandem with the NY VRA's ensures consistent standards for identifying and remedying minority vote dilution across New York law and congressional and local district maps.

FACTUAL ALLEGATIONS

I.   **The racial demographics of Staten Island have changed significantly over the last several decades, but the 2024 Congressional Map does not reflect those changes.**

51.   Since 1980, Staten Island's racial and ethnic makeup has changed significantly. As recently as 1980, Staten Island's population was almost entirely white. Meanwhile, Black and Latino New Yorkers comprised only about 11% of the borough's population.

52.   The opening of the Verrazzano Bridge in 1964 connected Staten Island to the rest of New York City and brought waves of immigration to Staten Island that transformed the demography of the borough. With new, easy access to mainland New York City, thousands of New Yorkers migrated to Staten Island from the other boroughs. Between 1980 and 2020, Staten

Island's population ballooned by approximately 40%. And with that growth came dramatically more racial diversity. Between 1980 and 2020, the white population on Staten Island dropped from 85% to 56%, while the combined Black and Latino population increased from approximately 11% to nearly 30%. Most of Staten Island's Black and Latino residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton.

53.   Staten Island's congressional district, CD-11, does not account for this demographic transformation. Despite the stark changes in the Island's demographic makeup, the district's boundaries have remained static since 1980. As a result, Staten Island's growing Black and Latino communities remain in a district where they consistently and systematically have less opportunity to elect their representatives of choice.

II.   The 2024 Congressional Map was enacted following litigation aimed at fixing the procedural defects of the 2021 map.

54.   In 2014, New York voters approved the Redistricting Amendments, which reformed the congressional and state legislative redistricting processes and mandated specific substantive criteria for district maps.

55.   Among other changes, the Redistricting Amendments, now codified in Article III, Sections 4 and 5(b) of the New York Constitution, provided for the creation of an independent redistricting commission (the "IRC"), which is required to submit proposed redistricting plans for consideration by the Legislature. The Redistricting Amendments also prohibit racial vote dilution in redistricting. *See* N.Y. Const. art. III, § 4(c)(1).

56.   In the first redistricting cycle following the enactment of the Redistricting Amendments—which occurred immediately after the 2020 Census—the IRC process failed. The IRC deadlocked and failed to send a second round of maps to the Legislature, as required by the

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New York Constitution. N.Y. Const. art. III, § 4(b). As a result, the congressional map in place for the 2022 elections (the "2021 Congressional Map") was ultimately drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. 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." NYSCEF Doc. No. 670 at 11–12, rep. of the special master, in *Harkenrider v. Hochul*, Sur. Ct., Steuben County index No. E2022-0116CV.

57.   Following additional litigation, the Court of Appeals ordered the IRC to redraw the 2021 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). On February 15, 2024, the IRC submitted a second congressional map to the Legislature that made very few substantive changes to the map and no changes to the configuration of CD-11.

58.   The Legislature rejected the IRC's second map, *see* 2024 NY Senate Bill 8639, 2024 NY Assembly Bill 9304, and ultimately drew its own, but did not make any sweeping substantive changes. 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.

59.   On February 28, 2024, Governor Hochul signed SB S8653A into law. Although the enactment of the 2024 Congressional Map fixed the procedural defects identified in *Harkenrider* and *Hoffman*, it did not remedy the unlawful racial vote dilution in CD-11.

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III.   Voting on Staten Island is racially polarized, and Black and Latino voters in CD-11 have less opportunity than other voters to elect candidates of their choice.

60.   Voting on Staten Island and within the Eleventh Congressional District is racially polarized.

61.   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).

62.   In the current CD-11, Black and Latino voters make up a combined 22.18% of the citizen voting-age population.

63.   Black and Latino voters on Staten Island are politically cohesive and consistently and overwhelmingly support the same candidates, which the rest of the electorate consistently opposes. At the same time, the white majority on Staten Island overwhelmingly supports the same candidates and votes as a bloc to usually defeat Black and Latino voters' candidates of choice.

64.   A long string of election outcomes demonstrates that white voters have historically been able to elect their candidates of choice in the congressional district containing Staten Island while Black and Latino voters have not. Since 1980, when Republican representative Guy Molinari was first elected to Congress, Republicans have been elected to represent the district in almost every congressional election held in CD-11.

65.   The district's current representative, Republican Representative Nicole Malliotakis, is decidedly not Black and Latino voters' candidate of choice and has never been their candidate of choice in any congressional election. In other words, despite Black and Latino voters now constituting nearly a quarter of the citizen voting age population of CD-11, they are not able to influence elections or elect their candidate of choice in that district.

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66.   In other elections, too, Black and Latino Staten Islanders have been cohesive in their support for the same candidates, which the white majority opposes. For example, in the 2017 mayoral election, in which Representative Malliotakis was the Republican nominee for mayor, Black and Latino Staten Islanders were consistent in their support for Bill DeBlasio, the Democratic nominee, whereas white Staten Islanders overwhelmingly supported Malliotakis. In the 2020 presidential election, Black and Latino Staten Islanders were cohesive in their support for former President Biden, whereas white Staten Islanders supported President Trump's campaign. The same was true in the 2024 election, where Black and Latino voters supported former Vice President Harris's campaign for President, and white voters cohesively supported President Trump.

IV.   Under the totality of the circumstances, Black and Latino voters have less opportunity to elect candidates of their choice and influence the outcomes of elections in CD-11.

67.   The evidence of racially polarized voting in CD-11, coupled with decades of Black and Latino voters' lack of opportunity to influence elections and elect their candidate of choice, is sufficient to show unconstitutional vote dilution.

68.   Unlawful vote dilution can also be established where, "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." N.Y. Elec. Law § 17-206(2). The NY VRA provides a non-exhaustive list of factors which a court may consider. *Id.*; *supra* ¶ 44. As discussed below, these factors show that the 2024 Congressional Map impairs Black and Latino voters' ability to elect their candidates of choice and influence elections in CD-11.

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A. History of Policies and Practices on Staten Island that Have Suppressed Minority Voting Rights

69.   Staten Island's growing minority population has suffered decades of marginalization and discrimination that continues to this day and has stymied Black and Latino voters' ability to participate fully in the political process.

70.   Black people have lived on Staten Island since the early 1800s. Staten Island's oldest and largest Black community, Sandy Ground, was established by free Blacks—many of whom were oystermen in the early 19th century. Previously known as "Harrisville" and "Little Africa," Sandy Ground was given its current name because of the poor quality of its soil. Despite the soil's relative infertility compared to other areas, Sandy Ground became a thriving agricultural and trading center. In the mid-1850s, Sandy Ground was part of the Underground Railroad; it was considered a safe haven for those escaping slavery.

71.   At the same time, however, Black men were legally and explicitly excluded from being able to exercise the franchise. At the New York Constitutional Conventions addressing the right of suffrage, the framers made explicit statements of their intent to discriminate against minority voters. And for decades, New York voters resisted providing Black men the same access to the ballot as white men. For example, by 1821, white men were no longer required to own property to be eligible to vote. But New York voters repeatedly rejected referenda—in 1846, 1860, and again in 1869—that would have eliminated the property requirement for Black men. It was not until the passage of the Fifteenth Amendment in 1870 that legal discrimination against Black men in voting ended. *See Hayden v. Paterson*, 594 F.3d 150, 157–59 (2d Cir. 2010).

72.   Even as Black men gained the right to universal suffrage, Black communities on Staten Island continued to face discrimination in nearly all facets of life as a result of redlining,

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persistent segregation, and racially motivated violence.

73.   As in other parts of New York City, redlining drove residential segregation on Staten Island. Redlining is a practice by which the government draws boundaries around neighborhoods based on residents' race and then denies access to financial services, such as loans and mortgages, to areas that have significant populations of racial minorities. When the Home Owners Loan Corporation ("HOLC")—a government-sponsored corporation created as part of the New Deal to provide mortgage relief to homeowners—prepared a map of Staten Island ranking neighborhoods by their "risk" for federally guaranteed home improvement and mortgage loans in 1940, every neighborhood on Staten Island with even a small Black population received the HOLC's lowest ranking—"D." That included Sandy Grove, which suffered a sharp decline in Black population in the early 1900s as a result of the closure of oyster beds and devastating fires. The HOLC described Sandy Ground as "on the downgrade for years" with "little hope for recovery," and concluded that "it is difficult to envisage any further decline, but the trend, if any, would be downward."

74.   When the Verrazzano Bridge was constructed in the 1960s, many white Staten Islanders decried the project, fearing the influx of migrants from New York's more diverse boroughs. Private real estate brokers reacted to this fear by engaging in discriminatory housing practices and racial steering that reinforced the patterns of segregation. Brokers consistently steered Blacks into segregated and rundown neighborhoods. In 1967, Ben Harris, director of the Open City fair housing program, told *The New York Times* that that Staten Island is the "worst borough" for discrimination against Blacks. He further observed that, "[w]henever a Negro goes into a Staten Island real estate office he always gets sent back to the worst areas . . . The white clients get shown places in the nice neighborhoods."

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75.   Redlining and other discriminatory housing practices were banned by the Fair Housing Act of 1968, but their discriminatory impacts persist today. Because of redlining, it was almost impossible for Blacks, and later Latinos, to buy property in sections of Staten Island inhabited by whites. Builders could not get Federal Housing Administration subsidies for the construction of single-family homes or apartment developments open to Blacks outside of mixed-race or predominantly Black areas. As a result, minorities were largely confined to low-ranked neighborhoods—like St. George and Stapleton neighborhoods, ranked "declining" or "hazardous"—where it was difficult to obtain market-rate mortgages to buy or improve properties. Redlining also spurred disinvestment and decline in many low-ranked neighborhoods.

76.   The result was extreme segregation, the remnants of which still exist today. Black and Latino residents of Staten Island remain largely concentrated in the North Shore, while Staten Island's South Shore is almost entirely white. This *de facto* segregation on Staten Island is no accident—it is by design. During debates over rezoning in the early 1960s, South Shore community organizations fought tooth and nail to ensure the city planning commission would zone their neighborhoods for detached, single-family homes only. They were successful, and low-cost housing that minorities could afford were confined to the North Shore.

77.   White communities also protested public transportation routes that would have connected the South Shore to other parts of Staten Island. Since at least the early 2000s, Staten Island residents have called the Staten Island Expressway the "Mason Dixon line," because it divides the predominantly white southern part of the island from its increasingly racially diverse northern section.

78.   In addition to bearing the effects of segregation, Black and Latino communities on Staten Island have also suffered from a history of racially motivated violence. In 1972, arsonists

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torched the home that a Black family had purchased in the predominantly white town of New

Dorp, just before the family's scheduled move-in date. Later that year, a police officer in New

Brighton shot and killed a Black unarmed, 11-year-old child for allegedly fleeing the scene in a

stolen vehicle. In the 1980s, a limited integration effort at New Dorp High School prompted a

"race riot" so serious that Black students were evacuated from the facility. In 1988, when the

Willowbrook Parkway was renamed the "Dr. Martin Luther King, Jr. Expressway," vandals shot

at the new sign and splashed paint on it.

79.   Racially motivated violence has also persisted in recent years. In 2003, as Staten

Island was rapidly diversifying, a spate of hate crimes and racial clashes occurred. In early 2009,

the U.S. Department of Justice indicted three white men in Staten Island for brutal attacks against

Black people in Park Hill and Richmond on the night that Barack Obama was elected president.

In 2023, Staten Islanders held anti-immigrant protests when the borough opened a 60-person

shelter for refugees in the predominantly white Arrochar neighborhood.

80.   In 2014, New York City Police Officer Daniel Pantaleo held Eric Garner, a 43-

year-old Black man, in a prohibited chokehold after stopping Garner for allegedly selling loose

cigarettes in Tompkinsville, a diverse neighborhood in northeastern Staten Island. Pantaleo

ultimately strangled Garner to death while Garner repeatedly said, "I can't breathe." The Staten

Island district attorney refused to indict Officer Pantaleo for killing Mr. Garner, sparking a

nationwide outcry.

B. The Extent to Which Members of the Protected Classes are Disadvantaged in Areas Which May Hinder Their Ability to Participate Effectively in the Political Process

81.   In nearly every sphere of life, Black and Latino residents of Staten Island bear the

ongoing effects of discrimination. Black and Latino residents lag behind white residents in areas

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such as education, employment, income, and access to healthcare.

82.   In education, for example, Black and Latino Staten Islanders face substantial disparities in graduation rates from Staten Island's public schools. In 2024, Black and Latino high school graduation rates were more than 15% lower than white graduations rates. While 93% of white students graduated, only 78% of Latino students and 74% of Black students did.

83.   Black and Latino Staten Islanders have also long been largely excluded from admission to Staten Island's most prestigious public school, the Staten Island Technical High School. In 2023, for example, only two Black and seven Latino students were given admissions offers out of 287 students admitted. And in 2025 the rate was even lower. Of the 289 students admitted, only one was Black and five were Latino.

84.   The racial income disparities on Staten Island are also stark: Latino and Black residents earn only about 60% of the per capita income of their white counterparts. Only about one in fifteen whites live in poverty on Staten Island; by contrast, one in six Latinos and one in four Blacks are poor.

85.   These educational and socio-economic disadvantages hinder minority residents' ability to participate effectively in the political process. Indeed, white Staten Islanders consistently turn out to vote at higher rates than Black and Latino Staten Islanders.

C. *The Extent to Which Members of the Protected Classes have Been Elected to Office on Staten Island*

86.   Black and Latino candidates have achieved little success in Staten Island elections. As late as 1988, there was no Black member of the Island's community school board even though close to 20% of its public school pupils were members of minority groups.

87.   Staten Island has never elected a Latino Supreme Court judge despite the fact that

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Latinos are the second largest demographic group in Richmond County.

88.   The first Black person elected to public office on Staten Island was Deborah ("Debi") Rose, a Democrat elected to the North Shore city council seat in the fall of 2009. Since then, Black candidates have had some success in city council and state assembly elections—but *only* in districts in the North Shore where Black and Latino voters are concentrated. In 2022, Kamillah Hanks succeeded Debi Rose to represent Assembly District 49. Charles Fall, who is Black, has represented Assembly District 61, which is comprised of the North Shore and parts of lower Manhattan, in the State Assembly since 2019. There has never been a Black or Latino candidate elected to be Staten Island Borough President.

89.   Staten Island has never elected a Black representative to the United States House of Representatives and only recently elected its first Latina member, Representative Malliotakis, in 2020. But Representative Malliotakis is not the candidate of choice for either Black or Hispanic voters. In both 2022 and 2024, Black and Hispanic voters supported Malliotakis's Democratic opponents in *substantial* numbers. The same is true of her 2017 run for mayor of New York. At the same time, Malliotakis won the white vote by more than 75% in all three elections.

D. Racial Appeals Have Occurred in Staten Island Campaigns

90.   Political campaigns on Staten Island have featured overt racial appeals. For example, in 2017, a political operative, Richard Luthmann, allegedly created a fake Facebook page in Representative Debi Rose's name, stating that she supported welcoming a "welfare hotel full of criminals and addicts" and turning a St. George property into "a heroin/methadone den."

V. **A new CD-11 can be drawn in which Black and Latino voters would no longer have less opportunity than other voters to influence elections and elect candidates of their choice.**

91.   A new district in which Black and Latino voters have the ability to influence congressional elections can be drawn by joining Staten Island with voters in lower Manhattan.

92.   This configuration is not without precedent. Joining Staten Island with lower Manhattan would align the district with New York's existing Assembly District boundaries. The 61st Assembly District links communities in Staten Island's North Shore with neighborhoods in lower Manhattan.

93.   In addition, in 1972, following the 1970 census, the New York Legislature enacted a congressional map with a newly-configured congressional district, then CD-17, that joined Staten Island with lower Manhattan. However, after the 1980 Census and the contentious 1982 redistricting battle, Republicans in control of the Senate sought to gain solid control of the Staten Island-based district. 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

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Ridge section of Brooklyn instead of the southern tip of Manhattan. The move was transparently partisan, securing Republican advantage on Staten Island for decades to come.

94.   Given the dramatic demographic shifts that have occurred on Staten Island since the 1980s when the district took its current form, in particular the growth of the Black and Latino populations and the relative decline of the white population, along with the persistence of racially polarized voting and the totality of the circumstances factors, CD-11 should be redrawn to comply with the requirements of Article III, section 4(c)(1) of the New York Constitution.

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 influence elections and elect their candidate of choice.

CLAIM I

Unconstitutional Vote Dilution
Article III, Sections 4(c)(1) and 5 of the New York Constitution; Unconsolidated
Laws §§ 4221, 4223

96.   Petitioners reallege and reincorporate by reference all prior paragraphs of this Petition and the paragraphs in the count below as though fully set forth herein.

97.   The New York Constitution explicitly protects against minority vote dilution in congressional redistricting by providing 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." N.Y. Const. art. III, § 4(c)(1).

98.   The NY VRA provides the standards under which New York courts evaluate a claim of vote dilution. In order to demonstrate vote dilution, plaintiffs must show that the Black- and Latino-preferred candidate would usually be defeated, and that either: (a) voting is racially

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polarized in the congressional district; or (b) under the totality of the circumstances, the ability of Blacks and Latino voters to elect candidates of their choice or influence the outcome of elections is impaired. N.Y. Elec. Law § 17-206(2)(b). Black and Latino Staten Islanders' votes are being diluted in CD-11 under both standards.

99.   There is racially polarized voting in CD-11. Blacks and Latinos dependably prefer the same candidates; their preferred candidates differ from those preferred by the rest of the electorate; and as a result, Black- and Latino voters' preferred candidates are consistently defeated.

100.   Under the totality of the circumstances, Black and Latino voters have less opportunity to influence the outcome of elections and elect candidates of their choice than other members of the electorate in CD-11.

101.   A minority influence district is both possible and required by the New York Constitution in CD-11. Pairing Staten Island with voters in lower Manhattan would produce a district in which Black and Latino voters could influence elections and elect candidates of their choice.

102.   By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs rights guaranteed to them by Article III, Section 4 of the New York State Constitution. Defendants will continue to violate those rights absent relief granted by this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

A.   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.

B.   Pursuant to Art. III, Section 5 of the New York Constitution, order 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.

C.   Issue a permanent injunction enjoining Defendants 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 Defendants from conducting any further congressional elections under the current map.

D.   Hold hearings, consider briefing and evidence, and otherwise take 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.

E.   Grant such other or further relief the Court deems appropriate, including but not limited to an award of Petitioners' attorneys' fees and reasonable costs.

Dated: October 27, 2025

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

[signature]

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29

Exhibit B

Transcript
January 5, 2026

In The Matter Of:

MICHAEL WILLIAMS et al. v.
BOARD OF ELECTIONS OF THE STATE OF NEW YORK

Dr.Thomas Sugrue & Dr. Maxwell Palmer
January 5, 2026

Cheryl-Lee Lorient

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 1   SUPREME COURT OF THE STATE OF NEW YORK
     COUNTY OF NEW YORK - CIVIL TERM - PART 44
 2   ------------------------------------------------------------X
     Michael Williams, Jose Ramirez-Garofalo, Aixa Torres,
 3   and Melissa Carty,

 4                                                Petitioners,

 5             -against-
                                                  Index No.:
 6                                                164002/2025

 7   Board of Elections of the State of New York, Kristen Zebrowski
     Stavisky, in Her Official Capacity As Co-executive Director of
 8   The Board of Elections of the State of New York; Raymond J.
     Riley Iii, in His Official Capacity As Co-executive Director of
 9   The Board of Elections of the State of New York; Peter S.
     Kosinski, in His Capacity As Co-chair and Commissioner of the
10   Board of Elections of the State of New York; Henry T. Berger,
     In His Offical Capacity As Co-chair and Commissioner of the
11   Board of Elections of the State of New York; Anthony J. Casale,
     in His Official Capacity As Commissioner of the Board of
12   Elections of the State of New York; Essma Bagnuola, in Her
     Official Capacity As Commissioner of the Board of Elections of
13   the State of New York; Katy Hochul, in Her Official Capacity As
     Governor of New York; Andrea Stewart-cousins, in Her Official
14   Capacity As Senate Majority Leader and President Pro Tempore of
     the New York State Senate; Carl E. Heastie, in His Official
15   Capacity As Speaker of New York State Assembly; and Letitia
     James, in Her Official Capacity As Attorney General of New York
16
                                                  Respondents,
17                            -and-

18
     Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B.
19   Reeves, Angela Sisto, and Faith Togba,

20                                         Intervenors-Respondents.
     ------------------------------------------------------------X
21                          60 Centre Street,
                            New York, New York
22                          January 5, 2026

23
     B E F O R E:
24
            HONORABLE JEFFREY  PEARLMAN,
25                              Supreme Court Justice
```

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21

22   CLAUDINE Y. DAVIDSON
                      CHERYL LEE LORIENT
23   MONICA HAHN
                      SENIOR COURT REPORTERS

24

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3

1   MR. TSEYTLIN: This is the matter of Williams

2   versus the Board of Elections of the State of New York, et

3   al., Index No. 164002/2025.

4   May I have appearance of counsel, please,

5   starting with the Petitioner.

6   MS. BRANCH: Good morning, Your Honor. My name

7   is Aria Branch on behalf of the Petitioners. And I have

8   here with me today my colleagues Christopher Dodge,

9   Nicole Wittstein, Lucas Lallinger, and our local counsel,

10   Andrew Celli and Emily Wanger.

11   MR. FASO: Good morning, Your Honor.

12   Nicholas Faso, Cullen & Dykman for Respondents,

13   Kosinski, Casale and Riley. And I'm here with my partner

14   Christopher Buckey.

15   THE COURT: Good morning.

16   MR. MOSKOWITZ: Good morning, Your Honor.

17   Bennet Moskowitz, Troutman Pepper Locke for the

18   Intervenor Respondents. Here with me at the counsels'

19   table is Misha Tseytlin, Robert Pealer, who is on the

20   other side of me. To my right is our hot-seat

21   technician -- and would Your Honor like me now to

22   introduce my other colleagues who may be going on record

23   at some time during these proceedings?

24   THE COURT: Please.

25   MR. MOSKOWITZ: Molly DiRago, whose pro hoc

1   admission you just entered, is standing right behind me

2   here. And Andrew Braunstein is over on that first bench

3   on the side. You may -- you will hear from him during

4   these proceedings. And Lauren Miller is standing right

5   next to him, and you will probably hear from her during

6   these proceedings as well.

7   THE COURT: Okay. Good morning. All right.

8   Well, please -- more?

9   MR. FARBER: Good morning, Your Honor.

10   Seth Farber, from the Office of New York State

11   Attorney General for Respondents Hochul, Stewart-Cousins,

12   Heastie and James. Thank you.

13   THE COURT: Good morning.

14   Anybody else?

15   Come on up.

16   MR. GROSSMAN: Good morning, Your Honor.

17   Perry Grossman from the New York Civil Liberties

18   Union for the proposed amici, New York Civil Liberties

19   Union, NAACP Legal Defense and Education Fund,

20   Asian-American Legal Defense and Education Fund, Latino

21   Justice PRLDEF and the Center for Law and Social Justice.

22   (Court reporter seeks clarification.)

23   THE COURT: Welcome.

24   Others, at this time?

25   Not at this time. Please be seated then.

1   Get started?

2   MS. BRANCH: Good morning again, Your Honor, and

3   may it please Court. My name is Aria Branch, and I appear

4   today on behalf of the Williams Petitioners.

5   The evidence in this case will show that Black

6   and Hispanic voters on the North Shore of Staten Island,

7   from Port Richmond to West Brighton and from Stapleton to

8   Saint George, have routinely, repeatedly and

9   systematically been excluded from the democratic process

10   because their votes are being diluted. Black and Hispanic

11   voting strength in the Congressional District 11 has been

12   rendered meaningless by design.

13   Even as the Black and Hispanic percentage of the

14   population on Staten Island increases, Black and Hispanic

15   voting strength is being diluted because -- and the

16   evidence will show this -- voting on Staten Island is

17   racially polarized. Coalitions between Black and Hispanic

18   voters and White voters do not exist, and the views and

19   interests of Black and Hispanic voters do not impact the

20   positions of representatives elected by what is now a slim

21   White majority.

22   The current contours of the 11th Congressional

23   District diminish Black and Hispanic voters' ability to

24   engage in the political process as true civic

25   participants. They are excluded from the promise of our

1   democracy rather than included. The evidence in this case

2   will prove three things about Staten Island and the 11th

3   Congressional District.

4   First, the evidence will show, as the figure on

5   the screen displays, District 11, like much of America,

6   has become increasingly diverse over the last several

7   decades, with a shrinking White population and a growing

8   Black an Hispanic one. From 1980 to 2020, the combined

9   Black and Hispanic population on Staten Island grew by

10   nearly 50 percent, meaning that now Black and Hispanic

11   people comprise nearly 30 percent of Staten Island's

12   population.

13   During the same period, Staten Island's White

14   population dropped from 85 percent to 56 percent. But the

15   current configuration of the 11th Congressional District

16   does not account for these population changes. It,

17   instead, ensures that the growing population of Black and

18   Hispanic voters will not translate to increase political

19   influence at the federal level.

20   Second, the evidence will show that social

21   science and voting data, together with many historical

22   facts, demonstrate that Black and Hispanic voters on

23   Staten Island experience significant disadvantages in many

24   areas, including education, homeownership rates and

25   employment rates. And Black and Hispanic Staten Islanders

1   have historically been unable to influence electoral

2   outcomes, much less elect their candidates of choice.

3   The evidence will also show that there is

4   significant racially polarized voting in Congressional

5   District 11. Black and Hispanic voters do not support the

6   same candidates as White voters, and their preferred

7   candidates are usually defeated.

8   Third, the evidence will show that this problem

9   is not unsolvable. It is possible to draw a fair map that

10   creates a competitive Congressional District 11, one that

11   can either elect a Republican or a Democrat and one where

12   cross-racial coalitions are possible and available, unlike

13   in today's congressional district.

14   (Court reporter seeks clarification.)

15   MS. BRANCH: Petitioners will offer the evidence

16   that I have just described through three expert witnesses,

17   each of whom is highly qualified in his field. First, we

18   will present evidence of a long history of racial

19   discrimination against Blacks and Hispanics on

20   Staten Island that persist to the present day.

21   The evidence will show that Staten Island is

22   highly segregated, with nearly all of the Island's Black

23   and Hispanics residents confined to neighborhoods in the

24   North Shore. In nearly every aspect of life, Black and

25   Hispanic Staten Islanders face steep disadvantages as

1   compared to Whites.

2   As a group, they own fewer homes. They face

3   higher unemployment rates and have lower levels of

4   academic achievement. They have also faced significantly

5   higher rates of violent crime than their White neighbors.

6   These disparities impact Black and Hispanic

7   voters' ability to effectively participate in the

8   political process, and they contribute to lower voter

9   turnout rates among those populations.

10   Dr. Thomas Sugrue, S-U-G-R-U-E, an expert in

11   American History and social science from NYU, will provide

12   more information on these disparities, which are often

13   referred to as "the totality of the circumstances factors"

14   in voting rights litigation parlance.

15   (Court reporter seeks clarification.)

16   MS. BRANCH: We will also present evidence of

17   racially polarized voting in Congressional District 11.

18   Dr. Maxwell Palmer of Boston University will testify that

19   Black and Hispanic voters vote cohesively, and they

20   consistently support different candidates than White

21   voters. Because of this intensely racially polarized

22   voting, Black and Hispanic voters are unable to elect

23   their preferred candidates.

24   The Black and Hispanic-preferred candidate won

25   only 5 of the 20 elections from 2017 to 2024 that

1   Dr. Palmer examined. He will testify that the current

2   incumbent representative is decidedly not the preferred

3   candidate for Black and Hispanic voters in her district.

4   Finally, Petitioners will also present an

5   illustrative map from Mr. Bill Cooper, who is a

6   well-respected and longtime demographer, showing that it

7   is entirely possible to remedy the racial vote dilution in

8   Congressional District 11.

9   (Court reporter seeks clarification.)

10   MS. BRANCH: Mr. Cooper will explain how

11   Petitioners' illustrative district joins Staten Island

12   with Lower Manhattan, instead of southwestern Brooklyn.

13   And he will testify that the illustrative map complies

14   with traditional redistricting criteria recognized under

15   New York Law, such as compactness and contiguity.

16   Dr. Palmer also examined Mr. Cooper's

17   illustrative map. And the evidence will show that the

18   illustrative map significantly reduces racially polarized

19   voting in CD-11, allowing the significant population of

20   Black and Hispanic voters to form an electoral coalition

21   with White crossover voters and that it complies with

22   traditional redistricting criteria.

23   This district would be highly competitive for

24   Black and Hispanic voters with their candidate of choice

25   winning most, but not all, elections.

1   There is nothing novel or unprecedented about

2   Mr. Cooper's illustrative map, which shows just many --

3   one of many ways to draw a district that remedies

4   Petitioners' injury.

5   This basic configuration has both historical and

6   contemporary precedent. Staten Island and Manhattan were

7   joined together in a congressional district for the first

8   half of the 20th century, as well as throughout the 1970s,

9   as shown on the display. The current State Assembly map

10   follows a similar template. Assembly Strict 61 presently

11   joins Staten Island's North Shore with Lower Manhattan.

12   Finally, the evidence will also show that the

13   illustrative district is competitive, and it creates what

14   Respondents themselves agree is a toss-up district, rather

15   than one that clearly favors one party over another. The

16   evidence will also show that the illustrative district

17   unites Chinese-American communities of interest in

18   Bensonhurst, Bath Beach, Sunset Park, all in one

19   congressional district.

20   Now you've heard the facts, and I want to talk

21   briefly about how the law instructs you to organize and

22   evaluate those facts.

23   In 2014, New Yorkers voted to amend the State

24   Constitution, and the amendments expressly prohibit racial

25   vote dilution in redistricting. The relevant amendment

1   provides, in part, that, quote:

2   "Districts shall be drawn so that, based on the

3   totality of the circumstances, racial or minority language

4   groups do not have less opportunity to participate in the

5   political process than other members of the electorate and

6   to elect their candidates of choice -- or their

7   representatives of choice." Excuse me.

8   That is Article 3, Section 4 of the State

9   Constitution.

10   Petitioners are the first to bring a racial vote

11   dilution claim under this provision. Accordingly, the

12   specific substantive legal standard that should be applied

13   is a matter of first impression for this Court to decide.

14   At the statewide level, New York has long

15   counted itself among the nation's leaders in protecting

16   the right to vote. And to that end, the language and

17   context of the constitutional provision support the

18   conclusion that it sweeps broadly; and, in particular, it

19   sweeps more broadly than federal law.

20   Unlike federal law, the New York Constitution

21   offers relief to petitioners who can show minority vote

22   dilution that can be remedied with a new district that

23   creates opportunity for minority voters without a

24   majority-minority population.

25   New York Courts themselves have suggested that

1   Article 3 is more protective of minority vote -- voting

2   rights than federal law because it protects crossover

3   districts. In the Harkenrider case, the lower court found

4   that Article 3's, quote, "prohibition against

5   discriminating against minority voting groups at the least

6   encapsulated the requirements of the Federal Voting Rights

7   Act; and according to many experts, expanded their

8   protection."

9   (Court reporter seeks clarification.)

10   MS. BRANCH: And since the 2014 redistricting

11   amendments, map drawers have assumed that the New York

12   Constitution protects districts in which the minority

13   population does not constitute a majority, just as the

14   New York Voting Rights Act does, even if federal law does

15   not.

16   For example, the Special Master in the

17   Harkenrider litigation drew a coalition district to,

18   quote, "follow the injunction of the State Constitution to

19   not draw districts that would result in the denial or

20   abridgment of racial or language minority voting rights."

21   Federal law sets a floor for the minimum

22   protections states must afford minority voters. But the

23   Supreme Court has expressly recognized that states may go

24   further, and it has discussed the benefits of doing so.

25   In Bartlett v. Strickland, for example, the

1   Supreme Court said that, quote: "States that wish to draw

2   crossover districts are free to do so where no other

3   prohibition exists." And as the Supreme Court explained

4   in Bartlett, crossover districts in particular, or

5   districts where racial minorities rely on White crossover

6   voters to have an opportunity to influence elections and

7   elect their candidate of choice, quote, "diminish the

8   significance and influence of race by encouraging minority

9   and majority voters to work together toward a common

10 goal."

11   Put another way, such districts help ensure that

12 Black and Hispanic voters are not denied the opportunity

13 to pull, haul and trade to find common political ground

14 with White voters.

15   That is the beauty of the minority voting

16 protections set forth in the State Constitution: They

17 seize on the Supreme Court's recognition that states can

18 go further in protecting minority voting rights.

19   They allow for the formation of crossover

20 districts and coalition districts, where different racial

21 groups can form collisions and influence elections.

22   They account for addressing unique and evolving

23 forms of racial vote dilution that would go unremedied

24 under federal law.

25   And the John R. Louis New York Voting Rights

1   Act, in particular, provides specific standards for courts

2   to use to, first, recognize unlawful racial vote dilution

3   and then remedy it.

4   This case is about a fundamental promise of our

5   democracy: That all voters -- no matter their race or

6   ethnicity -- should have a fair and equal opportunity to

7   participate in the political process and elect

8   representatives of their choice. That is the promise that

9   New Yorkers voted for when they amended the State

10   Constitution in 2014.

11   At the conclusion of this hearing, Petitioners

12   will ask this Court to fulfill that promise. We will ask

13   the Court to invalidate Congressional District 11 and

14   order the legislature to immediately remedy the

15   constitutional violation, according to Article 3,

16   Section 5, which says that the legislature should be given

17   a, quote, "full and reasonable opportunity to redraw an

18   unconstitutional map." Thank you.

19   THE COURT: Thank you.

20   Counsel.

21   MR. TSEYTLIN: Thank you, Your Honor.

22   Misha Tseytlin, for Intervener Respondents.

23   For decades, the legislature and courts have

24   drawn CD-11 to include Staten Island and portions of

25   Brooklyn. Most recently, the Steuben County Supreme

1   Court, which my friend just referenced, with the help of a

2   Special Master, drew the CD-11 in with that configuration.

3   The legislature two years later, after another court

4   decision, adopted a modified congressional map, but left

5   CD-11 alone. The elective representatives from CD-11 is

6   the daughter of a Cuban refugee and a Greek immigrant,

7   Representative Malliotakis, my client.

8   M-A-L-L-I-O-T-A-K-I-S.

9   Before her, it was represented by a Democrat who

10   won in -- in 2018.

11   After all this, Petitioners have brought this

12   lawsuit to, on its face, racially Gerrymander to put

13   Representative Malliotakis out of her district, on the

14   novel theory the standards of the New York Voting Rights

15   Act, adopted by the legislature in 2022 time-traveled back

16   to -- into the 2014 anti-Gerrymandering amendments that

17   the people adopted.

18   (Court reporter seeks clarification.)

19   MR. TSEYTLIN: Let me take an extreme view of

20   these -- of the NYVRA standards, which would render those

21   standards, as I will explain, absurd and impossible to

22   comply with throughout New York State.

23   They argue that the standards require that

24   Congressional District 11 must allow Black and Latino,

25   voters lumped together by race, who makeup only 30 percent

1   of the district, to elect the maj- -- the candidate of

2   their choice in more than half the elections, which means

3   that, since there is racially polarized voting in CD 11,

4   that voters lumped together by different races, such as

5   White voters, would elect their candidate of choice in

6   less than half the elections, which would mean that those

7   voters would then have a viable NYVRA-based claim against

8   the same district under their own theory.

9   (Court reporter seeks clarification.)

10   MR. TSEYTLIN: Now, this lawsuit should be

11   rejected for many reasons, and I'll talk about a couple

12   here. Some of them are purely legal, and some will be

13   evidence based.

14   First, as we explain in our briefing, there is

15   just absolutely nothing in the 2014 amendments that adopts

16   the standards of the NYVRA. The relevant language in the

17   2014 amendments mirrors the -- the federal VRA, Section 2,

18   which the US Supreme Court has said does not permit the

19   intentional finding of violation for failure to create and

20   influence districts in the LULAC case, that was a Supreme

21   Court case, L-U-L-A-C.

22   (Court reporter seeks clarification.)

23   MR. TSEYTLIN: There is no linguistic difference

24   between Section 2 of the VRA and the New York

25   Constitutional Anti-Gerrymandering amendments enacted in

1   2014 that would allow the gutting of Sections 2's core

2   requirement that there has to be a majority-minority

3   district that can be drawn with a reasonable

4   configuration.

5   And certainly, nothing in the Constitution's

6   language that allows this time-travel theory that is the

7   core of Petitioner's entire case, that the NYVRA standards

8   for 2022 should be incorporated back into the 2014

9   amendments.

10   In fact, comparing the NYVRA's language and the

11   New York Constitution's language suggests very strongly

12   the opposite inference. Both the NYVRA and the New York

13   Constitution guarantee racial groups the opportunity to

14   elect the candidates -- opportunity -- a fair opportunity

15   to elect their candidates.

16   Then NYVRA also, in addition, requires --

17   provides the protection for racial groups to influence

18   elections. That language is missing from the New York

19   Constitution. And the only fair inference is that

20   additional protection is in the NYVRA for localities, but

21   it is not in the New York Constitution for congressional

22   and state assembly and state senate maps.

23   Now, I think Petitioners, having framed this

24   case around that, kind of recognize that doesn't really

25   work. I mean, even the governor, who can't bring herself

1   to defend the very law that she signed two years ago, says

2   in her letter submission that that theory doesn't work,

3   that the NYVRA standards are not in the New York

4   Constitution, that they apply only to localities.

5   So these Petitioners, in some of their amici

6   and --

7   (Court reporter seeks clarification.)

8   MR. TSEYTLIN: I did not realize there would be

9   so much spelling on my feet here.

10   And -- and maybe -- maybe, the governor

11   suggests, that the Court can come up with some other

12   standard.

13   Very respectfully, we submitted multiple expert

14   reports on the NYVRA standards that they put in their

15   petition. We submitted detailed briefing about how this

16   Court, in a matter of first impression, should interpret

17   that language. To now adjudicate this case on some other

18   standard -- on which we haven't submitted expert reports,

19   on which we haven't adjudicated -- would be a fundamental

20   violation of due process and would render this proceeding

21   unconstitutional.

22   THE COURT: What standard should the Court

23   apply?

24   MR. FASO: The Court should take one of two

25   paths. One, if the Court agrees with us, that the NYVRA

1   standards are not in the New York Constitution, the only

2   legal -- legally permissible disposition is to dismiss

3   this petition or deny the petition.

4   If the Court disagrees with us and thinks the

5   NYVRA standards are in the New York Constitution, then the

6   Court should apply the NYVRA standards. And I will -- so

7   those are the two paths.

8   Obviously, we think it should be dismissed.

9   Nothing in the Constitution includes the NYVRA standards,

10   and the governor agrees with us. If the Court

11   disagrees -- if the Court takes a different approach, then

12   the Court will be in the position of being the first Court

13   in the state to articulate what the NYVRA means.

14   THE COURT: The Constitution, in Article 3

15   Section 4(1), talks about the opportunity to participate

16   in the political process. What's the difference there as

17   opposed to the New York Voting Rights Act language --

18   MR. TSEYTLIN: Right.

19   THE COURT: -- where it says that the Court

20   should apply the opportunity to participate?

21   MR. FASO: So the "opportunity to participate"

22   language, that is borrowed -- taken directly from

23   Section 2 of the -- of the Federal Voting Rights Act.

24   THE COURT: Right.

25   MR. TSEYTLIN: Which is the canonical voting

1   rights statute in this nation.

2   (Court reporter seeks clarification.)

3   MR. TSEYTLIN: The US Supreme Court has

4   interpreted that as to require that there has to be a

5   reasonably configured district that can be created, that

6   has a majority of either a single race, as some courts

7   have held, or multiple -- single-minority race or, as

8   other courts have held, a combination of multiple races

9   makes up 50 percent or more in a reasonably configured

10   district. That is what the US Supreme Court has held.

11   What the NYVRA does is it uses that language,

12   Section 2, in the New York Constitution. And it adds

13   additional language that says that there should also be

14   the opportunity to influence elections, the very thing the

15   US Supreme Court has held is not in the language that

16   Your Honor quoted.

17   And what we respectfully submit is -- you know,

18   look, the New York legislature in 2022 said, "We want this

19   influence standard for localities -- for counties, towns."

20   You know, I'm defending a couple -- I've defended, and I'm

21   defending, a couple lawsuits on behalf of towns and

22   counties when, you know, the NYVRA has been invoked.

23   (Court reporter seeks clarification.)

24   MR. TSEYTLIN: Here, the NYVRA was not adopted

25   to cover congressional districts. That is governed only

1   by the constitution provision that my friend projected on

2   the screen, and that one does not have the influence

3   language.

4   However, if Your Honor does choose to go in the

5   direction that my friends have urged in the petition to

6   adopt the NYVRA for congressional districts, which

7   legislature didn't do, then this Court is going to be in

8   the position to be the first one to opine what it -- about

9   what the language means.

10   And the way the NYVRA functions is as a

11 threshold requirement, and then two paths after the

12 threshold requirement. And threshold requirement is key,

13 which is that the -- the racial group at issue, the one

14 bringing the lawsuit, their candidates of choice have to

15 be usually defeated. And that involves two questions that

16 have been unanswered because there have been no cases yet.

17   One is: How high is the threshold for

18 "usually"? Is it 50 percent, as I think my friends are

19 suggesting? Or is it, as The Oxford Dictionary definition

20 that we quote said, has to be "ordinarily, as a rule."

21   Second, do you do the analysis by looking just

22 at the congressional district or the -- or the county

23 legislative district or the ward, dealing with counties --

24 when you're dealing with counties or towns? Or do you

25 look at the whole jurisdiction or a region?

1   And we respectfully submit that their thesis

2   that you look at the particular district, and that you

3   essentially do 50 percent or more, would render the NYVRA

4   absurd and impossible to comply with. And any

5   jurisdiction, and any district that had the very common

6   condition of racially polarized voting, the US Supreme

7   Court in Footnote 5 of Cooper says, that racially

8   polarized voting is a common condition, nothing

9   consciously suspect about it.

10   And even though an expert, Dr. Palmer says, and

11   I quote, "race and party are fundamentally linked in

12   American politics." So racially polarized voting is

13   common. So if one were to adopt their theory that you

14   focus on an individual district, and you say, you know,

15   "usually defeated" is 50 percent or more, then any -- any

16   district that have racially polarized voting -- almost any

17   district would be illegal.

18   (Court reporter seeks clarification.)

19   MR. TSEYTLIN: For one race or another, either

20   for -- like in this case, you know, the current district,

21   their own expert says that African-American and Latino

22   candidates of choice have won 4 out of 20 -- 5 out of 20

23   of the elections that he looked at.

24   If you reconfigure the district the way that

25   Dr. Cooper, another expert that they put forward, says,

1   then Dr. Palmer says that that district is won by the

2   candidate of choice of Latino and African-American

3   candidates 18 out of 20 times. So if -- if the Latino and

4   African-American candidate of choice is usually defeated

5   under the current district, then surely the

6   White-preferred candidate of choice is usually defeated

7   under their remedial district, which would make it illegal

8   for the same reason, just for another race.

9   Because as the Appellate Division held in the --

10 the Clark case that I argued and lost, on this --

11 including on this argument, the -- the NYVRA protects

12 White voters just like it protects voters of any other

13 race.

14   And since any -- unless you have a 50/50

15 district exactly, and you're going to have -- and you have

16 racially polarized voting, one of the racial groups'

17 preferred candidates is going to be losing. That's basic

18 math. So that can't be the test.

19   And we respectfully submit that the only way the

20 test works is if you do the analysis on a regional or a --

21 or a jurisdiction-wide basis and that you have a -- a more

22 stringent understanding of what "usually defeated" means.

23   THE COURT: I'm sorry -- a --

24   MR. TSEYTLIN: Of what "usually defeated" means.

25 Because "usually defeated" is the necessary threshold, and

1   if you apply the understanding --

2   (Court reporter seeks clarification.)

3   MR. TSEYTLIN: And if you apply that

4   understanding -- sorry, Your Honor.

5   THE COURT: Keep going.

6   MR. TSEYTLIN: If you apply the understanding to

7   the facts of this case, as the experts for their side and

8   our side are going to submit, the case is an easy one. It

9   is undisputed between the experts that the -- that the

10   African-American and Latino candidate of choice is not

11   usually defeated in New York across the -- the

12   congressional districts, according to the -- the numbers

13   that you'll see from Dr. Trendy, the 20 -- or 19 of the --

14   of the congressional districts of the 26 congressional

15   districts are expected to be won by the African-American

16   or Latino candidate of choice.

17   (Court reporter seeks clarification.)

18   MR. TSEYTLIN: If you look at just region-wide

19   in New York City, CD-11 is the only district where

20   African-American and Latino candidates of choice are

21   winning every election. And if you look at just CD-11,

22   their own expert says that a fourth of the time, the

23   African-American and Latino candidate of choice wins. And

24   he only -- he got that -- he -- and maybe he'll explain

25   why, he excluded the 2018 congressional race, where the

1   Latino and African-American candidate choice won in CD 11.

2   If you look at those numbers, Latino voters and

3   Black voters make up about 30 percent of CD-11, and

4   they're winning around 30 percent of the -- their

5   candidate of choice are winning around 30 percent the

6   elections.

7   So unless you have this absurd theory of: You

8   focus on only in the individual strict, and it has to be

9   50 percent that's usually defeated, under the evidence

10   presented by both sides' experts, their claim fails, under

11   the usually-defeated threshold.

12   And if their claim fails under the

13   usually-defeated threshold, Your Honor doesn't need to get

14   into this frankly messy and difficult question of how you

15   apply the 11 nonexclusive, all-things-considered factors

16   under the NYVRA that Dr. Sugrue is going to testify to

17   this morning and that our expert Mr. Borelli will testify

18   to in a couple of days.

19   Because if we are correct that the

20   African-American, Latino candidate of choice is not

21   usually defeated under the proper analysis, then you don't

22   get to that other inquiry. But if Your Honor does get

23   into that other inquiry, I think you will see that

24   Dr. Sugrue does not make out the case under those factors.

25   He essentially -- for a lot of his analysis, he

1   essentially ignores Latinos in -- in the NYVRA factors

2   that he analyzes, even though there are twice as many of

3   them as African-Americans in -- in Staten Island.

4   And then there -- the stuff -- the things that

5   he does look at are things like literacy tests that

6   New York State enacted decades ago that were long

7   adopted -- long abolished. You know, and other old

8   incidents. He glosses over the substantial progress that

9   Mr. Borelli will testify to in -- with African-American,

10   Latinos' progress and improvement in education, economic

11   attainment and voting in Staten Island.

12   (Court reporter seeks clarification.)

13   MR. TSEYTLIN: And also their success in --

14   electoral success. Not the least of which is Congressman

15   Malliotakis, who Petitioners are trying to racially

16   Gerrymander out of her -- out of this district, being a

17   Latino representative of this district.

18   THE COURT: But you're not claiming to be the

19   minority -- representing the minorities, though.

20   MR. TSEYTLIN: But that -- no, she represents

21   all of the people of CD-11, Your Honor.

22   (Continued on the next page.)

23

24

25

1   MR. TSEYTLIN: But I will say one of the

2   factors, one of the things to consider under the all

3   things considered inquiry, is the success of candidates,

4   of raises as well, not just, you know, who

5   demographically various candidates are supporting. Of

6   course, it cannot be said that New York -- policy only

7   minority candidates worth electing are those supported,

8   are those supported by democrats.

9   Finally, your Honor, um, it is important to

10 note that the remedy they seek here is very clearly

11 unconstitutional under the U.S. Supreme Court's equal

12 protection juris prudence. In fact, I further submit

13 that anything like that remedy, came out of this court,

14 U.S. Supreme Court would very likely submit a reverse as

15 it did in the Wisconsin legislator case a couple of

16 years ago.

17   The test under the U.S. constitution equal

18 protection clause, articulated by the U.S. Supreme Court

19 is straight forward.

20   One, is strict scrutiny applied.

21   Two, is it satisfied.

22   Strict scrutiny applies under the Wisconsin

23 legislator case if there is an intentional racial draw.

24 If race is the factor that can't be -- this wolf comes

25 as a wolf, your Honor.

1   Their entire basis for asking for either

2   legislative or judicial redraw here is race.

3   Under Wisconsin legislation in Cooper, that

4   very clearly triggers strict scrutiny. I don't think

5   there is a plausible argument to the contrary.

6   So they would have the burden to show that this

7   racial redraw of a district that is 30 percent African

8   American Latino, and electing the African American

9   Latino choice around 30 percent of the time, is nearly

10   tailored to satisfy a compelling argument. There is no

11   compelling argument of interest in changing the district

12   on racial basis, and even if there were, they haven't

13   come close, they haven't even tried to show that this is

14   narrowly tailored. Narrow tailoring is the highest

15   legal standard that we have outside of the criminal

16   context in this nation. They spent, I could tell one

17   sentence of their brief on it, that itself is

18   exceptionally a default on that necessary legal

19   requirement.

20   And in terms of my prediction of what would

21   happen if the racial gerrymander came out of this

22   proceeding, U.S. Supreme Court is not uninterested in

23   this area of law. It currently has before it order to

24   reargument in a case that may even hold that the --

25   Section 2 which carefully crafted three preconditions,

1   and two steps has serious -- problems.

2   A court that is willing to consider that

3   approach would surely have no trouble dispatching a

4   district that is intentionally drawn for racial reasons

5   with not even a serious effort to show strict scrutiny

6   has been satisfied.

7   Thank you, your Honor.

8   THE COURT: Thank you.

9   MR. FASO: Good morning, your Honor. Nicholas

10   Faso on behalf of respondent Kosinski, Casale and Riley.

11   At the outset, it is telling who is not

12   defending this lawsuit. The Governor, the Legislator,

13   democratic commissioners and board of elections, they

14   have not taken position on the merits of this case.

15   They are not defending the very lines that they enacted.

16   Their position underscores what this lawsuit is

17   really about. Partisan gambit to reconfigure the only

18   republican held district in New York City. It is not a

19   bona fide voting rights case.

20   The evidence will show this case is about

21   partisanship, not protecting minority voters.

22   Before we get to the evidence, this case should

23   be dismissed on a threshold legal ground my friend just

24   articulated.

25   The New York Voting Rights Act does not apply

1   to congressional redistricting, which is governed

2   exclusively by the New York State Constitution.

3   Petitioner has asked this court to properly

4   engraft that later enacted statute into the

5   constitution. But even if the legislature had intended

6   the New York Voting Right Act to apply, it would have

7   said so. Even the governor, legislative leaders, while

8   not defending the law, but agreed the New York Voting

9   Rights Act cannot apply, in this case.

10   Separation of powers forbids judiciary from

11   rewriting the constitution by applying the statutory

12   standard that the political branch chose not to.

13   Now, petitioners concede that their case fails

14   unless the New York Voting Right Act applies. Meaning,

15   they ask this court to do what the states political

16   actors have declined to do. This court should reject

17   that invitation.

18   Even putting aside this fatal flaw,

19   petitioners illustrious plan reveals partisan intent.

20   Under their own configuration, combined Black and Latino

21   citizen voting age share barely moves, while the White

22   share rises. That is not a vote dilution remedy. But

23   is a blatantly partisan reconfiguration to shift CD-11

24   political balances.

25   At best, Mr. Cooper --

1   THE COURT: Doesn't that happen all the time in

2   reconfiguring, scales tip to help a political balance;

3   isn't that part of what the legislature does?

4   MR. FASO: It is part of the people of the

5   State of New York rejected in the 2014 constitutional

6   amendment, explicitly prohibit political partisan

7   gerrymandering. The policy of this state to avoid that

8   consequence, sure. Political actors on both sides of

9   the aisles pursuing it. It is the role of the courts

10   to ensure that that does not happen.

11   At best, Mr. Cooper's illustrious plan was

12   nakedly partisan redraw of CD-11. At worse, there is a

13   wish list for the national democratic party that

14   violates multiple principles of redistricting.

15   First, the plan partisan gerrymandering

16   masquerading as it a racial remedy. It achieved its

17   claim performance gains not by adding Black or Latino

18   voters, but by swapping in more liberal white voters

19   from other boroughs.

20   Under petitioners own configuration, the

21   combined Black and Latino voting age share barely moves.

22   It is simply rearranging White partisans to shift the

23   district's political balance.

24   Second, the plan harms Asian voters. The

25   largest minority group in the area. To achieve this

1   partisan goal, the plans moves Asian voters at far

2   higher rates than any other group. It splits cohesive

3   communities like Chinatown and reduces their voting

4   strength in CD-11.

5   Degrading one minority groups voting share to

6   manufacture political outcome is not a lawful remedy.

7   Third, petitioner's goal is geographically

8   impossible. The population geography of Staten Island

9   and the surrounding boroughs makes it infeasible to draw

10   compact, lawful district that meaningfully increases

11   Black and Latino voting shares without harming Asian

12   representation or sacrificing compactness. This

13   practical impossibility confirms the plan's true aim is

14   partisan advantage.

15   Finally, adopting petitioner's theories is a

16   dangerous precedent providing -- partisan relitigation

17   of every competitive district in the state. The

18   inability to elect in any close district is enough to

19   trigger a redraw without some clear limiting principle,

20   courts will be drawn into an endless cycle of political

21   redistricting and -- that Article 3 permits. Our

22   experts will confirm this.

23   Political sciences John Alfred's analysis shows

24   the plans gains come from swapping democrat-leaning

25   White voters, not from empowering minority voters.

1   Demographer Thomas Bryan, B R Y A N, finds the plan less

2   compact, it splits communities interests, like Chinatown

3   and disproportionately harms Asian voters.

4   Ultimately, this case should be dismissed as a

5   matter of law, because the New York VRA does not comply

6   the governing standard for congressional redistricting

7   and petitioners cases admittedly not viable without it.

8   Alternatively, if the court reaches the merits,

9   the evidence will show the petitioners plan as a

10   partisan gerrymander that harms Asian voters, fails to

11   empower Black and Latino voters.

12   For these reasons, we respectfully ask the

13   court to dismiss the petition, enter judgment in favor

14   of the respondents.

15   Thank you, your Honor.

16   THE COURT: Thank you.

17   MR. FARBER: Good morning, your Honor.

18   THE COURT: Good morning.

19   MR. FARBER: Seth Farber, for Governor Hochul,

20   Senate Majority Leader Steward-Cousins, Speaker Heastie,

21   and Attorney General James.

22   Your Honor, the estate respondents rely on the

23   letter we submitted on December 8, 2025. NYSCEF

24   Document 95. Thank you.

25   THE COURT: Thank you.

1   Response?

2   MS. BRANCH: Yes. Just a few clarifying

3   points, your Honor.

4   All parties I think agree that this case

5   presents an issue of first impression because the

6   constitutional ban on vote dilution has not yet been

7   interpreted by courts. It is fairly new. Just added to

8   the constitution in 2014 and there has not been

9   litigation under that provision.

10   My friends on the other side believe that the

11   constitutional provision is just a repeat of Section 2

12   of the Voting Writes Act and plaintiffs are petitioners

13   that bring a constitutional vote dilution claim must

14   prove that they can constitute a majority in a new

15   district.

16   By contrast, we believe that the language and

17   the context of the constitutional provision indicates

18   that it is broader than the protections provided by

19   federal law. And that is the dispute here.

20   In particular, we believe that the

21   constitutional language, and allows plaintiffs to show

22   that a new district can be drawn, which a single race is

23   not required to form a majority of voters in the

24   district. Instead, coalitions, multi-racial coalitions,

25   in this case, Black and Hispanic voters and White

1   crossover voters can also be remedies for racial voters.

2   THE COURT: So can we breakdown the

3   Subdivision C of the New York State Constitution where

4   when we are talking about drawing district lines here,

5   Paragraph 1 talks about race, language, minority voting

6   rights, et cetera.

7   Paragraph 2 then gets to containing equal

8   number of inhabitants for each district. There is an

9   allowance for deviation.

10   Paragraph 3, it talks about continuity of the

11   district.

12   So based on the order, should I consider race

13   to be the primary objective and everything else falls

14   underneath that?

15   MS. BRANCH: The doctrine and the case law

16   under the equal protection clause is clear that courts

17   can remedy racial vote dilution, but they have to do so

18   in ways that comply with traditional redistricting

19   criteria. That would include some of the other criteria

20   that are set forth in that state constitutional

21   provision, including compactness and continuity. In

22   other words, race cannot predominate. That is the legal

23   test. And here that is why we will have expert

24   testimony from Mr. Bill Cooper that will show that, yes,

25   the district is drawn to remedy racial vote dilution in

1 Congressional District 11, but it also complies with the

2 traditional redistricting principles set forth in the --

3 constitution, it is compact considering the geography of

4 New York City, and Staten Island in particular which is

5 not, does not have enough population to constitute a

6 congressional district on its own. It either has to

7 take population from the two most natural geographies,

8 Brooklyn or Lower Manhattan, and will talk about the

9 ways in which the district has been configured as a

10 Staten Island, Lower Manhattan district in the past.

11   And so race cannot predominate, but it can be

12 considered in remedy racial vote dilution so long as the

13 additional criteria comply here.

14   I would like to draw your Honor's attention to

15 the language of Article 3, Section 4 of the state

16 constitution which specifically talks about districts

17 being drawn based on the totality of the circumstances

18 so that race or -- racial or minority language groups do

19 not have less opportunities to participate. And we

20 would submit that that plurally-range group is very

21 significant here with respect to whether or not the

22 state constitutional language extends beyond the

23 protections of federal law. We reference in our

24 briefing the Nixon v. Kent County case where the Sixth

25 Circuit underscored the text of Section 2 doesn't permit

1   lawsuit seeking coalition or crossover districts because

2   if Congress had intended to sanction such suits, then

3   federal law would refer to quote, "classes" plural

4   "of citizens protected."

5   Here, the language, that language that was

6   illustrative in the context of the Sixth Circuit case is

7   similar to the language in the state constitutional

8   provision in that it doesn't refer to a single class of

9   citizens, but rather refers to racial and minority

10   language groups, and we submit that that language is

11   important in interpreting the constitutional provision

12   to extend beyond the protections of federal law.

13   We have urged the court to look to the legal

14   framework set forth in the New York Voting Rights Act.

15   We don't argue that the state constitution incorporates

16   those standards or that those standards are somehow

17   engrafted onto the state constitutional language. We

18   simply argue that the New York Voting Rights Act as

19   opposed to federal law provides a helpful standard for

20   the court to consider applying to our constitutional

21   claim. Because it too, and the respondents and

22   intervenors agree with this, it too is broader than the

23   protections set forth under federal law.

24   The standards provided for in New York Voting

25   Rights Act are helpful. They provide a workable

1   definition of what constitutes racially polarized

2   voting. Dr. Palmer, our expert, will testify that

3   under that standard race -- there is significant

4   racially polarized voting in Congressional District 11.

5   The New York Voting Rights Act also provides a

6   non-exhaustive list of the totality of the circumstance

7   factors for courts to consider. Dr. Sugrue will testify

8   to those factors. I think it is important to note that

9   those factors are very similar to what is referred to as

10   the senate factors under Section 2.

11   So the idea that this is so novel and unheard

12   of, that we would look to standards for racial curing,

13   for identifying and remedying racial vote dilution that

14   exists in state law, I think is just, is over, is

15   over-placed.

16   Unless your Honor has further questions, I

17   think we can call our first witness.

18   THE COURT: That is fine. Bring up the

19   witness.

20   (A brief pause.)

21   THE COURT: Let's take a five minute break.

22   Off the record.

23   (Whereupon, a discussion was held off the

24   record.)

25   THE COURT: When you are ready, call the first

1   witness.

2   MR. LALLINGER: Good morning. Lucas Lallinger

3   on behalf of the petitioners.

4   Petitioners call Dr. Thomas Sugrue.

5   THE COURT OFFICER: Please remain standing.

6   Do you swear or affirm to tell the truth and

7   nothing but the truth?

8   THE WITNESS: Yes, I do.

9   D R.   T H O M A S   S U G R U E,

10   called by the Petitioner, after being duly sworn, testified

11   as follows:

12   THE COURT OFFICER: Have a seat.

13   State your name for the record and your

14   address.

15   THE WITNESS: My name is Thomas J. Sugrue,

16   S U G R U E. My address is 28 West Houston Street,

17   New York 10012.

18   THE COURT: Good morning.

19   THE WITNESS: Good morning, your Honor.

20   MR. LALLINGER: Your Honor, may I approach

21   the witness to hand him a binder with his expert

22   reports?

23   THE COURT: Hand it to the court officer.

24   THE WITNESS: Thank you.

25   (Handed to the witness.)

40

1   DIRECT EXAMINATION

2   BY MR. LALLINGER:

3   Q.   Good morning, Dr. Sugrue?

4   A.   Good morning.

5   Q.   You've been retained as an expert by petitioners in

6   this case; is that right?

7   A.   Yes, I have.

8   Q.   I will begin by asking you some questions about

9   your background and expertise.

10   What is your current profession?

11   A.   My current profession is silver professor of social

12   and cultural analysis and history at New York University.

13   Q.   And can you please summarize your educational

14   background?

15   A.   Yes. I received my bachelor's in history from

16   Columbia University in 1984. I then received a bachelor's

17   and masters degree in history from Cambridge University in

18   England in 1986 for the BA and 1990 for the MA. I attended

19   graduate school in history at Harvard University, where I

20   received a masters in 1987 and received my Ph.D in history

21   in 1992.

22   Q.   How long have you been a history professor?

23   A.   I began teaching in 1991 before I finished my Ph.D.

24   at the University of Pennsylvania. So that would add up to

25   be about 35 years.

1   Q.   And do you hold any other titles at NYU currently?

2   A.   Yes, I do. I am the founding director of the NYU

3   program in urban studies. In addition, I am the director of

4   NYU City's collaborator and I am affiliate member in the

5   Wagner School of Public Service and in the Department of

6   Sociology in NYU.

7   Q.   What are your principal areas of expertise?

8   A.   Principal areas of expertise are 20th Century and

9   21st Century U.S. history and social science. My

10   scholarship focuses on race and equality in the United

11   States. It focuses on cities and urban history. It focuses

12   on civil rights and focuses on politics. Written about

13   other subjects, but those are the primary areas of my

14   scholarship.

15   Q.   Have you published any books on these subjects?

16   A.   I'm sorry?

17   Q.   Have you published any books on these subjects?

18   A.   Yes, I have. I published many books. Single

19   author of three books, co-author of a fourth and editor of

20   six other books.

21   Q.   And any peer reviewed articles on these subjects?

22   A.   Yes. I have published about 33 peer-reviewed

23   articles, scholarly books and journals.

24   Q.   Have you served as an expert witness before in

25   voting or civil rights cases?

1   A.   Yes, I have.

2   Q.   How many cases?

3   A.   Um, eight cases all together.

4   Q.   Have any of those cases required you to examine the

5 totality of the circumstances, factors, either under the New

6 York Voting Rights Act or Section 2 of the Federal Voting

7 Rights Act?

8   A.   Yes. Four of the cases that I served in required

9 totality of circumstances analysis.

10   Q.   And has the court ever found you not qualified when

11 offered as an expert?

12   A.   No.

13   Q.   Have courts previously credited and relied on your

14 expert analysis?

15   A.   Yes, they have. My opinions, expert opinions were

16 cited in the voting writes case, U.S. v. City of Euclid.

17 That was 2007. And also in U.S. v. City of East Point which

18 was 2019.

19   MR. LALLINGER: Your Honor, at this time,

20   petitioner's tender Dr. Sugrue as an expert in the

21   fields of American History and Social Science focusing

22   on Urban History and Civil Rights, pursuant to Civil

23   Practice Law Rules 3101.

24   THE COURT: Any objections?

25   MR. MOSKOWITZ: Your Honor, just -- I think it

1   is -- Ben Moskowitz, Troutman Pepper Law. I think

2   Respondents have an explanation here, we negotiated a

3   stipulation with them that would result in having to not

4   having to go through this typical showing to tender

5   witnesses. So, maybe I missed it if it was filed,

6   perhaps it is with the court's consideration.

7   THE COURT: I saw it this morning. So if

8   everyone is okay with moving forward without laying the

9   foundation for making witnesses, I'm fine with foregoing

10   the background. I've read all the records in this

11   matter, so.

12   MS. BRANCH: Fine.

13   THE COURT: Thank you.

14   Let's continue.

15   MR. MOSKOWITZ: Thank you.

16   THE COURT: You may proceed. Thank you,

17   Counselor.

18   Q.   Dr. Sugrue, did you prepare two expert reports for

19   this case?

20   A.   Yes, I did.

21   Q.   Did those include your opening expert reports

22   submitted on November 17th and rebuttal report on

23   December 18th?

24   A.   That's correct.

25   Q.   Are those Tabs 1 and 3 in the binder that is in

1   front of you?

2   A.   Yes. Tab 1 is my expert report submitted in

3   November and Tab 3 is a rebuttal report I submitted in

4   December.

5   MR. LALLINGER: The parties have stipulated

6   that each of the expert reports filed by the parties in

7   support of their briefs shall be admitted into the, into

8   evidence as Exhibits F, provided the expert testifies at

9   this hearing.

10   So at this time, Petitioner's move to admit

11   Petitioner's Exhibit 1, November 17, 2025 report of

12   Dr. Thomas Sugrue and Petitioner's Exhibit 2, December

13   18th rebuttal report of Dr. Thomas Sugrue into evidence?

14   THE COURT: Documents numbers?

15   MR. LALLINGER: Sorry.

16   THE COURT: Virtual evidence? They are in the

17   virtual evidence courtroom?

18   MR. LALLINGER: They are.

19   THE COURT: Just tell me what documents they

20   are?

21   MR. LALLINGER: They are P001 and P002.

22   THE COURT: Okay. Both of them are for

23   identification purposes.

24   Let's continue.

25   (So identified.)

1   Q.   Dr. Sugrue, what were you asked to analyze, in this

2   case?

3   A.   I was asked to analyze the history of

4   discrimination, segregation, and racial disparities

5   affecting Blacks and Latinos in Staten Island. And in

6   addition, I was asked to consider ongoing segregation,

7   discrimination and disparities affecting Blacks and Latinos

8   in Staten Island, specifically with reference to the

9   totality of the circumstances enumerated in the New York

10   State Constitution and elaborated upon in the New York

11   Voting Rights Act of 2022, or the John Lewis Act of 2022.

12   Q.   And Dr. Sugrue, can you turn to Tab 4 of the binder

13   in front of you?

14   A.   Yes, I'm there.

15   Q.   And do you recognize this document?

16   A.   Yes, I do.

17   Q.   And what is it?

18   A.   This is a copy of the John Lewis Voting Rights Act,

19   New York Voting Rights Act of 2022.

20   Q.   Can you now turn to Page 4 of Tab 4?

21   MS. DIRAGO: Molly Dirago, for the

22   intervention respondents.

23   Do you plan to give us copies of these

24   documents? I have his reports. That is fine. If you

25   are going to be discussing the statute, I would like to

1   have it in front of me.

2   MR. LALLINGER: Yes, I have a copy.

3   (Handed to counsel.)

4   MS. DIRAGO: Thank you.

5   Q.   Dr. Sugrue, where it is marked three, does this

6   page show the totality of the circumstances factors under

7   the New York Voting Rights Act?

8   A.   Yes, it does. Page 4, Paragraph 3.

9   Q.   And did you focus on any particular totality of the

10 circumstances factors in your analysis?

11   A.   Yes, I did. My report touches on many of the

12 factors listed here, but focuses primarily on Factor A,

13 which is discrimination on Staten Island.

14   Factor B, the extent to which member, Blacks

15 and Latinos in Staten Island were elected to office.

16   Factor C, the use of voting qualifications,

17 prerequisite voting, et cetera, on Staten Island.

18   Factor G, which is the extent to which Blacks

19 and Latinos are disadvantaged in various areas on Staten

20 Island, including education and employment, criminal justice

21 and housing.

22   Factor H, the extent to which members of the

23 protected class -- Staten Island are affected, are

24 disadvantaged in other areas, ability to participate in the

25 political process.

1   Factor I, Factor J, significant lack of

2   responsive elected official in Staten Island.

3   Q.   What areas were you focusing on when analyzed the

4   areas?

5   A.   My report focuses primarily on Richmond County, New

6   York or the borough of Staten Island.

7   Q.   We can take this down now.

8   Now, Dr. Sugrue, does Page 4, Paragraph 8 of PX1,

9   your opening report, summarize the primary conclusions that

10   is you reached?

11   A.   Page 4, Paragraph?

12   Q.   Eight of your opening report?

13   A.   Yes, it does, yes.

14   Q.   What did you concluded?

15   A.   In my report I provided evidence that Staten Island

16   has a long history of racial segregation, discrimination,

17   and disparities affecting Blacks and Latinos on the island.

18   I looked at the connection between past history of

19   discrimination and segregation disparities to ongoing

20   disparities, particularly concerning housing and education

21   and status and policing, and with an eye toward the

22   scholarship that shows that all of these have a negative

23   impact on the ability of Blacks and Latinos to participate

24   fully in the political process. I discussed the

25   longstanding nature of race on Staten Island up to the

1   present day focusing both on public policies and private

2   actions by real estate brokers, landlords and building

3   managers and ordinary citizens in Staten Island that

4   contributed to the history of segregation. I also focused

5   on, provided evidence for segregation of Blacks and Latinos

6   on Staten Island. And I explored and discussed at some

7   length discrimination and acts of harassment, hate crimes or

8   violence that targeted Blacks and Latinos in Staten Island.

9   And I discuss in some detail various measures of

10   socioeconomic, educational and housing disparities on Staten

11   Island concerning Blacks and Latinos and affecting their

12   right or ability to participate fully in political process.

13   I can go on, but I think that gives a, what are the major

14   themes I explore in my report.

15   (Transcript continues on the next page.)

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1   Q   And what methodology did you use to come to your

2   conclusions?

3   A   I used methodologies that I've been using in my

4   scholarship since the very beginning of my career, which is a

5   combination of historical and social scientific analysis,

6   relying on various sources, including newspapers and other

7   publications, government records, empirical data, including

8   data from the U.S. Census.

9   In addition, I draw from scholarly books and

10   articles. I draw from City -- New York City records. I look

11   at court cases and -- and filings.

12   I may be missing a few but that, I think, captures

13   the scope of the types of sources that I use in this report and

14   that I've used in many of my -- my -- my books and articles

15   over the last 35 years.

16   Q   And did you review the expert reports of any other

17   expert in this case?

18   A   Yes. I -- I closely read and -- and responded to the

19   reports submitted by Mr. Joseph Borelli in this case. And I

20   briefly looked through some of the other expert reports that

21   your clients commissioned for this -- for this case.

22   Q   Dr. Sugrue, do you examine the demographic changes on

23   Staten Island at page 7, paragraphs 12 to 13 of your opening

24   report?

25   A   Yes, I do.

CYD

1   Q   And can you briefly describe what the demographics of

2   Staten Island were in 1980?

3   A   Yes. Staten Island in 1980 was overwhelmingly White.

4   It was more than 85 percent White, according to the decennial

5   census of that year. It was 7 percent Black and 5.4 percent

6   Latino and 1.9 percent Asian in 1980.

7   Q   Dr. Sugrue, can you please turn to tab 5 of the

8   binder in front of you?

9   A   Yes.

10   Q   Which has been marked as P013 for identification.

11   And take a look at the first few pages of those -- of that

12   document.

13   A   Yes.

14   Q   Do you recognize this document?

15   A   I do. I have a -- a beaten-up copy of this on -- on

16   the shelf in my office at NYU, along with some other states.

17   This is from the 1980 Census of Population prepared

18   by the U.S. Census Bureau for the State of New York, back in

19   the days when these things were published in paper form.

20   Q   And does it contain --

21   MS. DIRAGO: I'm sorry to interrupt. Can I just

22   get a copy of the exhibit?

23   (Court reporter seeks clarification.)

24   COURT OFFICER: Molly DiRago.

25   Can I get a copy of the exhibits that you're --

1   that you're going to be showing him and discussing?

2   MR. LALLINGER: We didn't -- we didn't discuss

3   how the parties would exchange exhibits, but we've filed

4   all of these exhibits that are marked on the virtual

5   courtroom. So our understanding is that you can get them

6   on the virtual courtroom.

7   MS. DIRAGO: Oh, yeah, I guess we didn't discuss

8   printing them out.

9   THE COURT: Just go off the record for a second.

10   (Off the record.)

11   THE COURT: Let's go back on the record.

12   All right, counsel. Whenever you're ready, you

13   may proceed.

14   BY MR. LALLINGER:

15   Q   Dr. Sugrue, does what's marked as P013 contain

16   demographic information for Staten Island in 1980?

17   A   Yes, it does. It's actually presented here as

18   county-level data for Richmond County, which is the same thing

19   as Staten Island. In fact, over the course of my testimony,

20   I'll use "Richmond County" and "Staten Island" synonymously.

21   Q   Thank you.

22   And did you rely on this document to report the 1980

23   demographic information for Staten Island in your report?

24   A   Yes, I did.

25   Q   And do historians and social scientists regularly

1   rely on this information to report demographic statistics?

2   (Court reporter seeks clarification.)

3   A   Yes. I've been using U.S. Census data since I worked

4   on my dissertation a long time ago.

5   MR. LALLINGER: Petitioners move to admit P013

6   into evidence.

7   MS. DIRAGO: I don't have an objection. Thank

8   you.

9   THE COURT: Plaintiffs' Exhibit 013 is admitted.

10   (Document is received and marked Petitioners'

11   Exhibit No. P013 in evidence by the Court as of this

12   date.)

13   MR. LALLINGER: Thank you.

14   BY MR. LALLINGER:

15   Q   Dr. Sugrue, can you briefly describe the demographic

16   change on Staten Island since 1980?

17   A   Yes, I can. Staten Island has grown increasingly

18   diverse since the 1980 census data that you just asked me

19   about. Today, Staten Island is only 56.6 percent White

20   compared to more than 85 percent in 1980.

21   Today, the Latino population or Hispanic population

22   of Staten Island is 19.5 percent compared to only 5.4 percent

23   in 1980. And Staten Island is today 9 percent Black. It was

24   7 percent Black in 1980.

25   Q   And Dr. Segrue, can you please turn to tab 6 of the

1   binder in front of you, which has been marked as P008 for

2   identification?

3   A   Yes.

4   Q   And take a look at the first few pages.

5   A   Yes.

6   Q   Do you recognize this document?

7   A   I do. This is a printout of data that I used

8   digitally from the American Community Survey, which is a

9   product of the U.S. Census Bureau. This is the five-year

10   American Community Survey from 2019 to 2023, the most recent

11   comprehensive census data available that I used throughout my

12   report.

13   Q   And does it contain demographic information for

14   Staten Island in 2023 that you relied on for your report?

15   A   Yes, it does.

16   MR. LALLINGER: Petitioners move to admit P008

17   into evidence.

18   MS. DIRAGO: No objection.

19   THE COURT: Petitioners' Exhibit No. 8 is

20   admitted.

21   (Document is received and marked Petitioners'

22   Exhibit No. 8 in evidence by the Court as of this date.)

23   MR. LALLINGER:

24   Q   Dr. Sugrue, let's begin with the history of

25   discrimination on Staten Island. Did you make any overall

1   conclusions regarding the history of discrimination?

2   A   Yes, I did.

3   Q   And what did you conclude?

4   A   I found that there is a long history of racial

5   segregation on Staten Island that dates back close to

6   100 years, and that those patterns of racial segregation

7   continue to shape and influence the experience of Blacks and

8   Latinos on the island today.

9   Q   Let's bring up figure 2 on page 11 of PX1, your

10   opening report.

11   (Exhibit displayed in open court at this time.)

12   A   Yes.

13   BY MR. LALLINGER

14   Q   Dr. Sugrue, can you explain what this figure shows?

15   A   Yes. Figure 2 shows the distribution of the Black

16   population on Staten Island between 1990 and 2019, 2023. I use

17   the decennial census data for 1990, 2000 and 2010; and I used

18   five-year American Community Survey of the U.S. Census Bureau

19   for 2023 -- from 2019 to 2023.

20   Q   And what does it show about the concentration of

21   Black Staten Islanders?

22   A   These maps which I prepared show that between 1990

23   and the most recent data that the Black population on Staten

24   Island has been disproportionately concentrated in the

25   North Shore of the island -- the area that is above where the

1 black curved line is shown on the maps here.

2   Q   And what is that black curved line on the map?

3   A   That line is the Staten Island Expressway.

4   Q   And is that a significant feature of Staten Island?

5   A   It is. It's the main way to get across Staten Island

6 from points east to New Jersey and beyond. And it's also a

7 place that has symbolic significance on Staten Island.

8   Q   In what way?

9   A   Beginning in the 1980s, many Staten Islanders began

10 to describe the Staten Island Expressway as the "Mason-Dixon

11 Line," that is referring to differences between north and

12 south, but in this case, referring to the fact that most

13 non-White Staten Island residents were living north of the

14 Mason-Dixon Line, that is north of the Staten Island

15 Expressway; and the areas to the south of the Staten Island

16 Expressway were overwhelmingly White.

17   That's a pattern that we can see in all four of these

18 maps. The Black population in all of these census data years

19 is overwhelmingly concentrated north of the Staten Island

20 Expressway.

21   Q   And let's bring up figure 3 on page 12 of PX1.

22   What does this figure show?

23   A   Yes. So figure 3 is an analogous map to figure 2,

24 drawing from the same data, from the 1990, 2000 and 2010

25 decennial U.S. Census, and also drawing from the most recent

1 data from 2019 to 2023, from the American Community Survey.

2 And this -- these are maps that I drew that show the

3 distribution of the Latino population on Staten Island over

4 that period.

5 Q And where is the Latino population on Staten Island

6 concentrated?

7 A The Latino population on Staten Island is also

8 concentrated in the North Shore of the island or north of the

9 Staten Island Expressway. You can see even with a relatively

10 small population in 1990 that the darker colored areas are

11 mostly north of the expressway. And you can see the population

12 as it expands in 2010 and 2023.

13 I should point out, as a bit of local information,

14 that you'll notice on the 2010 and 2023 maps -- the bottom two

15 maps, that there's a large orange area, which might suggest

16 a -- a significant movement of Latinos to the southern part of

17 the Staten Island.

18 But I should note this area has a very small

19 population. It's the area around the -- the Fresh Kills or

20 recently -- or soon to be -- or recently decommissioned --

21 decommissioned in 2001, Fresh Kills dump, so it doesn't have a

22 very big population.

23 And likewise, if you take a look at the 2023 map,

24 you'll see an area of kind of moderate-colored orange, just to

25 the south of the Staten Island Expressway on the left-hand side

1   of the map. This is an area called Travis and Chelsea, which

2   is a largely industrial area. There are a lot of warehouses

3   there, and it's a -- it's a neighborhood with pretty mediocre

4   housing stock by and large.

5   And if you look over to the far right, you'll see a

6   very dark area. This is an area that is almost all parkland

7   and fields. It has a population of 59 Latinos. And so, again,

8   these -- these colors on -- on the map represent the percentage

9   of Blacks and the percentage of Latinos in the population --

10   this map, the percentage of Latinos.

11   Q   Did you also provide statistical measures of

12   residential segregation on Staten Island in your report?

13   A   Yes, I did.

14   Q   And what statistical measure did you use?

15   A   I used the index of dissimilarity, which is the most

16   commonly used measure of residential segregation by race or

17   ethnicity.

18   Q   Can you briefly explain what the index of

19   dissimilarity is?

20   A   Yes. The index of dissimilarity, speaking broadly,

21   measures the distribution -- or evenness of the distribution of

22   two compared populations across the geographic unit of

23   analysis. So in this case, the index of dissimilarity measures

24   the evenness of the distribution of the White population and

25   the Black population or the White population and the Latino

58

1   population.

2   The index of dissimilarity goes from zero to 100.

3   Zero means that a geographic unit is entirely integrated, that

4   the populations are distributed totally randomly; that there

5   are no concentrations of one or another group. One hundred

6   means total apartheid -- that is, the complete segregation of

7   the population, and the index is measured on that -- on that

8   span between zero and one hundred.

9   Q   And are there commonly understood ranges within that

10 span from zero to one hundred?

11   A   Yes. I -- I cite the U.S. Department of Housing and

12 Urban Development's measure, which is one that many scholars

13 use as well, which finds that areas that are 40 or below on the

14 index are considered to be -- or considered to have low rates

15 of segregation.

16   From 40 to 55 indicates moderate segregation; and

17 from 55 to 100 indicates a high degree of segregation.

18   Q   And did you calculate the dissimilarity index value

19 for Blacks on Staten Island today?

20   A   Yes, I did.

21   Q   And what was that value?

22   A   The value of -- sorry. The index of dissimilarity

23 for Blacks and Whites in Staten Island using the most recent

24 ACS data are -- is 75, meaning that it's a highly segregated

25 community.

CYD

1   Q   And did you calculate the value for Latinos on Staten

2   Island today as well?

3   A   Yes, I did. And I found that there was an index of

4   dissimilarity of 42 between Blacks and Latinos in the present,

5   which signifies a moderate degree of segregation.

6   Q   Turning to paragraph 32 of your opening report, do

7   you offer any opinion on what led to the residential

8   segregation that exists on Staten Island today?

9   A   Yes, I did.

10   Q   And what is it?

11   A   So I focus on a number of factors that have shaped

12   past and ongoing segregation on Staten Island. One is historic

13   and ongoing discrimination and stigmatization of non-White

14   groups, Blacks and Latinos in this case.

15   Second are federal housing policies that created and

16   maintained segregation both in the private sector and in the

17   public sector, that is in -- in government subsidized private

18   real estate developments as well as public housing.

19   I also look at the history of ongoing discrimination

20   on Staten Island by real estate brokers, landlords and mortgage

21   lenders among others; and I also discuss the role that, on

22   occasion, ordinary citizens on Staten Island, White citizens

23   played, in maintaining the barriers of segregation on the

24   island.

25   Q   You discuss a practice called, "redlining."

1   Can you explain what redlining is?

2   A   Yes. Redlining is a term used by scholars and

3   policymakers to describe the demarcation of certain sections of

4   cities or metropolitan areas by a value of -- of properties,

5   the quality of properties, and -- and other characteristics.

6   Maps that were produced first by the Homeowner's Loan

7   Corporation in Staten Island in 1940 demarcated the island into

8   four different zones: The highest ranked being green and blue,

9   the lowest ranked being yellow and red. The term, "redlining,"

10   comes from this -- this demarcation of ostensibly risky or

11   hazardous neighborhoods using the color red on maps.

12   Q   And was there -- were there any particular factors

13   that made a neighborhood be demarcated as red on the maps?

14   A   Yes. When appraisers -- federal appraisers drew

15   these maps, they looked at the location, the housing stock, et

16   cetera. But an overriding factor in the drawing of these maps

17   was the presence of racial or ethnic groups that were

18   considered to be dangerous or undesirable or hazardous to the

19   value of properties in -- in those communities.

20   Every neighborhood that had a red ranking -- I'm

21   sorry. I should say, every neighborhood with even a small

22   Black population was ranked the lowest or demarcated red on

23   these maps. And even neighbors that had the prospect at some

24   point in the near or medium term future that were perceived as

25   likely to attract non-White residents was also ranked low on

CYD

1   these appraisal maps.

2   Q   Can we bring up figure 5 on page 19 of your opening

3   report.

4   A   Yes.

5   Q   Dr. Sugrue, did you identify particular neighborhoods

6   on Staten Island that were redlined?

7   A   Yes. I should say this is a reproduction of the

8   Federal Home Loan Board map for Richmond County, also called

9   The Home Security Map. And the appraisers offered detailed

10   descriptions of -- called "area descriptions" of each

11   community, marked here in different colors, that they use as a

12   basis for assigning evaluations to neighborhoods.

13   And the neighborhoods with significant Black

14   populations that were marked red included Sandy Ground, which

15   is in the southwestern part of the Staten Island, which was

16   Staten Island's longest established Black community dating to

17   the 1820s.

18   It also included nearby neighborhoods, Charleston and

19   Rossville, which had, as the HOLC reported, a growing

20   infiltration of -- of Black residents. And the low rankings

21   also included neighborhoods on the North Shore that were --

22   that had established Black populations or were perceived at

23   risk of -- of gaining Black population.

24   Q   Now, did you identify any connection between these

25   official policies of redlining and poor outcomes for those

1   living in formally redlined neighborhoods today?

2   A   Yes. There's a wide body of scholarship by

3   historians, sociologists, public health experts and other

4   social scientists, demonstrating that areas that are redlined

5   are more likely today to have various negative socioeconomic

6   indicators, problematic environmental outcomes and problematic

7   health outcomes.

8   Q   Now in your report at pages 25 through 29, you also

9   discuss past and ongoing discriminatory practices by real

10 estate brokers and landlords. What practices did you identify

11 in your report?

12   A   I identify a number of practices by real estate

13 brokers, including discrimination against Black and Latino

14 homebuyers or renters. I discuss the process of blockbusting,

15 which affected neighborhoods that were beginning to attract or

16 suspected to be beginning to attract minorities, and I discuss

17 racial steering.

18   In addition, I discuss real estate brokers'

19 opposition to -- on Staten Island, opposition to New York's

20 Civil Rights laws that protected the rights of minorities to

21 buy housing freely or rent housing freely on the market.

22   Q   And can you explain what "racial steering" is?

23   A   Yes.

24   Racial steering is one of the most common and ongoing

25 discriminatory practices concerning the sale or rental of

1   houses to -- differentially to Whites and Blacks and Latinos.

2   The process of steering is directing potential White buyers to

3   predominantly or entirely White areas and directing Black or

4   Latino potential homebuyers or renters to racially mixed or

5   predominantly Black or Latino neighborhoods.

6   It's a very common practice because it can be done

7   surreptitiously. It's very hard to document.

8   Q   And did you identify any evidence of this practice

9   still happening today on Staten Island?

10   A   Yes. I identified evidence of the practice of

11   steering beginning in the 1960s and continuing up to the very

12   recent past, I mean as in, within the last couple of years.

13   And steering is evidenced by the use of paired

14   testers or Blacks and Whites or Whites and Latinos with

15   comparable incomes, comparable credit records, comparable

16   desires for the type of housing they want, and then one finds

17   evidence of disparate treatment, that is Whites being steered

18   to prominently White areas and Blacks and Latinos being steered

19   to predominantly Black areas, regardless of their common

20   socioeconomic status or common interests.

21   Q   And you also mentioned White hostility and racial

22   harassment as contributing to residential segregation.

23   A   Yes.

24   Q   Can you summarize what you describe in that section

25   of your report?

1   A   Yes. I discuss incidents where White residents of

2   Staten Island expressed hostility to non-Whites who were

3   attempting to move or who moved into their neighborhoods over a

4   significant period of time in the 20th Century.

5   Q   Now, did you also look at socioeconomic disparities

6   between Black and Latino Staten Islanders as compared to White

7   Staten Islanders?

8   A   Yes, I did.

9   Q   And what particular socioeconomic factors did you

10   focus on?

11   A   I looked at major indicators of socioeconomic

12   disparity. That includes educational attainment. It includes

13   income. It includes rates of unemployment. It includes

14   poverty rates. It includes rates of homeownership or

15   rentership.

16   Q   And why did you focus on these particular factors?

17   A   These pretty much run the gamut of measuring

18   socioeconomic commonalities or differences between groups.

19   Q   Let's bring up figure 7 on page 39 of your opening

20   report.

21   Dr. Sugrue, what does this figure show?

22   A   This figure shows -- again, using the ACS five-year

23   data for 2019 to 2023, it shows the highest educational

24   attainment rates of Blacks, Latinos and Whites on Staten

25   Island. And I should say the universe covered by this is

1   everybody over the age of 25 who is White, Black or Latino.

2   Q   And what are the key data from this figure?

3   A   So the key data here are the first line, which is

4   "less than high school diploma"; and the last line, which shows

5   "Bachelor's degree or higher." In other words, who or what

6   percentage of each of these groups did not graduate from high

7   school on Staten Island, and what percentage of these groups

8   graduated from college on Staten Island.

9   Q   And do these show disparities between Black and

10 Latino as compared to White?

11   A   Yes. If you look at the top line, you'll see that

12 only 7.2 percent of Whites on Staten Island didn't have a high

13 school diploma, versus 11 percent of Blacks and 20.5, almost

14 21 percent of Latinos.

15   Q   And did Mr. Borelli in his report offer anything that

16 calls your conclusions about stark disparities between Black

17 and Latino as compared to White Staten Islanders in into

18 question?

19   A   No. Mr. Borelli's report offered evidence that

20 confirms my discussion of disparities in educational

21 attainment, showing gaps of those who have graduated from high

22 school as well as showing significant gaps between White,

23 Blacks and Latinos in terms of the attainment of a college

24 degree.

25   Q   And did you investigate whether there is a connection

CYD

1   between educational attainment and political participation?

2   A   Yes, I did.

3   Q   And what did you find?

4   A   A there is a wide body of scholarship going back

5   decades now by social scientists who show a strong relationship

6   between educational attainment and political participation,

7   precisely because educational attainment provides voters --

8   those who want to participate in the political process with

9   access to information and knowledge about political issues,

10   social capital that gives some advantages in the voting

11   process, and that's been found steadily over now decades of

12   scholarly research.

13   Q   And did Mr. Borelli offer any counter to the evidence

14   you presented of this connection between educational attainment

15   and political participation?

16   A   No. Mr. Borelli didn't comment on that in his

17   report.

18   Q   Now, did you also examine socioeconomic disparities

19   between the groups?

20   A   Yes, I did.

21   Q   Let's bring up figure 8 on page 39 of your opening

22   report.

23   A   Okay.

24   Q   Dr. Sugrue, what does this chart show?

25   A   So this chart uses different measures of

1   socioeconomic status to document disparities. The first line

2   looks at per-capita income on Staten Island. Again, I'm

3   drawing from the same recent census data. And it shows that

4   Whites on Staten Island make more than $53,000 a year per

5   capita, whereas Latinos and Blacks make in the very low 30s,

6   $31,647 for Latinos and $30,784 for Blacks.

7   Or to put it differently, Blacks and Latinos on

8   Staten Island, per capita, have incomes of $20,000 lower than

9   the per-capita income of Whites on Staten Island.

10   Q   And did you find the same -- similar disparities

11 exist between Blacks, Latinos and Whites in the unemployment

12 rate and those who live below the poverty line?

13   A   Yes, I did. The census data show that 5 percent of

14 Whites experience unemployment on Staten Island, whereas 6.7

15 and 6.8 percent of Blacks and Latinos, respectively.

16   Q   And did you investigate whether there's a connection

17 between these socioeconomic factors and political

18 participation?

19   A   Yes.

20   Q   And what does the data show?

21   A   There is, again, an extensive body of scholarship by

22 social scientists showing the relationship between

23 socioeconomic status and political participation on many

24 dimensions, including the ability to make financial

25 contributions to candidates or to organizations that are

1 funding political campaigns. And also, higher socioeconomic

2 status gives one access to other dimensions of political

3 process as well.

4   Q   And did Mr. Borelli offer any evidence or conclusions

5 that would call this scholarship on the relationship between

6 income and these socioeconomic factors into question?

7   A   No. His report is silent on the matter.

8   Q   Now, did you also look at homeownership rates on

9 Staten Island?

10   A   Yes, I did.

11   Q   Let's pull up figure 9 on page 40 of your opening

12 report.

13   What does this figure show?

14   A   This figure shows really substantial disparities in

15 homeownership rates on Staten Island. More than three quarters

16 of Whites -- 76.8 percent of Whites on Staten Island own their

17 own homes, whereas just a little more than 4 in 10 -- just a

18 little more than 4 out of 10.

19   (Court reporter seeks clarification.)

20   A   So 43.7 percent of Latinos own their own homes in

21 Staten Island, and only 35.8 percent of Blacks on Staten Island

22 own their own homes. It's a very marked difference in the

23 experience of Blacks and Latinos and Whites on Staten Island.

24 And that's reflected in the second line, which conversely shows

25 that a majority of both Blacks and Latinos in Staten Island are

1 renters, and a minority, under 1 in 4 Whites on Staten Island

2 are renters.

3 BY MR. LALLINGER

4   Q   And did you find -- did you investigate whether

5 there's a connection between homeownership and political

6 participation?

7   A   Yes. There's a wide body of scholarship by social

8 scientists showing that homeownership has a significant impact

9 on degrees of political participation, in part because

10 homeowners have a pretty significant financial stake in

11 political decisions that may affect the values of their

12 property and often have very strong stakes in the communities

13 where they live.

14   Q   And did you come to any overall --

15   THE COURT: Did you consider the difference in

16   New York City, where the tax base is based on income

17   rather than on property?

18   THE WITNESS: I -- I didn't consider the

19   relationship of taxes and property on Staten Island versus

20   other parts of New York City, no.

21   THE COURT: I'm asking in the context of

22   homeownership too, just for clarification.

23   THE WITNESS: No. I didn't explore that

24   question in my report.

25   THE COURT: Thank you.

1   BY MR. LALLINGER

2   Q   Did you come to an overall conclusion with regard to

3   the effect of these socioeconomic factors and political

4   participation for Blacks and Latinos on Staten Island?

5   A   Yes. Each of these socioeconomic factors that I

6   discussed -- educational attainment, income, poverty and

7   unemployment and homeownership and rentership -- are related,

8   strongly related to one's ability to participate fully in the

9   political process.

10   And on every one of these dimensions, there are

11   significant disparities between Blacks, Latinos and Whites on

12   Staten Island.

13   Q   Now, did you also look at Black and Latino electoral

14   success on Staten Island?

15   A   Yes, at this did.

16   Q   And what did you find?

17   A   Staten Island has had a Black population for about

18   200 years, and Staten Islanders did not elect the first Black

19   to public office until 2009. That was Councilwoman

20   Debbie Rose, who took office in 2010.

21   Since then, Staten Island voters have elected two

22   other Black elected officials, Councilwoman Rose's successor,

23   that's Councilwoman Kamillah Hanks, and Assembly Member

24   Charles Fall. I should say Kamillah Hanks was elected in 2022,

25   Charles Fall elected to the Assembly in 2018.

CYD

1   It's noteworthy that those three elected officials --

2   Kamillah Hanks, Debbie Rose and Charles Fall -- all represent

3   the center of the Latino and Black population on Staten Island,

4   the North Shore. Assembly Fall also -- his district includes

5   the North Shore, but also part of Lower Manhattan.

6   There is a fourth Black elected official on Staten

7   Island, and that is Judge Anne Thompson. She was elected in

8   2022, to the 13th Judicial District bench on in Staten Island.

9   It's noteworthy that Judge Thompson was elected in an

10   uncontested race, there were three candidates for three seats.

11   She had run the previous year in 2021 for an open seat on the

12   judicial bench in Staten Island and lost handily.

13   Q   Has any Latina person ever served on the Staten

14   Island city counsel?

15   A   No.

16   Q   And has any Latina person ever represented Staten

17   Island in the state legislature?

18   A   Yes. That was then Assemblywoman Nicole Malliotakis.

19   Q   And is she the only one?

20   A   She is the only person of Latino heritage who has

21   been elected to office on Staten Island, despite the fact that

22   Latinos constitute about 20 percent of Staten Island's

23   population today.

24   Q   And other than who you've identified now, did

25   Mr. Borelli identify any additional Black or Latino success on

1   Staten Island?

2   A   Mr. Borelli did not identify any additional Black or

3   Latino electoral success on Staten Island.

4   Q   And can you turn to pages 19 and 20 on tab 3, so this

5   is your rebuttal report?

6   A   Yes.

7   Q   And what do you discuss?

8   A   Oh, I'm sorry. I have to take -- take a minute to

9   find my way there. I'm sorry.

10   Q   No problem.

11   A   Page number? I'm sorry.

12   Q   Nineteen, beginning on page 19.

13   A   Yes, I'm there.

14   Q   What do you discuss at paragraphs 50 to 51?

15   A   I discuss a faulty assertion in Mr. Borelli's report

16   concerning the election of Blacks and Latinos to office in

17   Staten Island.

18   Q   And what was the faulty assertion?

19   A   Mr. Borelli provided a list of Black and Latino

20   and -- and, as an aside, Asian judges from Staten Island, or

21   sitting on bench in Staten Island. All of the judges that he

22   lists, that I'll mention now, were not elected to the bench by

23   Staten Island voters.

24   He asserts, for example, that the Honorable

25   Tashanna Golden and the Honorable Raymond Rodriguez were

1 elected by Staten Island voters.

2   Judge -- Judge Golden is a native of Staten Island,

3 but she serves on the Housing Court of the Civil Court of the

4 City of New York in Kings County, Brooklyn.

5   The Honorable Raymond Rodriguez has never held

6 elected office either, and he was not elected to any judicial

7 positions on Staten Island. He was appointed to the New York

8 City Criminal Court by the mayor; and at that point, it was

9 Mayor Bill de Blasio.

10   And Judge Rodriguez did run for the bench just

11 six weeks ago -- or two months ago, in November. He ran for an

12 open seat on the 13th Judicial District on Staten Island, and

13 he lost overwhelmingly with only 37.1 percent the vote.

14   So Staten Island has not elected any Black or Latinos

15 to the bench, except for Judge Anne Thompson in the uncontested

16 2022 race.

17   Q   Did you also examine whether there were disparities

18 with regard to criminal justice and policing on Staten Island?

19   A   Yes. I discuss a long history of disparities

20 concerning the treatment of Blacks and Latinos on Staten

21 Island, going back to the middle of the 20th century.

22   Q   Without going through all of your examples, are there

23 noteworthy examples of this history of discriminatory

24 treatment?

25   A   Yes. I think perhaps the most significant are racial

CYD

1   disparities in stop-and-frisk practices by the New York City

2   Police Department on Staten Island.

3   (Court reporter seeks clarification.)

4   A   The U.S. Commission on Civil Rights investigated

5   racial disparities in stop-and-frisk on Staten Island in the

6   late 1990s. And the New York City Police Department

7   commissioned the Rand Corporation, R-A-N-D, Rand Corporation, a

8   research center, to examine disparities in stop-and-frisk

9   across New York City. And they found that Staten Island stood

10   out for its disparate use of stop-and-frisk targeting Blacks

11   and Latinos on the island.

12   BY MR. LALLINGER

13   Q   And did you offer any examples of the discriminatory

14   use of force by Staten Island police?

15   A   Yes. I -- I offered evidence at various points about

16   discrimination, harassment and sometime deaths at the hand of

17   the police on Staten Island concerning Blacks.

18   Q   Now, did you also examine racial appeals in political

19   campaigns in Staten Island in your report?

20   A   Yes, I did.

21   Q   Can you begin by defining what a "racial appeal" is?

22   A   A racial appeal is the use of racial symbolism,

23   images, representations, language often associated with

24   undesirable characteristics that are part of the racialization

25   of segments of the population. For example, associating Blacks

CYD

1   or Latinos with welfare receipt, or criminality, or drug use.

2   And these racial appeals are used to activate the

3   racial animus or prejudices of voters in service of winning

4   their votes and influencing the political process.

5   Racial appeals have a particularly poisonous effect

6   on political discourse because they legitimate long-held

7   prejudices, stereotypes -- and not only legitimate but

8   reinforce those prejudices and stereotypes. And they -- they

9   give what you might call a permission structure to those who

10   see the racial appeals to offer their own -- or act on their

11   own impulses of prejudice.

12   Q   Let's bring up figure 11 on page 50 of your opening

13   report.

14   A   Yes.

15   Q   Can you describe for us what's going on in this

16   figure?

17   A   Yes. This was a fake Facebook page that was

18   attributed to then Councilwoman Rose. Again, she was the first

19   Black elected official on Staten Island, serving on New York

20   City Council.

21   This page offers a good example of a racial appeal by

22   associating a Black councilwoman with attributes that are

23   frequently racialized in American political discourse.

24   (Court reporter seeks clarification.)

25   A   And have been over time in Staten Island, as I

1   document in my report.

2   BY MR. LALLINGER

3   Q   And what's happening in this fake Facebook post?

4   A   So this post, attempting to discredit Councilwoman

5   Rose, refers to her alleged support for a welfare hotel full of

6   criminals and drug addicts.

7   I'm reading here from the -- from the text of this --

8   this page, second and third lines.

9   THE COURT: Why don't you just describe it,

10   rather than read it?

11   THE WITNESS: Yeah.

12   THE COURT: It's not in evidence yet.

13   THE WITNESS: Okay.

14   So this appeal associated Councilwoman Rose with

15   negative attributes frequently associated with -- with

16   non-Whites on Staten Island that I find evidence for,

17   going back to the 1970s -- 1960s, actually -- associating

18   race and such attributes as welfare receipt and drug

19   abuse, used to taint Candidate Rose's -- or Councilwoman

20   Rose's candidacy.

21   THE COURT: Thank you.

22   BY MR. LALLINGER

23   Q   Did you also review Mr. Borelli's discussion about

24   racial appeals?

25   A   Yes, I did.

1   Q   Turning to tab 3 of your rebuttal report.

2   A   Yes.

3   Q   At page 14, do you describe your understanding of

4 Mr. Borelli's methodology for identifying racial appeals?

5   A   Yes, I -- I do.

6   Q   And what is it?

7   A   Mr. Borelli did a two-keyword search from the

8 newspapers.com database, spanning 2000 to 2024.

9   (Court reporter seeks clarification.)

10   A   His keyword search terms were "racism" and "issues."

11 It's problematic -- indeed, I think, fatal to an effective

12 database research to use just two search terms, one of which is

13 judgmental and laden, "racism"; the other of which is really

14 vague, "issues."

15   When historians conduct newspaper research, they

16 regularly use multiple search terms, synonyms, related words

17 and concepts, specific terms that pertain to the issue that

18 they are attempting to find evidence on. "Racism" and "issues"

19 doesn't capture very much, or it captures, maybe with the term

20 "issues," a lot. But nothing specific necessarily to racial

21 appeals because they show up in -- in many ways in the

22 historical record.

23 BY MR. LALLINGER

24   Q   And in your opinion, what is the likely effect of

25 using the methodology that Mr. Borelli used to try and identify

1   racial appeals in Staten Island?

2   A   Well, Mr. Borelli used these two search terms to make

3   an argument that there were few, if any, racial appeals on

4   Staten Island between 2000 and 2024.

5   (Court reporter seeks clarification.)

6   A   And, again, using just those two keyword search terms

7   would not capture any number of -- of possible examples.

8   BY MR. LALLINGER

9   Q   Shifting gears slightly, who are the Young Leaders of

10   Staten Island?

11   A   The Young Leaders was a black-led organization,

12   founded to promote political participation and to demand

13   greater responsiveness on the part of the elected officials on

14   Staten Island to the needs of the Black community. And it's an

15   organization that also reached out and formed a coalition with

16   Latinos on Staten Island, making similar demands of -- of New

17   York City elected official and hoping to mobilize Black and

18   Latino voters in 2000. It was an organization committed to

19   peaceful protest as well.

20   Q   And did Mr. Borelli cite to an article in his report

21   that identified racial appeals concerning the Young Leaders?

22   A   Yes, he did.

23   Q   And did you review that article in writing your

24   rebuttal report?

25   A   Yes. I did review the ads that appear in the article

1   that Mr. Borelli cited.

2   Q   And do you discuss that at page 16, paragraph 41 of

3   your rebuttal report?

4   A   Yes, I do.

5   Q   And can you read the first two sentences of that

6   paragraph?

7   A   I can. So this refers to the use of the Young

8   Leaders as part of two ads that were racial appeals in the

9   2020, 11th Congressional District race between then

10   Assemblywoman Nicole Malliotakis and then incumbent Congressman

11   Max Rose, just to contextualize this quote.

12   Mr. Borelli refers to "The City," which is a New York

13   publication that he -- he draws from to discuss the nonviolent

14   protests led by the Young Leaders in 2020.

15   The article reports footage of one peaceful march

16   interspersed with doctored images of police cars ablaze, became

17   the centerpiece of an attack ad, touting Assembly Member

18   Nicole Malliotakis and trashing Representative Max Rose.

19   Q   And can you explain why that is a racial appeal?

20   A   Yes. This is a textbook racial appeal. It's a --

21   it's -- in some ways, this is what I could use in a class to

22   illustrate racial appeals to my students.

23   In this case, we have a group that's nonviolent, the

24   Young Leaders, marching on Staten Island. They did three

25   marches that summer. And their peaceful march is interspersed

1   with -- with inflammatory images of Black riotousness and --

2   and criminality of police cars being lit on fire.

3   The Young Leaders didn't light any police cars on

4   fire, and they didn't condone lighting police cars on fire,

5   or -- and there was nothing riotous, criminal, or threatening

6   about the marches that they led.

7   So, we see an ad, in other words, attempting to

8   promote the candidacy of one elected official against another

9   by associating, in this case, Representative Max Rose with

10   Black criminality, a classic use of a racial appeal.

11   Q   And did the article identify another racial appeal?

12   A   Yes, it did. The article also identified a

13   4 million-dollar ad campaign that was led by a Republican

14   political action committee, the Congressional Leadership Fund.

15   (Court reporter seeks clarification.)

16   A   This was also an ad that featured the nonviolent

17   marches of the Young Leaders. It showed a Young Leaders' March

18   through New Dorp, D-O-R-P -- it's a predominantly White section

19   of the central part of Staten Island.

20   (Court reporter seeks clarification.)

21   A   It showed images of the -- of the Young Leaders

22   marching through New Dorp, along with spliced-in violent

23   scenes, again not at all associated with the Young Leaders,

24   with the ad offering a voiceover, talking about criminals

25   hailed as freedom fighters.

CYD

1   BY MR. LALLINGER

2   Q   And can you explain why that's a racial appeal?

3   A   Yes. Once again, we see the Young Leaders, a

4   nonviolent organization that Mr. Borelli discusses very

5   favorably in his report, committed to Black and Latino

6   political engagement and working to influence the local

7   politicians to be more responsive to the needs of Blacks and

8   Latinos on Staten Island, and doing it nonviolently, yet being

9   associated with criminality and violent acts; again, very much

10 the racialized imagery and language that is an example of a

11 textbook racial appeal.

12   Q   And can you summarize your conclusions with regard to

13 the presence of racial appeals in campaigns in Staten Island?

14   A   Yes. Over time, we've seen racial appeals in Staten

15 Island that have had a negative impact on the political process

16 that contribute to racial polarization and de-legitimate -- or

17 sorry -- legitimate, not de-legitimate, my apologies -- that

18 legitimate racial prejudices and racial -- racially

19 discriminatory sentiments that have a long history on Staten

20 Island.

21   Q   Let's turn back to your evaluation of Mr. Borelli's

22 report.

23   What was your overall conclusion as to the

24 conclusions Mr. Borelli reached in his report?

25   A   Mr. Borelli's report confirms, when he uses

CYD

1 U.S. Census data, many of the points that I make in my report,

2 including confirming the evidence that I offer about

3 socioeconomic disparities and disparities in educational

4 attainment on Staten Island. His interpretation of those data

5 are problematic.

6   In addition, much of Mr. Borelli's methodology,

7 especially his use of search methods for racial appeals, are

8 problematic; but he does not offer a comprehensive history or a

9 history of the totality of the ways in which discrimination,

10 segregation, and racial disparities have affected Blacks and

11 Latinos on Staten Island over a very long period of time -- and

12 to consider the relationship, especially of -- of those various

13 forms of discrimination, segregation, and disparity, both past

14 and present and the connections between the two.

15   Q   And then, finally, can you briefly summarize your

16 conclusion with regard to the totality of the circumstances on

17 Staten Island?

18   A   Yes.

19   My research touches on a number of the totality of

20 factors, some -- some of which I enumerated at the beginning of

21 my testimony this morning, and shows that in sum, the

22 interconnections between a history of segregation in housing,

23 discriminatory practices ensconced in public policy, and also

24 reinforced by private actors on Staten Island -- real estate

25 brokers and citizens, created a pattern of segregation that

1   persists up to the present day and is evidenced in the index of

2   dissimilarity.

3   In addition, I show that other forms of

4   discrimination and racial marginalization and racial appeals

5   have played out in the life of Staten Island's Black and Latino

6   populations for decades, also impairing their right to fully

7   participate in the -- or their ability to fully participate in

8   the political process.

9   MR. LALLINGER: Thank you, Dr. Sugrue.

10   Petitioners pass the witness.

11   MS. DIRAGO: Your Honor, can I have a

12   five-minute break?

13   THE COURT: Absolutely. Why don't we let the

14   witness step down, take a break, and then we'll recommence

15   for a little while.

16   (Brief recess.)

17   MS. DIRAGO: My name is Molly DiRago. Good

18   morning, Your Honor.

19 BY MS. DIRAGO:

20   Q   Good morning, Dr. Sugrue. We met remotely. I don't

21 know if you remember, but a couple of years ago I deposed you

22 remotely. So good to see you again.

23   A   Yes, likewise.

24   Q   Yeah.

25   So you're not an expert on Staten Island, right?

    1   A   I am an urban historian and an expert on New York

    2   City, which includes Staten Island.

    3   Q   Okay.

    4   You would agree that the majority of cases that you

    5   testified in, though, do not relate to the history of Staten

    6   Island specifically, right?

    7   A   I have testified in cases concerning Nassau Counties,

    8   Islip and Suffolk County; Euclid, Ohio; East Point, Michigan;

    9   and -- those are the voting rights cases.

   10   Q   Okay.

   11   A   Whether Nassau and Suffolk County are related to

   12   Staten Island or not, they're all part the New York

   13   metropolitan area.

   14   Q   Okay.

   15   Well, I mean, Islip and Nassau are not even part of

   16   the New York City, right?

   17   A   That's correct.

   18   Q   You never taught any cases about Staten Island,

   19   right?

   20   A   I never --

   21   Q   You haven't taught any classes about Staten Island?

   22   A   I'm going include Staten Island in my spring semester

   23   History of New York undergraduate seminar, and we're going to

   24   do site visits, including to the North Shore of Staten Island.

   25   (Court reporter seeks clarification.)

CYD

1 BY MS. DIRAGO

2   Q   Is that due to this case and the research you've done

3 here?

4   A   Could you speak a little closer to microphone? My

5 hearing's not very good. I'm very sorry.

6   Q   Sure. I'll move on.

7   Let me see. You've never you authorized any

8 publication specifically focused on Staten Island, right?

9   A   Correct.

10   Q   So this is the first time doing research focusing on

11 Staten Island -- for this case?

12   A   No. I've researched about the Staten Island before.

13   Q   Focusing on Staten Island?

14   A   Focusing in part on Staten Island, yes.

15   Q   Because it was New York City?

16   A   No. Because I was invited to Arch Bishop Farrell

17 High School to do a workshop for archdiocesan teachers on

18 Staten Island and -- about a decade ago. And I began doing

19 some reading in Staten Island history so I could talk

20 knowledgeably about the island's relationship to the theme of

21 the presentation.

22   Q   Okay.

23   Let's talk about your opinions on segregation. And

24 I'm just going to clarify a few things.

25   You discussed Staten Island's Latino population in

1 your report, correct?

2   A   Yes, I do.

3   Q   And you use the term "Latino" pretty broadly, don't

4 you?

5   A   I use the term "Latino," which others already in this

6 case, and myself, too, use the term "Hispanic."

7   (Court reporter seeks clarification.)

8   A   Others speaking today have used "Hispanic." I used

9 both terms synonymously, and I use a definition that's widely

10 accepted by scholars and used by the U.S. Bureau of the Census

11 as well.

12   (Court reporter seeks clarification.)

13 BY MS. DIRAGO

14   Q   Okay.

15   And it describes people with ancestries from Mexico,

16 Latin America and the Caribbean, correct?

17   A   Yes.

18   Q   And that's regardless of national origin?

19   A   The term encompasses people from Central America,

20 Mexico, the Caribbean and South America.

21   Q   And are you aware from the research in this case that

22 Staten Island's Latino community is comprised of populations

23 from Puerto Rico, the Dominican Republic, the Caribbean and

24 Central and South America?

25   A   Yes. That's true of the Hispanic or Latino

1   population in all of metropolitan New York.

2   Q   And your report doesn't distinguish between these

3   subgroups, right?

4   A   I do not distinguish between the subgroups in my

5   report because the subgroup identities aren't relevant to the

6   larger issues that I discussed in my report.

7   Q   So you didn't look into whether those subgroups --

8   whether it's relevant to the issues in your report, right?

9   A   I did when I looked at various organizations that

10   advocate for Latinos and immigrants on Staten Island, like

11   La Colmena that themselves, serve Latinos regardless of their

12   place of origin, whether it be from Puerto Rico or the

13   Caribbean, elsewhere, or Mexico, or Guatemala or various

14   countries in South America.

15   Q   Okay.

16   But that doesn't have to do with the disparities that

17   you talked about in your report. Like, for example, education,

18   did you look at whether someone who was born in this country or

19   have ancestors who were born here have different levels of

20   educational attainment than, say, someone who came to this

21   country as an immigrant?

22   A   I looked at the census data. And the census uses the

23   term "Latino" to refer to the subset of the population, and

24   derived my findings from my analysis of census data.

25   Q   Okay.

1   So you did not parse it by subgroup.

2   A   When discussing education and --

3   Q   Sure.

4   Education and housing --

5   A   -- socioeconomic attainment I didn't parse it.

6   (Court reporter seeks clarification.)

7   A   When discussing educational attainment and

8   socioeconomic status, I did not parse national origin. I

9   focused on the census category, Latino or Hispanic.

10   BY MS. DIRAGO

11   Q   So in paragraph 22 of your report, and earlier, you

12   testified about the informal racial barrier that is the Staten

13   Island Expressway, correct?

14   A   Yes.

15   Q   You didn't discuss any segregation of Asians in your

16   report, did you?

17   A   I focused on Blacks and Latinos in my report because

18   they are the parties to this case.

19   Q   So was someone -- did someone tell you not to look at

20   the Asian communities in Staten Island in this case?

21   A   I -- I was hired to focus on disparities concerning

22   Whites, Blacks, and Latinos on Staten Island. So I focused on

23   disparities, discrimination and segregation concerning Whites,

24   Blacks and Latinos on Staten Island.

25   Q   And is that because the Petitioners' illustrative map

1 excises large portions of the Asian community from CD-11?

2   A   I did not look at the instructive -- I'm sorry. What

3 was the term that you used?

4   Q   "Illustrative map."

5   A   The illustrative map.

6   I have not looked at the illustrative map, and I have

7 not formed any opinions on it. I didn't use it when I was

8 writing my report.

9   Q   And just so I'm clear, were you instructed not to

10 look at the Asian-American population in Staten Island?

11   A   I was instructed to focus on Blacks, Latinos and

12 Whites on Staten Island because Blacks and Latinos are the

13 parties in this case.

14   Q   So you would agree that Asian-Americans can be found

15 on either side of the expressway, correct?

16   A   I did not do research on the residential

17 concentration or discrimination or disparities or segregation

18 concerning Asian-Americans on Staten Island.

19   Q   Did you note that Mr. Borelli did in his report?

20   A   I -- I saw that Mr. Borelli discusses Asians in his

21 report.

22   Q   Okay. Do you have any reason to disagree with the

23 data that he provides in his report for Asians?

24   A   I did not analyze the data that he used for Asians

25 since Asians are not part of what I was asked to do in

1   preparation of my reports.

2   Q   Okay.

3   You claim that -- in your report on paragraph 6, if

4   you want to look at it -- that you have conducted research on

5   historical and current patterns of racial discrimination,

6   racial segregation, and racial disparities and socioeconomic

7   status in New York City, with a focus on Richmond County.

8   But I guess you should have included a caveat that it

9   does not include Asians in Staten Island?

10   A   Again, in my report, I focused on the parties in the

11   case. I was asked to. I was not asked to provide data on

12   Asians. They were not parties to the case.

13   Q   Okay. So that would be a caveat that you would have

14   to add now to be accurate.

15   A   No. I don't see any caveat. This is what I was

16   hired to do, to focus on the matters of the totality of

17   circumstances that negatively impact the ability of the parties

18   to this case, Blacks and Latinos, to fully participate in the

19   political process on Staten Island.

20   Q   You do know that Asian-Americans make up 12 percent

21   of Staten Island, correct?

22   A   Yes. I report that data early in my report.

23   Q   And that's the third largest ethnic group on Staten

24   Island behind Whites and then Latinos, correct?

25   A   Yes.

1 Q   So even more than Blacks on Staten Island.

2 A   That's correct.

3 Q   I'm going to move on to something slightly different.

4   You cite an article by Seth Barron called, "New

5 York's Red Borough." That is in footnote 20 of your report.

6 A   I'm looking to see. I believe, yes, I did cite that

7 article. But I'll find it to verify. Yes, it's footnote 20 at

8 the bottom of page 13.

9 Q   Okay.

10   Is this the article that you cited there?

11 A   I'm sorry. I can't see it from here. It's just a

12 bunch of really small print.

13 Q   Okay.

14   You know what, then, I don't think we'll need it.

15 Let me know if -- if you end up wanting to looking at it. I'll

16 just ask you some questions.

17   THE COURT: You can probably enlarge it.

18 BY MS. DIRAGO

19 Q   And the first question was just sort of -- yeah, to

20 figure out if this was --

21 A   I -- it's still pretty hard for me to read. If I

22 could come down to the floor, I could look at it. Or if you

23 could give me a copy, it would be, I think, a lot easier for me

24 to look at it, and answer --

25 Q   Sure.

1   A   -- your questions accurately.

2   (Document handed to the witness at this time.)

3   A   Thank you very much.

4   COURT OFFICER: You're welcome.

5   THE COURT: We'll take a recess at about five to

6   1:00 for lunch, so -- just to give you some understanding

7   of where to stop.

8   MS. DIRAGO: I appreciate that. Okay.

9   THE COURT: Off the record.

10   (Off the record.)

11   THE COURT: Back on the record.

12   BY MS. DIRAGO:

13   Q   Okay.

14   Sorry, Dr. Sugrue. So you said that is the article

15   that you were quoting from in footnote 20 of your report?

16   A   Yes, it is.

17   Q   So you consider this -- you consider this article to

18   be reliable and credible.

19   A   I'm sorry. I considered it --

20   Q   -- the article to be a reliable and credible source?

21   A   It's a source that I use to document the

22   understanding of Staten Island's salient racial divide that is

23   the Staten Island Expressway, and to provide an example of the

24   use of the term "Mason-Dixon Line" on Staten Island.

25   Q   So for those purposes, it must have been reliable to

1   you, right?

2   A   Yes.

3   Q   It refers to Staten Island as the "forgotten

4   borough." In your research, did you come across what that

5   means, that term?

6   A   "Forgotten borough" is a concept that some residents

7   of Staten Island use to discuss the island's relationship with

8   other parts of New York City.

9   Q   And what is that relationship that it's referring to?

10   A   I can't speak to those who actually use or coined the

11   phrase. It refers to Staten Island's sense that it is somehow

12   not a part of New York or is -- has a complicated relationship

13   with New York City.

14   Q   Okay.

15   And that's all you found in your research about what

16   that term means?

17   A   I found examples of various grievances that residents

18   of Staten Island expressed towards other parts of New York

19   City. And the idea that somehow people in other parts of

20   New York City have forgotten or not paid attention to Staten

21   Island. A common complaint in American politics is that --

22   the -- the -- "I've been forgotten," and that's a -- a -- the

23   kind of rhetoric that doesn't surprise me.

24   Q   Okay.

25   So this article that you cited describes Staten

1   Island as "much less thickly settled than the rest of Gotham,

2   offering middle class families a chance to buy homes with lawns

3   and driveways."

4   Do you remember that description?

5   A   Yes.

6   Q   Do you agree with that description?

7   A   That description holds primarily for Whites because

8   of the low rates of homeownership for Blacks and Latinos on

9   Staten Island.

10   Q   Does lower Manhattan have a lot of homes with lawns

11   and driveways?

12   A   I'm sorry?

13   Q   Does lower Manhattan have a lot of homes with lawns

14   and driveways?

15   A   No.

16   Q   What about Bay Bridge, Bensonhurst or Bath Beach in

17   Brooklyn?

18   A   I haven't done research on Bay Ridge, Bath Beach or

19   other parts of -- of Brooklyn. There's a wide variety of

20   housing in Brooklyn based on my naked-eye observations, but not

21   any scholarly research, so I won't make any -- any claims based

22   on my scholarly expertise without the data.

23   (Court reporter seeks clarification.)

24   BY MS. DIRAGO

25   Q   Okay.

CYD

1   So you didn't look at the cultural differences or

2   similarities between Bay Ridge, Bensonhurst or Bath Beach,

3   Brooklyn and Staten Island?

4   A   I did not. I focused in my report on Staten Island.

5   Q   Okay.

6   And you didn't do any research on the similarities or

7   dissimilarities culturally between Lower Manhattan and Staten

8   Island, correct?

9   A   I did not look at culture, which is a pretty broad

10   and -- and murky category -- cultural differences or

11   similarities between Lower Manhattan and Staten Island, no.

12   Q   Okay.

13   So you don't have an expert opinion about whether

14   Staten Island is more similar culturally to Lower Manhattan

15   versus the western side of Brooklyn.

16   A   The term "culture" is really vague and undefined. I

17   wouldn't use it as a historian or social scientist to describe

18   the relationship between two different parts of a city.

19   (Court reporter seeks clarification.)

20   BY MS. DIRAGO:

21   Q   Okay.

22   A   It's really unspecified. How could I find data that

23   would -- that would document this -- this vague concept of

24   "culture"?

25   Q   So that's an easy "no" for you then.

1   A   That's correct.

2   Q   Okay.

3   The article further states that Staten Island has

4   "served as a political and cultural counterweight to the

5   far-left excesses of New York's other boroughs, especially

6   Manhattan and the Bronx."

7   Do you remember reading that?

8   A   Yes.

9   Q   And so this doesn't mention anything about being a

10   counterweight to Brooklyn there, does it?

11   A   There are a lot far-left people in Brooklyn, I think

12   it's safe so say. There's an area called the "Commie Belt"

13   that refers to a section of -- of southern and eastern Brooklyn

14   that offered overwhelming support for the candidacy of our --

15   our new mayor.

16   So the term "far-left excess" seems to me rather

17   hyperbolic. I wouldn't associate far-left excesses with

18   a great variety of political positions held by people in

19   different parts of metropolitan New York City.

20   Q   Okay.

21   It's your source. I'm just quoting it.

22   A   Yes.

23   Q   It also says:

24   "Statistically, Staten Island is an anomaly in New

25   York City. More than half of the adult population is married,

CYD

1   compared with less than 40 percent throughout the city as a

2   whole. Fewer than 15 percent of Staten Island households are,

3   quote, 'nonfamily,' whereas upward of 40 percent of households

4   citywide are so characterized. The citywide rate of unmarried

5   births is almost double the rate on Staten Island."

6   Did you remember reading that paragraph in your

7   research?

8   A   Yes.

9   Q   But you didn't report on that paragraph, did you?

10   A   I did not look at marriage, marriage patterns, family

11   structure, et cetera, on Staten Island or other parts of the

12   New York. It wasn't relevant to my analysis of discrimination,

13   segregation and racial disparities on Staten Island.

14   Q   All right.

15   Let's move to your opinions on segregation. And you

16   discussed earlier this index of dissimilarity, correct?

17   THE COURT: Do you want to start here at 2:00.

18   MS. DIRAGO: Oh, yes.

19   THE COURT: Sorry to interrupt.

20   MS. DIRAGO: No. This is a good time to stop.

21   THE COURT: Let's stop for lunch now. We'll go

22   off the record.

23   Let me remind the witness that while you're

24   testifying, please don't have any conversations with your

25   attorneys about your testimony.

CYD

1   Anything else?

2   MS. DIRAGO: When should we come back?

3   THE COURT: Come back at 2:00, and we'll get

4   started again at 2:15. We'll get everybody assembled, and

5   we'll go.

6   THE WITNESS: May I leave my materials here?

7   THE COURT: You may. All right. We'll recess

8   until 2:00.

9   MS. DIRAGO: Thank you, Your Honor.

10   (LUNCHEON RECESS HELD AT THIS TIME.)

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 1   THE COURT: Let's go back on the record.

 2 CROSS EXAMINATION

 3 MS. DIRAGO:

 4   Q.   Hello, again. I just started before the break

 5 discussing or bringing up the topic of the dissimilarity

 6 index that you discussed in your report and you testified to

 7 earlier, right?

 8   A.   Yes.

 9   Q.   So the index of dissimilarity is a tool to measure

10 the distribution of racial populations across a certain

11 geographic area; is that right?

12   A.   Yes.

13   Q.   This index does nothing to answer the question of

14 why there is racial dissimilarity, correct?

15   A.   Yes, I explained as part of my report.

16   Q.   And you would agree that a dissimilarity value of

17 40 or below represents a low level of segregation, correct?

18   A.   That's correct.

19   Q.   And the maximum value on the dissimilarity index

20 is 100, right?

21   A.   Correct.

22   Q.   And you calculated the white and Latino

23 dissimilarity index or value in Staten Island.

24   It is 42; is that right?

25   A.   Yes, that's correct.

1   Q.   So that's a moderate dissimilarity between

2 Hispanic and whites in Staten Island, right?

3   A.   Yes, that's what I reported.

4   Q.   And actually it's at the low end of what's

5 considered moderate?

6   A.   It's in the moderate range. We could talk about

7 that. There's not a consensus among scholars about whether

8 something is low, medium or high within a range.

9   Q.   Okay.

10   You didn't include the value for the

11 dissimilation, a number between Asians and whites, right?

12   A.   I did not.

13   Q.   And is that because you looked at it and it was

14 low, so you didn't include it in your report?

15   A.   No. I could -- I wrote my report considering

16 discrimination, segregation and disparities concerning

17 blacks and Latinos who were parties in this case.

18   Q.   So you don't provide any statistics on Asians,

19 beyond just a mere percentage of how many live in Staten

20 Island, in your report?

21   A.   I do not provide any other statistics concerning

22 Asians in my report.

23   Q.   Did you review Mr. Riley's report -- forgive me.

24 I may have asked you this. But he mentioned or he reported

25 that the dissimilarity value was 32 for Asians in Staten

1   Island.

2   Did you read that?

3   A.   I'd have to look at his report to review it and

4   give you the most accurate answer. But, I do recall it was

5   in the 30 range.

6   Q.   And 32 indicates a low level of segregation,

7   right?

8   A.   That's correct.

9   Q.   And did you also see that that number has steadily

10   declined from a value of 36 in 2010?

11   A.   As I said, I did not focus on Asians in Staten

12   Island. So, I didn't pay close heed to the statistics in

13   this report and the trajectory of that index.

14   Q.   Okay.

15   But you would agree that there's not a high degree

16   of segregation in Staten Island for either Latinos or

17   Asians?

18   A.   Again, I did not research the question of Asians.

19   And there's a moderate degree of segregation in Staten

20   Island for Latinos -- the group that I did study at length.

21   Q.   Okay.

22   So, you would agree that it's not in the high

23   range?

24   A.   As I reported, the degree of segregation for

25   Latinos in Staten Island has been, since 2000, in the

1   moderate range.

2   Q.   You did report the black and white segregation

3   number and that's high in Staten Island, correct?

4   A.   Yes, I reported that black and white segregation,

5   beginning in 1990 and continuing to 2019 to 2023 ACS.

6   Q.   Do you agree that racial segregation, especially

7   of Blacks and Whites is a common pattern in urban America?

8   A.   There's a wide range of indices of dissimilarity

9   in urban America. United States has, at least, several

10   hundred urban areas. And I would say, it's hard to make a

11   generalization across the board.

12   I do know that seven five, which includes Staten

13   Island, ranks Staten Island in the higher end of -- again,

14   that's not an official designation, but certainly ranks

15   along with some racially segregated metropolitan areas and

16   cities throughout the United States.

17   Q.   So you agree that it's a common pattern across

18   America?

19   A.   You are asking me to make a generalization on

20   hundreds of data points that I did not do in my research for

21   this. So I can't give you an accurate answer without seeing

22   the data.

23   Q.   So as a historian -- or for this report, it was

24   not relevant to know how Staten Island stacks up against the

25   rest of the country?

1   A.   My report is about Staten Island and about

2   disparities, segregation and discrimination concerning

3   Blacks and Latinos on Staten Island, not those issues in

4   Detroit or Chicago and San Francisco.

5   Q.   So, if it is a common pattern across America, it's

6   not relevant to your report?

7   A.   I don't understand the question you are asking me

8   here.

9   Q.   Would it be relevant to your report or your expert

10   opinion here if the common pattern that you see in Staten

11   Island is common across the rest of the country?

12   A.   It would be irrelevant to understand what's

13   happening on Staten Island rather than the disparities

14   between the groups that are a party to this case on Staten

15   Island.

16   Q.   I'm surprised to hear that.

17   So, you quote Mr. Lawrence Bobo in article --

18   actually, you quote -- you reference a study that he did.

19   Do you remember that name "Lawrence Bobo"?

20   A.   Yes, I do. He's a very distinguished scholar at

21   Harvard University. I know his work. I probably wrote on

22   everything he's written. I know his work well.

23   Q.   Okay.

24   I was quoting from his study where he says racial

25   segregation, especially of Blacks from Whites, is a common

1   pattern in urban America.

2   Do you take more heed in that statement?

3   A.   Again, it depends on what you mean in "common."

4   We are parsing a word that's really broad in its

5   characterization. I have no reason to disagree with

6   Professor Bobo. But again, some metropolitan areas have

7   range of segregation in the 70s and some have range of

8   segregation in the 30s or 20s.

9   Again, if you show me a table of the top 50 or top

10   100 or top 500 Metropolitan areas in terms of segregation, I

11   can give you an informed answer. But I know, from my

12   scholarship, this is an enormous range across metropolitan

13   areas of the United States.

14   Q.   Okay.

15   So do you know the dissimilarity index for

16   New York City as a whole?

17   A.   I looked at Staten Island and I calculated the

18   dissimilarity index for Staten Island in this report. I did

19   not calculate the index of dissimilarity for New York City

20   in this report.

21   Q.   Did you know then or you probably do not know then

22   that it's 84, so much higher than it is on Staten Island?

23   A.   Again, I would have to look at the data to be able

24   to verify it to see who calculated it, how it was

25   calculated. But, the metropolitan New York is a segregated

1   metropolitan area by Black and White and by Black and

2   Latino.

3   Q.   And so, if that too is irrelevant, how Staten

4   Island lists compared to the rest of New York City was not

5   relevant to your report?

6   A.   Again, I was looking as -- I was charged to do my

7   report at Staten Island. Blacks and Latino and Whites on

8   Staten Island, not Blacks and Latino and Whites in other

9   parts of the New York metropolitan area or other states in

10   the United States very much.

11   Q.   Okay.

12   So you didn't know that Queens, Bronx and

13   Manhattan have higher dissimilarity index scores for Blacks

14   and Whites than Staten Island?

15   A.   I have not examined those data to be able to

16   answer your question accurately.

17   Q.   Okay.

18   For the cause of segregation, you discussed that

19   in paragraph 31 of your report, you claim that there's

20   abundant counterevidence to the opinion that racial or

21   ethnic groups tend to self-segregate. Do you remember

22   writing that?

23   A.   Yes. Yes, I do.

24   Q.   And that's from your source -- I believe it's

25   Lawrence Bobo -- correct?

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1   A.   Yes. But I'm also drawing from my general

2   knowledge of the history of patterns of residents in the

3   United States. I'm drawing from scholarship that goes all

4   the way back to my dissertation.

5   Q.   I'm sorry.

6   I think I was just asking about your general

7   knowledge about patterns of residents across the United

8   States and you said you hadn't looked into that and you

9   can't give me an expert answer.

10   A.   No, you asked me whether I knew about

11   dissimilarity in the greater metropolitan area across the

12   United States. And I said no, I haven't looked at this data

13   recently. I cannot answer your question accurately unless

14   you show me those data.

15   Q.   And what is the difference then between

16   segregation and -- I thought you were talking about

17   segregation.

18   A.   No, segregation is a process that leads to the

19   segregation of groups by race and ethnicity. There's a lot

20   of history on the processes by which groups are segregated

21   in the United States. It is a topic I have been working on

22   for my career, my entire career.

23   Q.   Okay. I understand now.

24   So we are just talking about -- I was just talking

25   about the index values. But, okay. I understand now.

1   A.   But the index values don't answer the question

2   about what you -- they are not relevant to the question of

3   whether birds of a feather flock together, which is what you

4   were asking, or whether groups choose to segregate.

5   Q.   I understand. It's still relevant. But it does

6   not answer that question. You agree with that, right?

7   A.   I'm sorry. Can you rephrase that question?

8   Q.   I think you just said the index value wasn't

9   relevant.

10   A.   The index -- as I said, I didn't examine the

11   indices of dissimilarity outside of Staten Island, because

12   Staten Island was the subject of my report. I was not asked

13   to write a report involving groups other than the ones party

14   to this case. And I was not asked to examine data for other

15   places other than Staten Island. And that's where I focused

16   on in my report.

17   Q.   Okay.

18   And so, you quote Mr. or Dr. Bobo who says, "Only

19   a trivial percentage of Blacks, Hispanics and Asians express

20   objection to living in a largely White neighborhood."

21   Do you see that in your report? Do you

22   remember --

23   A.   I remember that. That's an accurate statement

24   that reflects Professor Bobo's research as well as other

25   scholars in the field.

1   Q.   So I assume you read that, Mr. Bobo's article,

2   that that came from, correct?

3   A.   Yes.

4   Q.   Okay.

5   A.   As I said, I read, I think, probably almost

6   everything that Professor Bobo has written over the course

7   of his long, very distinguished career.

8   Q.   Okay.

9   You didn't cite to it, though. You cited instead

10   to minutes from a New York City Council meeting.

11   Is that because they maybe referenced his report

12   in that meeting?

13   A.   I have to take a look at the footnote. Which one

14   are you referring to?

15   Q.   Twenty-nine.

16   A.   Twenty-nine?

17   Q.   In your original report.

18   A.   Yes. I am looking at 29. In Footnote 29, I'm

19   referring to the Brown case, which was the case of the Klu

20   Klux Klan attack on a Black family who moved into the

21   section of the North Shore in Staten Island in the 1920s.

22   In that paragraph and to that citation, I note

23   that the annual NAACP chapter on Staten Island -- which has

24   fought against racial segregation and disparity on Staten

25   Island for 100 years. We just passed it's centennial

1   anniversary -- was founded in Staten Island in response to

2   the Brown case in 1925.

3   Q.   Are you looking at 29 of your original report?

4   A.   Yes, I am. Footnote 29 refers to New York City

5   Council minutes of the proceedings for the second meeting

6   October 3, 2017.

7   That is a discussion of the city council providing

8   historic designation or noting historical significance of a

9   terroristic incident that lasted for more than a year

10   regarding the Brown family in Staten Island which lead to

11   the formation of NAACP chapter. That had nothing to do with

12   Professor Bobo.

13   Q.   Okay.

14   So you don't actually cite his article. I just

15   wasn't -- I didn't understand why --

16   A.   I'm not sure how you -- you said I said Professor

17   Bobo. I didn't look for the citation. But, I did not cite

18   Professor Bobo vis-a-vis the Brown case or the NAACP because

19   Mr. Bobo is not the historian who wrote about the Brown case

20   and the NAACP in Staten Island or the long history of the

21   NAACP fighting against segregation and against disparities

22   from the Brown case all the way up to today.

23   Q.   Well, this is the sentence you say: "While there

24   is some evidence that members of extended families are

25   immigrants from the same town or village of origin sometimes

1   move to neighboring homes, there's abundant counterevidence.

2   Political scientist warns Bobo found that only a trivial

3   percentage of Blacks, Hispanics and Asians express objection

4   to living in a largely White neighborhood, a finding echoed

5   by other demographers and sociologists."

6   A.   I agree with that statement. I studied it. But

7   it's not here at Footnote 29. I'm not sure where you're

8   finding it.

9   Q.   Well, I had to research it. That's my point, is

10   that it wasn't in there. Okay.

11   So, someone objecting to living in a largely White

12   neighborhood does not say anything about the choices they

13   make or whether they prefer to live near other Blacks,

14   Hispanics or Asian people, correct?

15   A.   There are three parts to that question. Can you

16   break it down into different parts so I can answer it

17   accurately?

18   Q.   Yeah.

19   Someone not objecting to living in a largely White

20   neighborhood does not say anything about the choices they

21   make about where they prefer to live.

22   Do you agree with that?

23   A.   There is a -- I'm not quite understanding your

24   question. But there's a large body of scholarship on the

25   relationship between preferences and residents. There's a

1   large body of literature that I draw from extensively and

2   have for most of my work that shows that for most of the

3   20th century and into the 21st, Black and Latinos have faced

4   really significant obstacles to achieving their stated

5   preferences for where to live. And that include Staten

6   Island beginning with the process of racial harassment and

7   redlining.

8   There's not a free market for housing for Blacks

9   and Latinos in part, because of the long history of

10   segregation and discriminatory practices in the document

11   here.

12   THE COURT: All right. One at a time.

13   MS. DIRAGON: I'd like to move as

14   nonresponsive.

15   THE COURT: You want to read the response

16   back, please.

17   (The testimony as requested was read by the

18   reporter.)

19   MR. LALLINGER: Your Honor, the witness

20   responded to what he understood the question to be

21   about which was the preferences of Black and Latinos

22   from where to live and he spoke about his research on

23   exactly that question.

24   THE COURT: While I understand the

25   objection, it's overruled. It is.

1   Let's continue.

2   Q.   Okay.

3   Dr. Sugrue, I'm asking you about -- and, if you

4   want to look at paragraph 31 in your original report, I'm

5   just asking you about that sentence, your last sentence in

6   that paragraph which says, "Political scientist, warns Bobo,

7   found that only a trivial percent of Blacks, Hispanics,

8   Asians, express objection to living in a largely White

9   neighbor a finding echoed by other demographers and

10   sociologists."

11   Do you see that?

12   A.   Yes, I do.

13   Q.   And you talk about a large body of scholarship,

14   but all you quoted or all you cited was the New York Council

15   minutes of proceedings for this stated meeting on October

16   31, 2017, correct?

17   A.   Oh, there seems to be a missing footnote here.

18   There are -- the quote from Larry Bobo -- professor Lawrence

19   Bobo that you cite, says Footnote 29. But then, the

20   following page continues to sequence of footnotes 26, 27, 28

21   and 29 again.

22   So, it looks like somewhere on the process, in the

23   process of editing, the citation was, erroneously, left out.

24   I don't understand. It is really strange to have two

25   Footnote 29s, one between Footnote 25 and footnote 26.

1   Q.   I guess we don't need -- I don't have two, 29

2 footnotes at all. So this is why depositions are good.

3   A.   Yes. I will -- I will point it out on this

4 version. There's a Footnote 29 after "sociologist," the

5 sentence with the Larry Bobo quote. And there's a Footnote

6 29 after my discussion of the Brown case, which is at the

7 very end of paragraph 33. It says, in the Footnote 29 --

8   Q.   Okay. I'll just move on.

9   A.   It goes down to that "New York City Council

10 minutes" that you suggested.

11   Q.   That clears up a lot. Okay.

12   So we don't -- I have two footnotes in the body,

13 two footnotes "29" in the body, but not two footnotes in the

14 footnote area for "29."

15   A.   That's correct. I have two footnotes "29"

16 superscripts in the text and one Footnote 29 referring to

17 the Brown case at the end of page 17.

18   Q.   Thank you for clearing that up.

19   Regardless, say a Asian person who professes not

20 to object to living in a largely White neighborhood does not

21 say anything about the choices that person would make about

22 where they are living or where they prefer to live. Do you

23 agree with that?

24   A.   You asked me that question before. And I'll offer

25 maybe a slightly shorter answer, which is that the process

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1   of segregation grows out of public policies and private

2   actions that limit the ability of potential homebuyers or

3   renters to achieve the preferences that they have expressed.

4   Q.   But, Dr. Sugrue, I'm talking about this one study

5   that you quoted and you felt it was important enough to

6   quote this conclusion by Mr. -- Dr. Bobo. So, that's what

7   I'm talking about.

8   A.   Yes, I understand. And I stand behind what

9   Dr. Bobo wrote. The article that, unfortunately we don't

10   have a footnote for, discusses the relationship between

11   preferences and residential patterns and segregation

12   concerning different non-white groups including Blacks and

13   Latinos. I refer to it in this context.

14   Q.   Okay.

15   We'll get into this more. But, I'm focused on

16   this one sentence. And I guess I will ask you again.

17   I mean, if you poll everyone at a restaurant and

18   you say, "Are you -- do you object to eating soup for

19   lunch," and 5 percent said yes, you would not then assume

20   that 95 percent of those people ordered soup for lunch,

21   right?

22   A.   May I answer your question not using the

23   hypothetical that you presented? I'd rather, as a

24   historian, not range into hypotheticals and actually offer

25   specific evidence that answers your question.

1   Q.   Okay.

2   A.   So, there is abundant evidence by scholars of race

3 and urbanization and civil rights, including myself in two

4 of my books, that probe segregated housing policies enacted

5 by the national government or enacted by a private sector --

6 actors like real estate broker and managers -- have long

7 prevented non-white potential homebuyers or renters to

8 express their preferences. This is the core of efforts to

9 deal with the ongoing problems of fair housing.

10   Q.   So, it sounds like you've agreed with me that that

11 sentence and that conclusion by Dr. Bobo is probably not

12 relevant to what you cite it for, because you keep backing

13 away from it.

14   A.   I'm not backing away from it. I said earlier, I

15 agree with Professor Bobo. I draw from his work. I know

16 him and have been in conferences with him, shared work with

17 him. I know what position he takes and when it's consistent

18 with mine as is a wide body of scholarship including some of

19 my own published work.

20   Q.   The conclusion that you cite, however, is not

21 relevant to your conclusion? You cite it as evidence for

22 your conclusion. And that is the part that I'm taking issue

23 with.

24   MR. LALLINGER: Objection, your Honor. I

25   think this question has been asked and answered three

1   or four times.

2   THE COURT: Let's continue.

3   MS. DIRAGON: Okay.

4   THE COURT: I have heard enough.

5   Q.   So the study that Dr. -- I assume he's a doctor,

6   correct?

7   A.   He is.

8   Q.   Okay.

9   I assume the study that Dr. Bobo performed he did

10   not actually ask participants about their preferences in

11   where to live, did he?

12   A.   I don't have Professor Bobo's article in front of

13   me right now. I can't remember every detail in the article.

14   Q.   Okay.

15   Would it surprise you if I told you that he did

16   not ask them about their preferences on where to live?

17   A.   Again, I'd have to see the text to be able to give

18   you a definitive answer.

19   Q.   Okay.

20   MS. DIRAGON: Why don't we pull that up.

21   Q.   While he's doing that, do you remember that the

22   study was conducted from 1996?

23   A.   Yes.

24   Q.   Do you remember that the study used data from

25   people in Los Angeles, correct?

1   A.   That's correct.

2   Q.   Not Staten Island?

3   A.   Yes.

4   Q.   And not New York?

5   A.   He does not talk about Staten Island in this.

6   Q.   Okay.

7   Let's -- first, if you could go to page 1.

8   A.   Yes.

9   Q.   That was fine. That's fine.

10 A.   Please make it big. I definitely can't read that.

11   Yes. Thank you.

12 Q.   Okay.

13   So, that's -- that first sentence is what I was

14 quoting to you earlier about the common pattern --

15 A.   Yes.

16 Q.   -- in urban America.

17 A.   Yes.

18   MS. DIRAGON: And then, if you could then go

19 to page 891.

20   (Handing.)

21 A.   Thank you very much.

22   MR. LALLINGER: Do you have a copy of that

23 for us as well?

24   MS. DIRAGON: Yes.

25   MR. LALLINGER: Thank you.

1   Q.   If it helps you, on page 889 is, I think, a quote

2   or at least the data you were quoting. It's like sort of

3   midway through the page.

4   A.   889.

5   Q.   Yes. The second paragraph.

6   A.   Yes, that is the quote that I pulled from

7   Professor Bobo's report.

8   (Pause in proceedings.)

9   THE COURT: Are you ready?

10   MS. DIRAGON: I'm sorry. I am ready.

11   THE WITNESS: Yes.

12   Q.   Did you determine your answer?

13   A.   I'm sorry. I thought I answered the last question

14   you asked. I was just looking at the report. I thought you

15   were reviewing your notes.

16   Q.   Oh.

17   A.   My apologies.

18   Q.   I was waiting for the answer.

19   So the question that was asked was not about the

20   preferences of people and where they prefer to live, but it

21   was whether they objected to living near or with groups

22   of -- he calls it out-groups, correct?

23   A.   Professor Bobo is looking at residential

24   preferences by Blacks, Whites and Latinos for integration as

25   a way of discussing larger patterns of segregation.

Cheryl-Lee Lorient

1   He concludes that his findings point to ongoing

2   and persistent segregation and differences between White

3   attitudes about integration and non-white attitudes about

4   integration.

5   In other words, non-Whites he argues -- in the

6   quote that he used here to summarize part of his argument --

7   are more likely to not object to living in integrated

8   neighborhoods than Whites. This is part of the -- you might

9   say, the social structure that perpetuates residential

10 segregation by race.

11   If we look at page 904 of Professor Bobo's essay,

12 in the paragraph that's near the bottom, he talks about how

13 White's stereotypes and racial prejudices -- he talks about

14 White attitudes and stereotypes and racial prejudice, as a

15 center group position, translates into attitudes on

16 residential segregation.

17   Q.   So is that a big no? I am asking you a very

18 simple --

19   A.   I'm trying to be as accurate and thorough as

20 possible to give you the answers reflecting my scholarly

21 attention to the context and the detail.

22   And the answer is, I stand behind both my quote

23 here from Professor Bobo and Bobo's interpretation about the

24 relationship of minority preferences for integration and the

25 persistence of segregation by race which is the central

1   argument I'm making in this entire section of my report.

2   Q.   Dr. Sugrue, I will move on. But, respectfully, I

3   didn't ask you about that. I asked you, specifically, what

4   the question was.

5   There was a study that was done and you had a lot

6   of time to look at it. And I asked you if they -- what

7   Mr. Bobo did in the study and what he asked the

8   participants, which is very important when you're analyzing

9   a scientific or social scientific study. And you still

10   haven't answered.

11   A.   Mr. Bobo looks at Black, White, Asian and Latino

12   attitudes and preferences about racial integration and about

13   out-groups and in-groups.

14   And he uses those to draw conclusions that

15   contribute to a very large body of scholarship on

16   residential segregation, concluding that there are

17   restraints on opportunities because of White's attitudes

18   towards integration that he documents here in this essay.

19   Q.   So when you're looking at a study, for example, do

20   you look to see the participant's size, the sample size,

21   where the data was from, how old it was, where the

22   participants lived? Do you look at stuff like that when you

23   are analyzing it as a historian?

24   A.   Yes.

25   Q.   Did you look, in this case, at the actual

1   questions that were asked of the participants in the study?

2   A.   I did not have access to the research instrument

3   or the survey instrument that Professor Bobo used to conduct

4   his research for the article.

5   Q.   Okay.

6   Did you know that Mr. -- Dr. Bobo, actually, found

7   that Blacks had the highest margin of any group preference?

8   A.   Yes. But, any group preference, as he shows in

9   this article, is not necessarily related to preference about

10   where to live. He documents, in fact, that Blacks and

11   Latinos express an interest in living near Whites, because

12   they believe the White neighborhoods have better amenities,

13   are better off, et cetera. So again, you're asking me to

14   disaggregate two different sets of Professor Bobo's

15   argument. And he talks about both.

16   (Continued on the following page.)

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1 BY MS. DIRAGO

2   Q   My questions are just as simple as I ask them. I'm

3 not asking anything more than words that I say to you.

4   But thank you for at least agreeing with that.

5   A   You're welcome.

6   Q   So you cite a lot of academics in your report,

7 actually, don't you?

8   A   Yes, I do.

9   Q   And do you vet those people for bias?

10   A   I'm sorry? I missed the last bit.

11   Q   Do you vet those people who you cite for any kind of

12 bias?

13   A   I read a wide range of a scholarship from people of

14 different vantage points. I look for -- I look first to the

15 footnotes, to the apparatus. As a scholar, you seem to get a

16 sense of the quality of the research that they've done. And I

17 look at articles and books in relationship to other literature

18 in the field.

19   This is what all of us do. This is how we do peer

20 review, for example.

21   Q   Okay.

22   Your report discusses redlining, right?

23   A   Yes, it does.

24   Q   And you testified about that earlier, correct?

25   A   Yes, I did.

1 Q   And that was the practice of marking areas or

2 neighborhoods where minorities lived as having a credit risk,

3 correct?

4 A   Among other things, yes.

5 Q   And redlining existed around the country in the 1930s

6 and 40s?

7 A   Yes, it did.

8 Q   You also talk about some federal housing programs in

9 the 1930s and early 1940s, Federal Home Loan Bank Board, The

10 Home Owners Loan Corporation, the Federal Housing

11 Administration and the Veterans Administration, correct?

12 A   Yes, I do.

13 Q   And then none of those are unique to Staten Island

14 either, right?

15 A   No. These are public policies that influenced and

16 affected Staten Island and shaped the racial geography of

17 Staten Island, but the programs that you mentioned were

18 programs overseen by the federal government.

19 Q   Right.

20   And I asked if they were unique to Staten Island.

21 A   No.

22 Q   You state that:

23   "These federal housing agencies prevented most Blacks

24 and Latinos from obtaining federally backed home loans and

25 mortgages for more than a third of a century between 1932 and

1 1968."

2   That's paragraph 34, if you wanted to check in that.

3   A   Yes. I agree with that. I don't need to consult the

4 text in this case.

5   Q   Your report does not contend that the Home Owners

6 Loan Corporation rated predominantly Latino neighborhoods in

7 Staten Island as "declining or hazardous," does it?

8   A   The Home Owners Loan Corporation area descriptions

9 for Staten Island didn't mention Latinos because in 1940, there

10 were few, if any, Latinos on Staten Island. The number was

11 only 3 percent or so in 1980.

12   Q   And it doesn't mention any Asian -- it doesn't

13 mention redlining for any Asian presence in the neighborhood,

14 correct?

15   A   The Asian population in Staten Island was miniscule

16 until the 21st Century.

17   Q   The -- if I call it the "HOLC," you'll understand

18 Home Owners Loan Corporation?

19   (Court reporter seeks clarification.)

20 BY MS. DIRAGO

21   Q   The Home Owners Loan Corporation published its map

22 for Richmond County in 1940, correct?

23   A   Yes, it did.

24   Q   And you cite, "Mapping Inequality: Redlining and New

25 Deal America."

CYD

1   (Court reporter seeks clarification.)

2   A   Yes, I do.

3   BY MS. DIRAGO

4   Q   And there is a website associated with that, correct?

5   A   Yes, there is.

6   Q   And you note in your report that areas with large

7   number of Italians were ranked negatively, correct?

8   A   Yes. I noted that.

9   Q   In fact, the website that you cited as a source

10   states that for Staten Island, anti-immigrant -- I'm sorry.

11   "Anti-Italian sentiments saturates The Home Owners

12   Loan Corporation report as many D-ratings are attributed

13   primarily to the presence of Italians."

14   A   That's correct.

15   Q   So you would agree with that statement.

16   A   Yes, I do.

17   Q   And it referred to, for example, Rosebank as having

18   been, quote, "entirely taken over by Italians and transformed

19   into a typical slum."

20   Did you read that?

21   A   I did.

22   Q   And what percentage did you say Hispanics were in

23   Staten Island in 1940?

24   A   I don't have the census data for the number of

25   Hispanics in 1940. The U.S. Census wasn't collecting data on

CYD

1   Latinos or Hispanics until the -- really beginning, tentatively

2   in the 1960s, and reaching its more or less current form in

3   1980.

4   Q   So in 1940, Blacks only constituted about 2 percent

5   of Staten Island; is that correct?

6   A   Yes. That's correct.

7   Q   Yet 75 percent of the map was ranked "definitely

8   declining or hazardous." Did you remember that?

9   A   I saw that in the redlining report, and it's

10   well-documented that the appraisers considered immigration

11   status and ethnicity, along with race, in their evaluations of

12   neighborhoods, including in the 1940 Staten Island map.

13   Q   And the website that you have as a source states that

14   with the opening of the Verrazzano Bridge, the ramps were

15   constructed over several majority Italian neighborhoods rated C

16   or D by the HOLC, H-O-L-C.

17   A   I'm sorry. I don't remember offering that quote in

18   my report.

19   Q   That's on the website. Do you disagree with that

20   statement?

21   A   I don't disagree with that statement. I haven't

22   examined the Italian composition of the area underneath the

23   Verrazzano Bridge to verify it, but I have no reason to doubt

24   the statement.

25   (Court reporter seeks clarification.)

1   BY MS. DIRAGO

2   Q   Okay.

3   Did you know that the island today holds the highest

4   concentration of Italian-Americans in the United States?

5   A   I have not seen that exact figure, but I know that

6   Staten Island has a significant population of Italian heritage.

7   Q   Do you know the percentage of people living on Lower

8   Manhattan today who are Italian-American?

9   A   I do not. I haven't examined the census data to be

10   able to answer that question.

11   Q   What about Bensonhurst, Bay Bridge or Bath Beach in

12   Brooklyn?

13   THE COURT: Bay Ridge.

14   MS. DIRAGO: Did I say "Bay Bridge"? Sorry.

15   Bay Ridge.

16   A   I didn't look at the census data for Bensonhurst,

17   Bay Ridge and Bath Beach in Staten Island in preparation -- I'm

18   sorry -- in Brooklyn in preparation for this report. I focused

19   on Staten Island.

20   BY MS. DIRAGO

21   Q   You had discussed opposition of public housing on

22   Staten Island in your report, correct?

23   A   Yes.

24   Q   And you believe that all opposition to public housing

25   is racist, correct?

1   A   I did not say that at any point in my report. I

2 wouldn't make such a blanket statement.

3   Q   So you agree there are legitimate policy reasons to

4 oppose public housing?

5   A   There are many reasons that people might oppose

6 public housing, but we know from the history of public housing

7 in New York, and elsewhere, that racial considerations were

8 quite significant in opposition to the construction of public

9 housing. It's well-documented in the scholarly literature,

10 including work -- my own work.

11   THE COURT: More than socioeconomic, race was

12   considered more?

13   THE WITNESS: Well, public housing -- the

14   socioeconomic status of public housing was -- has changed

15   over time. Early public housing was largely working class

16   and lower middle class.

17   The increasing number of poor people living in

18   public housing occurred over time. It wasn't initially

19   part of public housing. Because there was a massive

20   shortage of housing in the 1930s and 1940s when the United

21   States launched its public housing programs for the first

22   time.

23   THE COURT: Okay. Thank you.

24 BY MS. DIRAGO

25   Q   So you cite a lot of sources discussing opposition to

1 public housing that don't mention race, and you don't provide

2 an analysis of why those sources are race-based. Do you agree

3 with that?

4   A   Again, you would have to point me to specific sources

5 or statements that I made, but it's --

6   Q   I can do that.

7   A   -- it's well-established that there were racial

8 reasons for opposing the construction of public or affordable

9 housing in New York and on Staten Island.

10   Q   Well, I'm going by the sources in your report.

11 That's what we have here today.

12   So if you go to, for example, paragraph 44, you cite

13 Kramer and Flanagan, "Staten Island: Conservative Bastion in a

14 Liberal City."

15   This is in your discussion of the construction of

16 public housing in Annadale-Huguenot.

17   A   Yes.

18   Q   Okay. So you agree that this is a reliable source?

19   A   Yes. I draw from Flanagan and Kramer's book on

20 Staten Island at various points in my report.

21   Q   Okay.

22   What you failed to mention, however, about the

23 Annadale-Huguenot urban renewal efforts is that Kramer and

24 Flanagan state that the program was "odd because it conceived

25 of the program to tear down the slums and replace them with

1 decent buildings, shops, restaurants and recreational cultural

2 centers. But Annadale-Huguenot was at that time, and it is

3 now, a middle-class community with a low crime rate and many

4 pleasant homes."

5   Do you remember reading that in the Kramer and

6 Flanagan book?

7   A   I read that in the Flanagan book. Annadale-Huguenot

8 was -- had those characteristics because it was an all-White

9 part of Staten Island when the proposed Annadale-Huguenot

10 project was built and opposed.

11   Q   So do you think it is racist to object to tearing

12 down a middle-class community with nice homes and a low crime

13 rate?

14   A   I can't answer that question without context. The

15 context is: At a moment when Whites on Staten Island and

16 New York were fiercely opposing the construction of public

17 housing that was going to be open on a nondiscriminatory basis

18 that would change the composition of White neighborhoods, they

19 opposed it. And that's the a case in Annadale-Huguenot.

20   (Court reporter seeks clarification.)

21 BY MS. DIRAGO

22   Q   It sounds like that's all you needed for analysis

23 that that was race-based.

24   A   I'm not sure that's all I needed. As with this case,

25 as with many of the cases, I'm a historian.

1   I think contextually, Annadale-Huguenot can't just be

2   understood as a one-off deal. It's -- it occurred in the

3   context of really fierce contestation against the construction

4   of public housing that would be opened on an integrated basis

5   in predominantly White sections of New York and Staten Island.

6   (Court reporter seeks clarification.)

7   BY MS. DIRAGO

8   Q   You also quote from a 1968 newspaper article in the

9   "Staten Island Advance." This is paragraph 44 of your report

10   and you state:

11   "Similar fears rose in the Fox Hills area of Clifton,

12   where the construction of new high-rise apartments and a new

13   primary school sparked White residents' concerns that the city

14   will subsidize housing to bring in minority groups from ghetto

15   areas in the city."

16   Did I read that correctly?

17   A   That's correct.

18   Q   Did you read the next sentence after that in the

19   newspaper article that you quote?

20   A   Can you point me to the sentence? I'm looking at my

21   report.

22   "'Staten Island Advance' published a cartoon entitled

23   'Unwelcome" --

24   (Reporter admonition.)

25   A   Are you talking about the sentence that says, "The

1   'Staten Island Advance' published a cartoon" --

2   BY MS. DIRAGO

3   Q   I mean in the newspaper article.

4   A   -- "entitled 'Unwelcome Import'"?

5   Q   Sorry.

6   In the newspaper article that you quote from.

7   A   I'd have to go back and look at the newspaper article

8   to -- I --

9   Q   You don't remember either way.

10   A   I don't recall.

11   Q   So the very next sentence: "The author concedes that

12   'while no one admits it openly, those fears are quite

13   prevalent.'"

14   My question to you is: Would you consider that an

15   unreliable source of a reporter admitting that no one has

16   admitted openly the fears that she's reported people having?

17   A   The quote again, can you read that back to me, "No

18   one expresses it openly"?

19   Q   "While no one admits it openly, the fears are quite

20   prevalent."

21   A   That seems to me a very common sentiment for people

22   who are unwilling to express racial concerns openly. You

23   express them privately, quietly. That's very common. That's

24   indeed one the reasons racial appeals matter so much because it

25   gives public prominence to sentiments that are often discussed

1 privately.

2 Q Okay.

3 So no second thought about a reporter stating that

4 people feel some way, but they didn't express it openly, that

5 you just accept that.

6 MR. LALLINGER: Your Honor, asked and answered.

7 THE COURT: I'll allow you to answer that.

8 Let's continue.

9 A I don't have any objections to that statement.

10 BY MS. DIRAGO

11 Q Okay.

12 We'll go on to real estate practices now.

13 Within your discussion of discriminatory real estate

14 practices in your report, you don't mention a single instance

15 of discrimination against Latinos, do you?

16 A I would have to look at my report to answer that

17 question accurately, but I do know that in recent years -- yes,

18 in fact, I can think of one right now, which is the incident --

19 Q I want to stick to your report if you don't mind.

20 A No, I'm sticking to my report. I discussed an attack

21 on a family that moved into New Dorp in 1972. New Dorp,

22 D-O-R-P.

23 (Court reporter seeks clarification.)

24 A They were Black and Venezuelan. Venezuelans are --

25 are Latinos. And that was a case in which four neighbors, some

1   law enforcement official and a real estate broker, vandalized

2   the property and eventually torched it in 1972 to prevent the

3   Black-Venezuelan family from moving in.

4   BY MS. DIRAGO

5   Q   And you don't mention a single instance of

6   discrimination against Asians, do you?

7   A   I will repeat again what I said earlier which is: I

8   did not focus on discrimination and acts of harassment that

9   targeted Asians in Staten Island.

10   Q   And the paired testing of the realtors that you

11   testified to earlier did not test whether real estate agents

12   steered Latino residents to certain neighborhoods, correct?

13   A   I don't specifically state whether -- who the paired

14   testers were. My sources didn't always give me evidence as to

15   who went out with whom in the paired testing process.

16   (Court reporter seeks clarification.)

17   BY MS. DIRAGO

18   Q   And you don't provide any examples of blockbusting

19   involving Latino residents, correct?

20   A   I did not have any evidence of blockbusting

21   concerning Latino residents. It focused on Black residents in

22   the period I wrote in -- about blockbusting, which was the

23   1960s, when the Latino population of Staten Island was still

24   quite small.

25   Q   Okay.

1   We'll move on to hate crimes. You state that Black

2   and Latino residents of Staten Island have been the targets of

3   hate crimes, correct?

4   A   Yes.

5   Q   But you don't dispute Mr. Borelli's contention that

6   Staten Island has consistently had one the lowest incident

7   rates of hate crimes in New York's precincts for the past

8   several decades, correct?

9   A   Mr. Borelli only provides data from 2018, 2019 to

10   substantiate that point in his report. And he offers evidence

11   of two hate crimes that occurred this past year. So I don't

12   have any other evidence upon which to offer an assessment of

13   the trajectory of hate crimes on Staten Island.

14   Q   Okay.

15   So you can't dispute it then.

16   A   As I said, I found evidence of hate crimes in Staten

17   Island spanning a multi-decade period all the way up until

18   2025. Hate crimes are part of the totality of circumstances

19   that affected non-Whites on Staten Island.

20   Q   Did you know there were only two hate crimes against

21   Black individuals on Staten Island in 2025?

22   A   There were two hate crimes against Blacks on Staten

23   Island in 2025. One hate crime -- as the head of the anti-hate

24   crime organization in Staten Island, one hate crime is one too

25   many.

1   Q   I don't disagree with you. But we're not here

2   talking about an ideal world. We're talking about Staten

3   Island.

4   Do you know the difference --

5   A   We're talking about a place that -- that has a long

6   history of hate crimes, including some that led to grievous

7   injury, targeting non-Whites.

8   Q   Did you compare the statistics of hate crimes from

9   Staten Island to Manhattan?

10 A   I did not. I focused on Staten Island in my report.

11 Q   Did you know that over the last five years, there was

12 only one hate crime against a Hispanic individual on Staten

13 Island?

14 A   I did not see data on the specifics of targets of

15 hate crimes on Staten Island.

16 Q   Do you know there were no hate crimes against

17 Latinos, according to the New York Police Department, in 2025

18 on Staten Island?

19 A   I didn't see data about hate crimes targeting Latinos

20 on Staten Island in 2025.

21 Q   There were only two hate crimes in the last

22 five years against Asians on Staten Island. Did you know that?

23 A   I didn't focus on Asians in Staten Island, but two

24 hate crimes directed against a fairly small community is not

25 inconsequential.

CYD

1   Q   Are you referring to Asians as a fairly small

2   community?

3   A   Well, 12 percent of the population on Staten Island,

4   that's slightly more than one in ten.

5   (Court reporter seeks clarification.)

6   BY MS. DIRAGO

7   Q   You also refer to the Proud Boys as a very -- very

8   active Staten Island chapter.

9   (Court reporter seeks clarification.)

10   BY MS. DIRAGO

11   Q   That's paragraph 71 in your report.

12   A   Yes.

13   Q   And you cite the Southern Poverty Law Center list of

14   hate groups from 2024, correct?

15   A   That's correct.

16   Q   The source did not discuss whether the chapter was

17   quote, "very active," did it?

18   A   I'd have to look back at the report to give you an

19   accurate answer, but it reported that the Proud Boys are an

20   active extremist organization on Staten Island.

21   Q   Well, it actually just had a list of organizations.

22   Do you -- did you look into what the Southern Poverty Law

23   Center did to determine what groups go on that list?

24   A   I have used the Southern Poverty Law Center's data on

25   hate groups and extremist groups in my work. I have not,

1   however, looked at the survey instrument or the data-gathering

2   methods that the Southern Poverty Law Center uses.

3   Q   We've talked a little about New Dorp School. You

4   reference a brutal attack in October 1980 at the high school.

5   (Court reporter seeks clarification.)

6   BY MS. DIRAGO

7   Q   That's paragraph 63.

8   A   Yes, I did.

9   Q   And you cite the "New York Amsterdam News"; is that

10   correct?

11   A   That's correct.

12   Q   You don't cite any other sources for that event, do

13   you?

14   A   I don't believe I did. I may have cited, although I

15   didn't, to the Flanagan and Kramer book, which also discusses

16   that incident at New Dorp High School.

17   Q   Did you know that "The New York Times" ran an article

18   at the same time about the incident, and stated that the school

19   authorities attributed the difficulties to what they said was

20   "a handful of troublemakers of both races and a series of

21   isolated incidents that were magnified by rumors and eventually

22   involved the entire school"?

23   A   I did not look at "The New York Times" article, but

24   that strikes me as descriptive of the kinds of hate incidents

25   that often occur in such racially charged environments as

CYD

1 New Dorp High School.

2   Q   And did you read that the school was overcrowded

3 because they were squeezing 3,000 people into a structure built

4 for 2,200?

5   A   I didn't look at the overcrowding of the school. It

6 was 5 percent Black at the time. But it was overwhelmingly

7 White. But I did not look at the population of the school in

8 1980.

9   Q   In your research, did you see that "The Times" ran a

10 story eight years later that talked about the efforts the

11 school had made, which were successful?

12   A   The efforts to --

13   Q   I'm sorry, the efforts to eradicate racism?

14   A   I don't know if I read a specific article from

15 "The Times" about that effort to eradicate racism in New Dorp

16 High School.

17   Q   So it stated:

18   "The high school's efforts have not gone

19 unrecognized. In 1986, New Dorp's human relations program was

20 cited by the New York Commission of Education as the most

21 outstanding in the state. Last year, Mayor Koch selected it as

22 the most positive effort of its kind in the borough, prompting

23 other organizations to initiate similar programs."

24   Is that news to you?

25   A   I didn't see the article that you're referring to, so

1   I can't answer any more than that.

2   Q   Okay.

3   So when you were doing your analysis of

4   discrimination in Staten Island and you came across that

5   incident, you didn't look for more articles about it?

6   A   I focused on that incident because, again, I'm

7   writing about New Dorp in the larger context of various acts of

8   discrimination, harassment, hate crimes, and ultimately, the

9   patterns of segregation and disparities that continue to affect

10   Latinos and Blacks on Staten Island.

11   So New Dorp has to be understood in that larger

12   context. And I did not look at a "New York Times" article that

13   you cited.

14   Q   But the larger context is important, correct?

15   A   My entire report is about the context, looking at the

16   relationship of various incidents to larger patterns of

17   discrimination and segregation on Staten Island.

18   Q   So you say that "anti-Latino sentiment intensified in

19   Staten Island, especially from 2022 to 2024, as the number of

20   asylum seekers in the city rose," correct?

21   A   Yes, I did.

22   Q   Do you perceive all objections or protests to

23   immigration as anti-Latino?

24   A   No. There are legitimate reasons for having

25   differences of immigration policy. But the protests that

1   occurred on Staten Island in the fall of 2024 -- I'm sorry --

2   fall of 2023 and continuing into 2024 also exhibited various

3   substantial and sometimes violent xenophobia.

4   (Court reporter seeks clarification.)

5   BY MS. DIRAGO

6   Q   But you cited a lot of protests and objections to

7   immigration that did not have anything violent about them. Is

8   it your contention that they all had racist undertones?

9   A   I cited a number of incidents, and I focused on those

10   that are of the family of hate crimes -- that is, physical

11   attacks, acts of aggressive harassment that are that targeted

12   migrants on Staten Island, very serious ones.

13   Q   So even if there's no violence.

14   A   I answered your question by saying: I focused mostly

15   on those that were violent and that expressed xenophobic

16   sentiment, that harassed Latinos and other migrants to Staten

17   Island in the long period from the late summer of 2023 to the

18   spring of 2024.

19   Q   Well, for example, you cite an article at

20   footnote 102 on page 35, entitled, "Staten Island Pols Express

21   Outrage Over Migrants Being Housed in a Staten Island Hotel."

22   Do you remember citing this article or reading this

23   article?

24   A   Yes, I do.

25   Q   Do you remember that it quoted Congresswoman

1   Malliotakis, M-A-L-L-I-O-T-A-K-I-S, as saying: "The thousands

2   of asylum seekers coming to Staten Island will burden the backs

3   of people who are already struggling"?

4   (Court reporter seeks clarification.)

5   BY MS. DIRAGO

6   Q   Did you read that?

7   A   I did not quote Congresswoman Malliotakis here. But

8   I have no reason to doubt that she said that in her discussion

9   of the policy.

10   Q   Do you agree with that statement?

11   A   I would have to note a larger context of the entire

12   statement to -- it's not -- there's not a "yes" or "no" answer

13   to that.

14   Q   Do you agree that the influx of over 100,000 migrants

15   to New York would burden those with less means and wealth than

16   those with more means and wealth?

17   A   I did not see evidence of any disproportionate burden

18   on people with less wealth and more wealth. Some of their

19   opposition to immigration happened in wealthy neighborhoods,

20   but it didn't happen violently.

21   Q   It did not happen violently, or it did?

22   A   I did not see violent incidents in the articles that

23   Mr. Borelli cited, and I know about the anti-immigration

24   sentiment near a hotel in the Upper Westside, where people went

25   to meetings and expressed their opinions vocally, as citizens

CYD

1   do.

2   (Court reporter seeks clarification.)

3   A   But I did not find evidence that there were violent

4   attacks on migrants who were moving into the Upper Westside or

5   to Clinton Hill, which Mr. Borelli cites in his report.

6   BY MS. DIRAGO

7   Q   Do you remember your article that you cited entitled,

8   "Borough President Calls for Migrants to be Housed in

9   Washington D.C. Instead of Fort Wadsworth"?

10   A   I don't recall that article.

11   Q   You cited it at footnote 104, if you want to take a

12   look.

13   A   My memory is not perfect at age 63, but I do see the

14   citation here at footnote 104.

15   Q   Okay. Do you remember what the article is about?

16   A   Yes. I remember the article was about the conversion

17   of part of the Fort Wadsworth Plant for providing temporary

18   housing for displaced refugees.

19   Q   Okay.

20   And you know that Fort Wadsworth is a historical site

21   in Staten Island?

22   A   Yes. I've seen it from my crossings of Staten Island

23   over the years.

24   Q   Okay.

25   And so you know it's in the Gateway National

CYD

  1   Recreation Area?

  2   A   Yes.

  3   Q   And it's maintained by the National Park Service?

  4   A   Yes.

  5   Q   So is it your opinion that objections to the housing

  6   of homeless people in a cultural and historical landmark is

  7   inherently racist?

  8   A   No.

  9   Q   Okay.

 10   So why did you include that example, then, in your

 11   report?

 12   A   I was situating the debate about refugees in its

 13   wider context on Staten Island in the summer of 2023 -- the

 14   fall of 2023 and beyond.

 15   Q   Okay.

 16   And in your next paragraph, you discuss a protest on

 17   October 12, 2023, in the Arrochar neighborhood. It's

 18   A-R-R-O-C-H-A-R.

 19   A   What paragraph are we looking at?

 20   Q   That would be -- I think 71.

 21   A   I found it at paragraph 71.

 22   Q   You originally stated that that protest had members

 23   of the Proud Boys present, correct?

 24   A   I did. And I corrected that in my rebuttal report.

 25   The Proud Boys were evoked by a prominent speaker; but to the

1   best of my knowledge, they were not present. So that was an

2   error in my report.

3   Q   Okay.

4   So you just misread the article?

5   A   I'm sorry.

6   Q   You had just misread the article.

7   A   Correct.

8   Q   That one was not violent either, was it?

9   A   Not to the best of my knowledge.

10   Q   And this type of protest were not unique to Staten

11 Island in 2023 and 2024, correct?

12   A   What was distinct about the protests on Staten Island

13 in '23, '24 is that many of them were very violent and

14 disruptive, including stoning immigrants, surrounding a bus for

15 almost seven hours, not allowing immigrants off. Flashing

16 lights and blasting loud music in the nighttime into shelters,

17 shouting through megaphones and blasting music at night at

18 shelter housing refugees.

19   (Court reporter seeks clarification.)

20 BY MS. DIRAGO

21   Q   You said many of the protests were? I only read one

22 in your report.

23   A   I'm sorry?

24   Q   I only read one protest -- the protest that you're

25 describing, I only read one of those in your report, but you

CYD

1   said "many."

2   A   One of the articles I cite discusses how ongoing

3   protests at night, including the blasting of music, the use of

4   blow horns, the flashing of lights into windows occurred on

5   Staten Island.

6   Q   Port Richmond is on the North Shore of Staten Island,

7   correct?

8   A   Yes.

9   Q   When you wrote your original report, were you aware

10   that Council Member Kamillah Hanks -- first name spelled

11   K-A-M-I-L-L-A-H -- is a Black woman who represents the

12   North Shore of Staten Island in the city council?

13   A   Yes.

14   Q   You never discussed her in your original report, did

15   you?

16   A   I discussed her in my second report.

17   Q   Is that because that is a fact that is positive for

18   the Black community on Staten Island, why you didn't discuss it

19   in your original report?

20   A   In a district that serves most of the Blacks and

21   Latinos in Staten Island, the election of a Black elected

22   official could be seen as a -- as the ability for Blacks and

23   Latinos in that council district to elect a candidate of their

24   choice.

25   Q   And so that's why you didn't want to put it in your

1   original report?

2   A   No.

3   MR. LALLINGER: Objection. Your Honor,

4   mischaracterizes the testimony.

5   THE COURT: Sustained.

6   BY MS. DIRAGO

7   Q   You discuss in your original report -- you have a

8   paragraph about people of color serving in elected positions

9   from Staten Island. And in that paragraph, you don't discuss

10   Council Member Kamillah Hanks; is that correct?

11   MR. LALLINGER: Objection. Your Honor, asked

12   and answered. We want to be mindful of the fact that we

13   have other witnesses to put on today.

14   MS. DIRAGO: Okay. I will hurry up.

15   THE COURT: Thank you.

16   (Continued on the next page.)

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1   Q.   Your original report also mentions Nicole

2   Malliotakis, but cited her as being elected to the State

3   Assembly in 2010 and not in the U.S. House of

4   Representatives; is that correct?

5   A.   I don't recall. But, I certainly knew that

6   Congress Woman Malliotakis had been elected to the U.S.

7   Senate. I'm sorry -- the U.S. House of Representatives.

8   Q.   You would agree that there is a tendency among

9   people to omit or ignore the experiences and achievements of

10 Hispanics?

11   A.   I can't say, yes or no. It's not a subject I've

12 researched extensively or at all.

13   Q.   Okay.

14   What about the same phenomenon occurring with

15 women in history?

16   A.   There's certainly evidence that contributions of

17 women historically have been downplayed.

18   My wife is now a historian and she is part

19 teaching of classes introducing the importance of

20 Renaissance artists, who are women artists, who are not

21 represented in chronicle of art history. And there are

22 many, many examples of that over time.

23   Q.   You minimized her Latino heritage in your report,

24 didn't you?

25   A.   I stated her heritage very clearly. I said she

 1   has a father who is Greek and a mother who is Cuban.

 2   Q.   You said she has some Latino heritage instead of

 3   calling her Latina or Hispanic, correct?

 4   A.   That's correct. She has some Greek heritage and

 5   some Latino heritage. That's not diminishing Congress Woman

 6   Malliotakis. It is reflecting how she identifies herself.

 7   Q.   You mention her religion as Greek orthodox. I

 8   didn't see you mention the religion of anyone else, any

 9   other elected official in your report.

10   A.   I don't remember mentioning her being Greek

11   orthodox religion. But, that's an affiliation that she has

12   mentioned in public in reports that I read about her

13   candidacy and her works as a congress person.

14   Q.   And do you know that if the petitioners'

15   illustrative map is enacted, she is likely to be swiftly

16   voted out. So that would actually reduce the number of

17   Latino representatives in elected office on Staten Island?

18   A.   I'm a historian. A historian writes about

19   contemporary reality. I don't make predictions about the

20   future. I would lose my credibility as a historian if I

21   looked into what would inevitably be a very cloudy and

22   cracked crystal ball. I'm not to make predictions about

23   what might happen even tomorrow not to mention more or less

24   years from now.

25   Q.   Okay. Almost done. You didn't do any research

1   into the migratory patterns of Brooklynites to Staten Island

2   after the Verrazano Bridge was completed, correct?

3   A.   I did not look at census data or other data that

4   examined migratory patterns in metropolitan New York.

5   Q.   Did you do any research into the influx of Asian

6   Americans from Brooklyn to Staten Island?

7   A.   I did not focus on Asian Americans in my report.

8   I focused on the parties to the case who are Black and

9   Latino.

10   Q.   So if the Court finds that the Asian community is

11   relevant here, you have nothing to say on the matter?

12   A.   I didn't conduct research on this matter. So I

13   can't offer an opinion, one way or another, without

14   examining the data.

15   Q.   Okay. That's all I have.

16   THE COURT: Okay. Redirect?

17   MR. LALLINGER: We have nothing further.

18   Thank you very much, Dr. Sugrue.

19   THE WITNESS: Thank you.

20   THE COURT: I thank the witness for your

21   testimony. You may step down.

22   (Witness excused.)

23   THE WITNESS: Thank you very much, your

24   Honor.

25   THE COURT: We have another 30 minutes. Do

1   you have another witness?

2   MS. BRANCH: Yes. I have Dr. Maxwell

3   Palmer.

4   THE COURT: Come on up.

5   Let's have the witness be sworn in.

6   COURT OFFICER: Raise your right hand,

7   please.

8   Do you swear or affirm to tell the truth the

9   whole truth nothing but the truth?

10   THE WITNESS: I do.

11   M A X W E L L   P A L M E R, called as a witness for the

12   by the Plaintiff, having been first duly sworn, testified

13   as follows:

14   COURT CLERK: Please, have a seat.

15   Please state your name and address -- your

16   full name address for the record.

17   THE WITNESS: Maxwell Palmer, One Roanoae

18   Road, R-O-A-N-O-A-E, Arlington, Massachusetts.

19   MS. BRANCH: May I hand you a binder of

20   Dr. Palmer's expert reports in this case?

21   (Handing.)

22   THE WITNESS: Thank you.

23   COURT OFFICER: You're welcome.

24   THE COURT: Good afternoon.

25   THE WITNESS: Good afternoon.

1   DIRECT EXAMINATION

2   MS. BRANCH:

3   Q.   Good afternoon, Dr. Palmer.

4   A.   Good afternoon.

5   Q.   I know that the parties have stipulated to your

6   expertise and to your expertise as to the matters in your

7   report. I do want to briefly introduce you to the court,

8   but I will not belabor your background.

9   Can you please just first summarize your

10   educational background.

11   A.   I received my undergraduate degree in mathematics

12   and government and legal studies from Bowdoin College in

13   Maine. And my PhD in political science from Harvard

14   University in 2014.

15   Q.   Where are you, currently, employed?

16   A.   I am, currently, an associate professor of

17   political science at Boston University.

18   Q.   Are you tenured?

19   A.   I am.

20   Q.   What classes do you teach or have you taught at

21   Boston University.

22   A.   I teach courses on American politics, voting

23   rights and political methodology including data science and

24   research and design.

25   Q.   Have you ever been accepted as an expert witness

1   in cases involving redistricting before?

2   A.   Yes.

3   Q.   You also served as a consultant to the nonpartisan

4   Virginia redistricting commission in 2021?

5   A.   Yes. I was hired by the Virginia commission as

6   their independent racially polarizer and voting consultant.

7   Q.   And is racially polarizing an area of your

8   expertise.

9   A.   Yes. I have prepared many reports and testified

10 many times about it.

11   MS. BRANCH: At this time, your Honor,

12   petitioners tender Dr. Palmer as an expert in

13   redistricting, political science and data analysis.

14   The parties have stipulated to his qualifications.

15   MR. BUCKLEY: No objection.

16   THE COURT: Okay.

17   Continue.

18   Q.   Dr. Palmer, did you prepare two expert reports for

19 this case?

20   A.   I did.

21   Q.   Does that include your opening report, which was

22 submitted on November 19th and your rebuttal report which

23 was submitted on December 18th?

24   A.   Yes.

25   Q.   Are those reports in the binder in front of you?

1   A.   Yes.

2   Q.   Did you include your findings and opinions and

3   your reasons for them in your report?

4   A.   I did. I'm not sure I have my second report here.

5   Q.   Let's fix that.

6   THE COURT: You can hand it to the court

7   officer.

8   A.   I'm sorry. It is just on the other tab here.

9   Thank you.

10   Q.   Okay. Are you prepared to discuss your findings

11 and opinions today?

12   A.   I am.

13   MS. BRANCH: At this time, petitioners move

14   to admit Petitioners' Exhibit 3, which is the November

15   19th report of Dr. Maxwell Palmer and Petitioners'

16   Exhibit 4, the December 18th rebuttal report of doctor

17   Palmer, into Evidence. And the parties have stipulated

18   to that. So I will move on.

19   THE COURT: Okay.

20   Q.   Let's now discuss the analysis you did for this

21 case. What were you asked to do Dr. Palmer?

22   A.   I was asked to offer an expert opinion on the

23 extent to which voting is racially polarized in the

24 11th Congressional District as well as to evaluate the

25 ability of Black and Hispanic preferred candidates to win

1   elections in that district. Then, I was also asked to do

2   the same analysis for the proposed illustrative districts.

3   Q.   Did you also look at voter turnout on Staten

4   Island?

5   A.   I did.

6   Q.   And did you also respond to some of the opposing

7   experts in this case?

8   A.   Yes.

9   Q.   At a high level, did you reach a conclusion with

10   regard to whether there's racially polarized voting in

11   Congressional District 11?

12   A.   Yes, I found strong evidence in racially polarized

13   voting in the 11th Congressional District. I looked at 20

14   different elections from 2017 to 2024 and found a consistent

15   pattern where Black and Hispanic voters share the same

16   candidate of choice and white voters cohesively oppose those

17   candidates.

18   Q.   Did you reach an opinion about whether Black and

19   Hispanic voters' proffered candidate is able to win

20   elections in Congressional District 11?

21   A.   I find that Black and Hispanic preferred

22   candidates are generally not able to win elections in

23   District 11. Across the 20 elections I looked at, they lost

24   75 percent of the time.

25   Q.   Do you have an opinion regarding whether there is

1 racially polarized voting in the illustrative district?

2   A.   In the illustrative district, I find that there is

3 a significantly lower or a lesser degree of racially

4 polarized voting, that, White voters support Black and

5 Hispanic candidates at a higher level.

6   Q.   Did you reach an opinion regarding whether Black

7 and Hispanic voters preferred candidates are able to win

8 elections in the illustrative district?

9   A.   Yes. I find that overall Black and Hispanic

10 candidates are generally able to win elections in the

11 illustrative districts wining 16 of the 18 elections

12 examined.

13   Q.   Let's discuss your racially polarized voting

14 analysis in a bit more depth.

15   First, can you please explain to the court what

16 racially polarized voting is?

17   A.   Racially polarized voting -- sometimes abbreviated

18 to RPV -- is when the majority of voters of different racial

19 or ethnic groups, support additional different candidates.

20   I think it is easiest to explain it just as a

21 hypothetical. Imagine an election where 80 percent of Black

22 voters support candidate A. We would say that Black voters

23 are a cohesive group. They are generally supporting the

24 same candidate by a large majority. And suppose that

25 75 percent of White voters support candidate B, the

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1   opponent. The White voters would also be cohesive

2   supporting a different candidate; being the case of racial

3   polarize voting, because the two groups support two

4   different candidates.

5   Q.   Does racially polarizing votes analysis tell us

6   why voters vote for a certain candidate?

7   A.   No racially polarized voting seeks to understand

8   how voters vote -- or, that is, how different groups of

9   voters vote, who they prefer. It doesn't tell us anything

10   about the reason behind their decisions.

11   Q.   How would you go about examining whether there is

12   racially polarized voting in a given jurisdiction?

13   A.   There is several different techniques to do this,

14   but the one I use and the most commonly used one is called

15   ecological inference or EI.

16   What it seeks to do is to estimate the levels of

17   support of different groups of voters for different

18   candidates using the data that we have available to us.

19   Q.   Can you explain the ecological inference

20   methodology?

21   A.   The problem we have is that because of secret

22   ballots, we can't see how individual voters vote. We can't

23   see the choices made by individuals. The only information

24   we have available to us is aggregate data. That is at the

25   precinct level. We can see how many votes were casted for

1   each candidate in each election. And we can also use census

2   data or other data sources to determine how many people or

3   potential voters there were by race and ethnicity in each

4   precinct.

5   And so what ecological inference does is it takes

6   those two different sources of information precinct level

7   votes and precinct level population data to estimate the

8   rate at which voters, of each group, are supporting each

9   candidate.

10   Q.   You use a particular computer program to run this

11   analysis?

12   A.   Yes. Ecological inference is typically run

13   through a statistical software called R -- it's just the

14   letter "R" -- which is a free open source software commonly

15   used in the social sciences, in the natural sciences across

16   many industries as well.

17   And there's a variety of different tools within

18   that or software that other scholars developed and published

19   that we could use to run the ecological inference model.

20   Just to clarify, when I talk about the ecological

21   inference analysis or model, it is something that we are --

22   it's a statistical procedure that's run separately for every

23   election.

24   So when I'm looking at 20 different elections, I

25   am producing 20 different sets of ecological inferences and

1   then looking at or analyzing results altogether.

2   Q.   Is ecological inference the same methodology you

3   have used in other redistribution cases to analyze racially

4   polarized voting.

5   A.   Yes. I've used this same methodology in every

6   case in which I've testified. And my understanding is it's

7   the most commonly used one by experts in redistricting

8   cases.

9   Q.   And is it your understanding that Court's

10   regularly rely on ecological inference analyses to determine

11   whether there is racially polarized voting in a certain

12   area?

13   A.   Yes. It's routinely used and relied upon by

14   courts. And my understanding is it's the prefer the

15   methodology of at least Federal Courts.

16   Q.   Let's dig in a little bit more into how you used

17   ecological inference in this case.

18   Which racial groups did you examine for your

19   analysis.

20   A.   I looked at five different races or ethnic groups;

21   first Hispanic people of all races. And the census

22   categorizes both race and ethnicity. So using ethnicity to

23   determine Hispanic people of all races. And then,

24   non-Hispanic Whites, non-Hispanic Blacks, non-Hispanic

25   Asians and then "other" which is everybody else including

1   multiracial people.

2   Q.   What kind of results did your ecological inference

3   analysis produce?

4   A.   So, for each of the elections, the ecological

5   inference analysis will produce an estimate of what

6   percentage of each group is supporting each candidate as

7   well as a measure of uncertainty, a confidential interval or

8   credibility interval that is a measure of uncertainty about

9   that estimate.

10   Q.   Which geographic area did you examine for your

11   racially polarized analysis in this case?

12   A.   I conducted two separate analyses; first using the

13   boundaries of the 11 Congressional District and then second

14   using the boundaries of the illustrious district.

15   Q.   What data did you use for your analysis?

16   A.   I combined two different data sets; one is

17   precinct level election results. And that comes from the

18   New York City elections website where they provide all the

19   election results at the precinct level as well as geographic

20   data about where those precincts are located.

21   And then I combined that with data from the U.S.

22   Census Bureau the American Community Survey which produces

23   estimates at the block group level of the number of citizens

24   and voting age people by race and ethnicity.

25   Q.   How many precincts did you analyze?

1   A.   The number of precincts will vary from year to

2 year, because the City will create new precincts or

3 consolidate precincts or redraw them in various ways. But I

4 think there's about three to four hundred precincts each

5 year. It is going to vary a little bit.

6   Q.   Is that a sufficient number of precincts to

7 analyze in your experience?

8   A.   Yes. Sometimes there's not enough data to run an

9 ecological inference model with many different racial or

10 ethnic groups, say, at the State house level. Some

11 districts might not have enough precincts, but several

12 hundred is more than enough.

13   Q.   Which particular election is did you examine?

14   A.   I looked at every election from 2017 to 2024 that

15 covered the entire 11th District as is currently drawn. So,

16 that includes federal elections for president and senate,

17 state elections for statewide offices, citywide offices as

18 well as for 2022 and 2024 the U.S. house election.

19   Q.   How did you select these elections?

20   A.   These are all of the elections in recent years

21 where the election was held either at the boundaries of the

22 current district or at a greater level such that all of the

23 potential voters in that district could have participated in

24 that election.

25   Q.   Why did you choose to look at so many elections?

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1   A.   I generally think it's useful to look at many

2   elections; the picking and choosing single contact. We

3   could have variation arising year to year as the political

4   climate changes. And within the year, we could see

5   variations from office to office based on candidates and

6   campaigns and issues that might arise. So I think getting

7   the big picture of a general pattern is more useful than say

8   picking one election or one from each year or something like

9   that.

10   Q.   Let's now take a look at your opening report,

11   which is petitioners' Exhibit 3. And let's turn to figure

12   one on page four, which is entitled racially polarized

13   voting estimates for U.S. House races CD 11.

14   Dr. Palmer what does anything one show.

15   A.   Figure one shows the results or two of the

16   ecological inference models for the 2022 and 2024 house

17   races. So each panel on the figure is from a separate

18   analysis, a separate election.

19   And on the horizontal access, on the bottom, we

20   see the names of the two candidates running in 2022 and then

21   2024.

22   And then, the Y, the vertical axis, is the

23   percentage of each group voting for each candidate. And

24   above each candidate are three dots; one, for Black voters,

25   one for Hispanic voters and one for White voters showing the

1   estimated level of support for that candidate.

2   So if we look at the top left corner of the 2022

3   figure, we see that the blue dot and the green dot shows a

4   very high level of support from both Black and Hispanic

5   voters in favor of Rose.

6   And then, on the bottom right, we see very low

7   levels of support from Black and Hispanic for Congress Woman

8   Malliotakis.

9   In contrast, the red dot is around the 25 percent

10   line, for Rose. And the 75 percent line for Malliotakis

11   shows that White voters strongly support Malliotakis over

12   Rose.

13   And so, we can get a couple of key pieces of

14   information from each election from this figure. First that

15   Black voters are cohesive. A large majority of Black voters

16   are supporting the same candidate.

17   Second, that Hispanic voters are cohesive; a large

18   majority of Hispanic voters support the same candidate.

19   Across the group Blacks and Hispanics supporting

20   the same candidate and finally White voters are cohesively

21   opposed to that candidate.

22   So that would be an example of racially polarized

23   voting where White voters are polarized against preferred

24   and candidate of the Black and Hispanic voters.

25   Q.   You talked about the 2022 U.S. House race. Is

1   your observation as to whether there were racially polarized

2   voting with respect to the 2024-U.S. House race the same?

3   A.   Yes. the pattern is generally the same.

4   Q.   What do the lines on the charts represent?

5   A.   The lines behind the dots are the confidence

6   intervals behind the -- for the estimate. That is a measure

7   of uncertainty produced by the model about where the true

8   estimate might lie.

9   Q.   Is it correct, when you're looking at the chart

10   that the further apart the dots are the more polarization

11   there is?

12   A.   Yes, I think we can measure polarization as a

13   spectrum. It's not a binary "yes or no." When we see a

14   large separation between White voters and the Black and

15   Hispanic voters, that indicates a high degree of

16   polarization.

17   I also say that when the points are closer to the

18   50 percent line, it indicates that a group isn't that

19   cohesive, which is less polarization. But, also that group

20   doesn't have a single clear candidate choice.

21   Q.   Is Representative Malliotakis the preferred

22   Black -- the preferred candidate for Black and Hispanic

23   voters in either the 2022 or 2024 U.S. House election?

24   A.   No.

25   Q.   Let's turn to another figure in your report on

1   page five, figure two. This figure is entitled "Racially

2   polarizing voting Estimates CD 11." What does figure two

3   show, Dr. Palmer?

4   A.   Figure two shows the results of this analysis for

5   all 20 elections. And the main difference is that I'm

6   condensing figure one down. I'm only showing the results

7   for the Black and Hispanic preferred candidate, because we

8   can clearly identify that candidate in each election.

9   And I'm sort of rotating the whole figure

10   90-degrees so we can fit it all on a page.

11   And what we see, just looking across all 20 of

12   these candidates, is a very clear pattern. On the

13   right-hand side of the figure, we see blue points for Black

14   voters and green points for Hispanic voters. Consistently

15   above 75 percent usually significantly higher.

16   Then on the left-hand side of the figure, below

17   50 percent, we see those red points for white voter. That

18   shows the general pattern of cohesions among Black and

19   Hispanic voters -- and between Black and Hispanic voters and

20   the polarization of those voters.

21   Q.   Can we pull up, at table one of your report, which

22   is on page ten.

23   Dr. Palmer, does your report contain the precise

24   numbers for the elections that were just depicted in figure

25   two?

1   A.   Yes. This table contains all the numbers that you

2 use to make that figure. And so, each row is one of the 20

3 elections that I look at. And there's five columns of

4 numbers for Black, White, Hispanic, Asian and other.

5   And within each column of numbers are actually

6 three numbers. First, there's the estimate that's sort of

7 the best estimate produced by the model. Those are the

8 points in the figure. And then, in parenthesis are the

9 bounds of the confidence interval. And that's where the

10 bottom and top of those lines or arrow bars would be on the

11 figure. So, we could use this to look at any particular

12 result or any group and see the results.

13   Q.   And so table one shows your results for Black,

14 White, Hispanic, Asian and also other voters or voters in

15 the "other" category; is that right?

16   A.   Yes.

17   Q.   And which voters are in the other category?

18   A.   Other includes people who selected multiple races

19 on the census, Native Americans and any other racial group.

20   Q.   Does your report make any conclusions with respect

21 to Asian voters or voters in the other category?

22   A.   My report is primarily focused on Black, Hispanic

23 and white voters. But, this table let us draw conclusions

24 by Asian voters; for example, if we look down this column of

25 numbers, we see that often the Hispanic estimate is around

M. Palmer - Plaintiff - Direct

1 50 percent, in the high 40s, low 60s for the most part. And

2 that would indicate that Asian voters are not very cohesive

3 that they might be divided across two or more candidates.

4 And there are some elections here where Asian voters are

5 more cohesive with Black and Hispanic voters.

6   Q. We can take that figure down.

7   After you determined and analyzed elections and

8 ran your racially polarized voting analysis, what was your

9 next step?

10   A. The next step was to look at the performance of

11 these candidates in District 11. That is, once we've

12 identified Black and Hispanic preferred candidates, did they

13 win elections in this district or not.

14   Q. How did you conduct this part of your analysis?

15   A. This analysis is really simple compared to the EI

16 analysis. I already know which precincts fall under the

17 boundaries of the 11th district. It is just a matter of

18 adding up the votes across all the precincts and determining

19 which candidate one and which candidate lost.

20   Q. Let's turn to figure three of your report on page

21 six. Figure three is entitled "Performance of Black and

22 Hispanic Preferred Candidates CD 11."

23   What does figure three show?

24   A. Figure three shows the results of this analysis.

25 But I think that's the old version of my report before we

1   corrected it. The report I have in front of me has one

2   small difference which is that the public advocate election

3   is colored differently.

4   Q.   Okay.

5   A.   The orange points correspond to cases where the

6   Black and Hispanic preferred candidate lost. And green

7   points to cases where the Black and Hispanic candidate won.

8   So we see, first, a general pattern that the Black

9   and Hispanic candidate are losing most of these elections.

10   They lose 15 of the 20 and lost every election since 2019.

11   There is a couple exceptions to that. In 2018,

12   Black and Hispanic candidate did better and very narrowly

13   won four contests in the district.

14   In 2017, that public advocate election, should be

15   colored in green there as well. That was an unusual

16   multi-candidate case where the Black and Hispanic preferred

17   candidate won despite not getting the majority of the vote.

18   Q.   What conclusions did you draw from this analysis?

19   A.   Generally, Black and Hispanic preferred candidates

20   are not able to win elections in this district and they

21   average 41 percent of the vote. So they're not coming that

22   close most of the time. When they are able to win, it is

23   extremely narrow. But generally they are not able to do.

24   So --

25   Q.   Can you take that figure down.

1   Let's turn now to the illustrative map. How did

2   you conduct your racially polarize voting analysis with

3   respect to the illustrative district?

4   A.   This analysis was conducted, identically, to the

5   other IE analysis. The only difference is that these are

6   precincts that fall within the current 11th District. I am

7   using all precincts that fall under the boundaries of the

8   illustrative district.

9   Q.   Did you make any conclusions as to whether there's

10   racially polarized voting in the illustrative district?

11   A.   I did. I still find that Black voters and

12   Hispanic voters are very cohesive in this district. The

13   main difference I find is that White voters are less

14   cohesive.

15   There is still some polarization in some

16   elections, but, generally, white voters are more supportive

17   of Black and Hispanic candidates. We call this cross over

18   voting such as the estimates are significantly higher. I

19   would estimate that whites, about 42 percent of voting

20   areas, support white and Hispanic preferred candidates on

21   average.

22   Q.   Which elections did you analyze?

23   A.   I went to the exact same set of elections except

24   for the two elections for U.S. House which I can't include

25   here, because the boundaries are different. And there's

1   voters in the illustrative that wouldn't have been able to

2   vote in those two U.S. house races.

3   Q.   So you looked at 18 elections in the 11th

4   District, is that correct?

5   A.   Yes, that's correct.

6   Q.   Let's turn now to your analysis of the performance

7   of Black and Hispanic preferred candidates in the

8   illustrative district. What did you analyze in that part of

9   your report?

10   A.   I did the same performance analysis as before,

11 just changing the boundary from the district of the

12 precincts that are included.

13   Q.   Does this analysis depend on any type of

14 estimation or models?

15   A.   No. Just as before I am just determining which

16 precincts fall within the illustrative district and adding

17 up all the votes cast in each election.

18   Q.   Let's turn to figure five of your report, which is

19 on page 78 entitled performance of Black and Hispanic

20 preferred candidates in the illustrative districts. What

21 does figure 5 show?

22   A.   Figure 5 shows the performance of Black and

23 Hispanic preferred candidates in this district. And this is

24 also the out-of-date version of this figure.

25   Across the 18 elections, the Black and Hispanic

1   candidate won 16 times. There's two cases, in 2021, where

2   they won without getting majority of the vote. That should

3   be colored green here. They lost both elections for mayor

4   in 2017 and 2021. But otherwise they won. In a relatively

5   competitive district, I find that a Black and Hispanic

6   preferred candidate averaged 54 percent of the vote.

7   Q.   Are there specific results of your analysis in

8   your report?

9   A.   Yes. Table three of my report has the exact

10   numbers I used to make these figures.

11   Q.   And we can pull that table up. I believe it's on

12   page 11.

13   Do Black and Hispanic voters' candidates win every

14   election in the illustrative districts?

15   A.   No, they lose two contests for mayor in 2017 and

16   2021.

17   Q.   Would you classify the illustrative districts as

18   competitive?

19   A.   Generally, yes. Hispanics and Black preferred

20   candidates are wining for average 54 percent of the votes

21   here. So, not a safe seat but, it is a seat where their

22   preferred candidates are able to win.

23   Q.   Let's turn next to your analysis of voter turn

24   out.

25   What did you analyze regarding voter turn out on

1   Staten Island?

2   A.   I was asked to examine differences in voter

3   turnout by race, just in Staten Island, not in the full 11th

4   District. And, to do so, I used a data source called L2,

5   which is a data vender for voter information. And that

6   estimates the race of every voter on the voter file.

7   And it does so, because New York -- unlike some

8   states like, say, North Carolina -- doesn't record the race

9   of voters on the voter registration file. So L2 estimates

10   it's using geography names and other variables. And it's

11   been validated and used in academic work and in other court

12   cases as well. And they made their estimates for 2020, 2022

13   and 2024 publically available.

14   Q.   Let's turn to figure 6 which is on page 9 of your

15   report. It's titled "Estimated Voter Turnout by Race" --

16   and I think that's supposed to be -- "Ethnicity Groups on

17   Staten Island." What does figure 6 show, Dr. Palmer?

18   A.   Figure 6 shows estimated voter turnout among

19   registered voters by race on Staten Island. And what we can

20   see is that the yellowish bar that's second is for White

21   voters in each panel. It's the highest. White voter

22   turnout the highest rates. And Hispanic and Black voters

23   turnout at lower rate.

24   So, for example, in 2024, 71 percent of white

25   voters turnout at the vote, while 50 percent of Hispanic and

1   54 percent of Black voters did so.

2   And we see especially large differences in the

3   2022 mid term election. And we always see lower turnout in

4   midterm elections. But here we see a 54 percent of White

5   voters turnout compared to 35 percent of Black voters.

6   (Continued on the following page.)

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1   BY MS. BRANCH

2   Q   Shifting gears now, Dr. Palmer, in your rebuttal

3   report, which is Petitioner's Exhibit 4, you responded to some

4   of the analyses Respondents' and Interveners' expert witnesses

5   conducted. And I'd like to talk with you briefly about some of

6   those analyses and the conclusions they made.

7   Let's start with Interveners' expert Dr. Voss. Did

8   you review Dr. Voss' expert report submitted in this case?

9   A   I did.

10   Q   Did you also review his corrected report?

11   A   I did.

12   (Court reporter seeks clarification.)

13   MS. BRANCH: V-O-S-S.

14   BY MS. BRANCH

15   Q   To start, was Dr. Voss able to easily replicate your

16   ecological inference analysis?

17   A   Yes. I provided all of my code and data with my

18   report, which allowed Dr. Voss to reproduce my analyses.

19   Q   Were his results substantively identical to yours?

20   A   Yes.

21   Q   What criticisms does Dr. Voss make of your analysis?

22   A   My understanding is that Dr. Voss raises three

23   criticisms with my report. First, he claims that I did not

24   follow scientific best practices because I didn't adjust my

25   models with covariates.

1   Second, he claims to find turnout patterns in my

2   results that don't make sense.

3   And third, he questions the scope of my analysis,

4   focusing on the 11th Congressional District.

5   Q   Let's take the last of those first.

6   Can you further explain what you understand to be

7   Dr. Voss' critique of the geographic scope of your report?

8   A   In my report, I conducted ecological inference for

9   the 11th District. And Dr. Voss' critique, as I understand it,

10   is that he argues that I should have looked at a larger

11   geography, at a broader geography, in that analysis. And he

12   instead conducts his analysis using all of the congressional

13   districts that fall mostly within New York City.

14   Q   What happened when Dr. Voss examined racially

15   polarized voting in all of New York City?

16   A   Dr. Voss estimated racially polarized voting analysis

17   for, I believe, just one election that he reports, the 2022

18   election for governor. He runs the model using data from the

19   entire city, instead of the 11th District alone. But then he

20   calculates estimates for each individual congressional

21   district.

22   And when you look at the 11th District from Dr. Voss'

23   model, while he gets different numbers than I do, he also finds

24   racially polarized voting in the 11th District. He estimates

25   that 95 percent of Black voters and 75 percent of Hispanic

CYD

1   voters voted for the same candidate, while only 20 percent of

2   White voters did so.

3   So regardless of the scope, we still see strong

4   evidence of racially polarized voting in this district.

5   Q   Turning to the second critique, what does Dr. Voss

6   have to say about your turnout results?

7   THE COURT: When you finish with Dr. Voss' line

8   of questioning, we'll wrap up for the day.

9   MS. BRANCH: Thank you, Your Honor. I just have

10   maybe three or four more questions.

11   A   When you run ecological inference using census data,

12   one thing you also estimate along the way to getting support

13   for different candidates is the percentage of people of each

14   group who turned out to vote.

15   And Dr. Voss looked at the turnout numbers that are

16   produced by my report and says that there's odd patterns in

17   them, where turnout seems to increase as you go from the more

18   important offices to the less important offices within a

19   certain year, for example, from governor to state comptroller,

20   for example.

21   Q   And what is your analysis of that critique?

22   A   I find nothing to support that critique. Dr. Voss

23   presents a table of just the estimates from my model, showing

24   that sometimes there's a two or three-percentage point

25   difference in turnout for a group.

1   (Court reporter seeks clarification.)

2   A   But that's well-within the bounds of the confidence

3   intervals.

4   (Court reporter seeks clarification.)

5   A   That is, when we account for a statistical

6   uncertainty, there's no differences at all. There's nothing to

7   make of this pattern that he finds by ignoring the uncertainty

8   in the estimates.

9   BY MS. BRANCH

10   Q   Finally, what critique does Dr. Voss make of your

11   ecological inference methodology?

12   A   Dr. Voss argues that I'm not following what he terms

13   "scientific best practices" in running EI, because I'm not

14   including covariates in my models, which are additional

15   precinct-level variables that can be included in these models.

16   Q   In your experience, is it standard practice to use

17   Dr. Voss' approach of including covariates in the analysis?

18   A   No. I haven't come across anyone else raising this

19   claim or doing this in their ecological inference analyses.

20   It's not something I've done in any of my expert reports or

21   that I've seen done by other experts, including those

22   responding to my own reports.

23   Q   Have you had the opportunity to review and analyze

24   the results of Dr. Voss' ecological inference analysis which

25   includes covariates?

1   A   I did.

2   Q   And do you have an opinion of the results?

3   A   I ran Dr. Voss' models, his covariate-adjusted model

4 myself, and looked at the results. And they produce results

5 that don't make a lot of sense to me.

6   For example, the turnout numbers that his adjusted

7 models produce don't make a lot of sense. In one case, it

8 estimated that Hispanic turnout was around 75 percent, which

9 was much higher than White or Black turnout in that same

10 election and that the other groups' turnout was around

11 95 percent. So to me, this covariate is producing nonsensical

12 results that I don't find reliable.

13   MS. BRANCH: I think that'll end the questioning

14   for today, Your Honor. And just with respect to

15   Dr. Palmer's corrected report, we will make sure that the

16   correct version of the report is included in the exhibit

17   list. And it has been served on opposing counsel. I

18   think there was just a mixup with respect to the

19   technologies.

20   THE COURT: So let's have the witness stand

21   down.

22   Let me remind what while you're on the stand,

23   you shouldn't discuss your testimony with counsel.

24   And we'll see you tomorrow.

25   THE WITNESS: Thank you.

CYD

1   THE COURT: Watch your step going down.

2   (The witness exits the stand at this time.)

3   THE COURT: Anything to discuss before we

4   adjourn for the day?

5   MR. BUCKEY: Christopher Buckey with Cullen

6   Dykman, I'm here for Respondents. I just want to be

7   clear, after Dr. Palmer's direct is done tomorrow, both

8   the Interveners and the Respondents intend to

9   cross-examine him.

10   THE COURT: Absolutely.

11   MR. BUCKEY: Okay. Thank you.

12   THE COURT: Absolutely.

13   Okay. All right. So we're adjourned for the

14   day. Everybody have a good afternoon.

15   (Whereupon, the case is adjourned to

16   January 6, 2025.)

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Exhibit C

Transcript
January 6, 2026

In The Matter Of:

Williams et al. v.
Board of Elections of the State of New York, et al.

Dr. Maxwell Palmer & William Cooper
January 6, 2026

Monica Hahn

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 1   SUPREME COURT OF THE STATE OF NEW YORK
     COUNTY OF NEW YORK : CIVIL TERM :  PT. 44
 2   ------------------------------------------------------------x
     MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO,
 3   AIXA TORRES and MELISSA CARTY,

 4                                        Index: 164002/2025

 5                         Petitioners,
                  -against-
 6
     BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN
 7   ZEBROWSKI STAVISKY, IN HER OFFICIAL CAPACITY AS
     CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS OF THE
 8   STATE OF NEW YORK; RAYMOND J. RILEY, III, IN HIS OFFICIAL
     CAPACITY AS CO-EXECUTIVE DIRECTOR OF THE BOARD OF ELECTIONS
 9   OF THE STATE OF NEW YORK; PETER S. KOSINSKI, IN HIS
     OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE BOARD
10   OF ELECTIONS OF THE STATE OF NEW YORK; HENRY T. BERGER, IN
     HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE
11   BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ANTHONY J.
     CASALE, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE
12   BOARD OF ELECTIONS OF THE STATE OF NEW YORK; ESSMA
     BAGNUOLA, IN HER OFFICIAL CAPACITY AS COMMISSIONER OF THE
13   BOARD OF ELECTIONS OF THE STATE OF NEW YORK; KATHY HOCHUL,
     IN HER OFFICIAL CAPACITY AS GOVERNOR OF NEW YORK; ANDREA
14   STEWART-COUSINS, IN HER OFFICIAL CAPACITY AS SENATE
     MAJORITY LEADER AND PRESIDENT PRO TEMPORE OF THE NEW YORK
15   STATE SENATE; CARL E. HEASTIE, IN HIS OFFICIAL CAPACITY AS
     SPEAKER OF THE NEW YORK STATE ASSEMBLY; AND LETITIA JAMES,
16   IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

17                         Respondents.

18          -and-

19   NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDIAN, SOLOMON B.
     REEVES, ANGELA SISTO AND FAITH TOGBA,
20
                         Intervenors-Respondents.
21   ------------------------------------------------------------x

22                         January 6, 2026
                           60 Centre Street
23                         New York, New York 10007

24   B E F O R E:

25          HONORABLE JEFFREY PEARLMAN
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                     Justice of the Supreme Court

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1   THE COURT OFFICER: All rise. Part 44 is now

2   in session.

3   THE COURT: Everybody be seated. Thank you so

4   much.

5   Let's get appearances. This is the matter of

6   Michael Williams, et al. V. Board of Elections, State of

7   New York, et al. Index 164002/2025.

8   May I have the appearance of counsel, please,

9   starting with the petitioner.

10   MS. BRANCH: Aria Branch for the petitioners.

11   With me is Nicole Wittstein, Christopher Dodge, Lucas

12   Lallinger and local counsel Andrew Celli.

13   MR. BUCKEY: Christopher Buckey here on behalf

14   of the respondents, Kosinski Casale & Riley and I have

15   with me my colleague Nicholas Faso.

16   THE COURT: Good morning.

17   MR. BUCKEY: Good morning.

18   MR. BRAUNSTEIN: Good morning, your Honor.

19   Andrew Braunstein, Troutman Pepper Locke, LLP, along

20   with colleague Misha Tseytlin, Bennet Moskowitz, Molly

21   Dirago and Lauren Miller on behalf of the Intervenor

22   respondents.

23   THE COURT: Good morning. Anybody?

24   MR. FARBER: And good morning, your Honor.

25   Seth Faber, with the Office of the Attorney General,

1   for Respondents Hochul, Stewart-Cousins, Heastie and

2   James.

3   THE COURT: Thank you. Good morning.

4   Any amici in the back want to state their

5   appearance. All right.

6   So let's bring the witness back up.

7   MS. BRANCH: Yes. Petitioner calls Dr. Maxwell

8   Palmer back to the stand, please.

9   THE COURT: Dr. Palmer. Reminding you that

10   you remain under oath, and we are continuing with your

11   direct testimony.

12   Whenever counsel is ready, we can get started.

13   MS. BRANCH: Yes. If I may approach the

14   witness?

15   THE COURT: Let's have the court officer hand

16   up to the witness.

17   THE WITNESS: Thank you.

18   THE COURT OFFICER: Yep.

19   (Handed to the witness.)

20   CONT'G DIRECT EXAMINATION

21   BY MS. BRANCH:

22   Q.   Good morning, Dr. Palmer?

23   A.   Good morning.

24   Q.   We left off yesterday with you responding to a few

25   questions regarding Dr. Voss's critiques of your report.

1   I would like to turn now to respondents expert

2   Dr. Alford.

3   Did you review Dr. Alford's report, in this case?

4   A.   I did.

5   Q.   And was Dr. Alford able to easily replicate your

6   racially polarized voting analysis?

7   A.   Yes, he was.

8   Q.   Does Dr. Alford identify any issues with your

9   methodology?

10   A.   No, he doesn't identify any issues and uses the

11   same methodology as I do.

12   Q.   Did Dr. Alford critique you for not uses covariants

13   in your ecological-inference analysis?

14   A.   No, he doesn't raise this issue at all.

15   Q.   And does Dr. Alford dispute your conclusions that

16   Black and Hispanic voters in the 11th Congressional District

17   vote cohesively?

18   A.   No.

19   Q.   Does he dispute your conclusion that White

20   preferred candidates usually defeat the Black and Hispanic

21   preferred candidates in most elections?

22   A.   No.

23   Q.   Where do you understand Dr. Alford to disagree with

24   you?

25   A.   I think the difference is in interpretation of the

1   results that Dr. Alford looks at the party affiliations of

2   the candidates of the Black and Hispanic candidates of

3   choice and the White candidates of choice, and says that the

4   results are a pattern of partisan polarization rather than

5   racially polarized voting.

6   Q.   What analysis does he conduct to reach that

7   conclusion?

8   A.   Probably he looks at the party's labels for each

9   candidate and reports that because the Black and Hispanic

10   preferred candidates are democrats and the White prefer

11   candidates are republicans that this is a partisan pattern

12   rather than racially-polarized voting.

13   Q.   Do you find his approach flawed in any way?

14   A.   I think Dr. Alford is trying to do something

15   different which is trying to make an argument about why

16   voters made the choices that they made, but

17   racially-polarized voting isn't about the reasons behind the

18   choices of voters, but what their choices are. And so

19   regardless of if voters of different groups prefer

20   candidates of different parties or not, that is still

21   evidence that they are preferring different candidates and

22   that would still be evidence of racially-polarized voting

23   regardless of the partisan affiliation of the candidate.

24   Q.   Does Dr. Alford ask the right question to examine

25   racially-polarized voting in your opinion?

1   A.   No. I think, as I said the question should be how

2 are voters voting. That is, what are their preferences, not

3 where do the preferences come from.

4   MS. BRANCH: Thank you. I pass the witness.

5   THE COURT: Cross.

6 CROSS-EXAMINATION

7 BY MR. BRAUNSTEIN:

8   Q.   Good morning, Dr. Palmer. Good morning, your

9 Honor. My name is Andrew Braunstein. I am counsel for the

10 Intervenor Respondents in this action.

11   Dr. Palmer, in coming to the conclusions in your

12 report, you did not use any polling data, did you?

13   A.   No, I did not.

14   Q.   You did not use any direct voter analysis, did you?

15   A.   Can you define what that means?

16   Q.   Any analysis of -- did you use any survey data in

17 your analysis?

18   A.   No.

19   Q.   So the only method you used in your analysis was

20 ecological inferences; isn't that right?

21   A.   For the racially-polarized voting analysis, yes.

22   Q.   And you used standard ecological inference that did

23 not adjust for aggregation bias, correct?

24   A.   I used what I term the standard model, but

25 ecological inference is a model designed to deal with

1   aggregation bias as constituted. The difference I think

2   that you are pointing to I didn't include additional

3   covariant in my model.

4   Q.   To be clear, you did not use covariants, correct?

5   A.   I did not use covariants. I would not say the

6   model doesn't account for aggregation bias.

7   Q.   The software you used to perform your analysis, I

8   believe you testified is called R yesterday, the letter R.

9   That allows for the use of covariants to try to correct for

10   aggregation bias, doesn't it?

11   A.   It allows for the use of covariants. That doesn't

12   mean that including covariants with will correct for

13   aggregation bias or that it is necessary to do so.

14   Q.   Right. Using covariants could correct for

15   aggregation bias?

16   A.   Um, it is possible that some covariants potentially

17   could. It is not clear to me it is necessary here. And the

18   models I reviewed from Dr. Voss certainly didn't produce

19   better results. They produced results that didn't make very

20   much sense. Um, the fact that you can do something in a

21   model is not evidence that you should do something in a

22   model.

23   Q.   Understood. Even though the software allowed for

24   those corrections you, did not employ any of those, correct?

25   A.   That is correct. There are many different options

1   the software allows from. In my judgment I used the correct

2   set of options.

3   Q.   The software also allows you to perform a

4   diagnostic on whether aggregation bias might exist, isn't

5   that correct?

6   A.   There is some tools in the software for models that

7   can be used to perform different diagnostics. It is a

8   little bit harder in the models that have multiple groups

9   and multiple candidates like we are using here to use some

10   of those diagnostics, but there is different ways you can

11   look and assess the fit of the models.

12   Q.   But you could have used those diagnostic tools

13   here, isn't that correct?

14   A.   Um, yes. There are checks I do on the models as

15   I'm setting up the data, as I'm working with it before I

16   produce my final results to make sure the models are

17   operating within the way they are suppose to work.

18   Q.   Those checks you did, that did not include any

19   diagnostic or whether there may be aggregation bias, did it?

20   A.   Um, I don't think that is right. I'm looking at

21   the model result. I see they converge appropriately. So I

22   think I'm appropriately evaluating the model performance.

23   Q.   That sounds like you just did that without using

24   the diagnostic tools in the software; is that right?

25   MS. BRANCH: Objection. Asked and answered.

1   THE COURT: I will allow him to answer the

2   question.

3   A.   There is many ways to look at the results, assess

4   performance, whether you use the built-in functions, whether

5   I write my own code to look at things to do so. So I don't

6   believe I used some of the built-in functions, but I look at

7   the results and assess the performance of the models.

8   Q.   Okay. Thank you.

9   You are familiar with VoteHub, correct?

10   A.   I was not familiar with it until I read Dr. Voss's

11   report.

12   Q.   But you are familiar with it now?

13   A.   In a very limited sense in how Dr. Voss discusses

14   it and from a very brief perusal of the website, I wouldn't

15   say I have any in-depth familiarity with it.

16   Q.   You did not compare the results you obtained to any

17   data or results that or analysis that would be on VoteHub,

18   did you?

19   A.   No, I did not. It was not a resource that I have

20   used in the past or I assessed as reliability or accuracy.

21   Q.   In your reply report you cite to a recently

22   published peer-review article in the American Political

23   Science Review, do you recall that?

24   A.   I do.

25   Q.   Did you assist the authors of that article in

1   authoring that article?

2   A.   No, I did not.

3   Q.   Did you review the article for the purpose of

4   writing your reply report?

5   A.   I did.

6   Q.   Did you review the article to see if it might have

7   any impact on the way you did your analysis here?

8   A.   No. I was just trying to assess the degree to

9   which a recent peer-reviewed work in the field was using or

10   not using covariants as Dr. Voss claims is necessary, and so

11   what I did here was when you publish an article in a top

12   journal in political science, the American Political Science

13   Review is considered the top or flagship journal in the

14   field, you have to produce your code and your data for

15   public review. And so I downloaded the publically available

16   replication materials for this article, looked at the code

17   where they ran ecological inference, and verified that they

18   did not include covariants here as I would have expected, as

19   I believe the standard practice in the field.

20   Q.   Did you work on that article in any capacity?

21   A.   I didn't work on it. I didn't author it. I may

22   have gave them brief comments on a draft. I probably saw it

23   before publication, but I didn't write it or author it or

24   write any of the code for it.

25   Q.   In the abstract, I believe the author thanked

1 several individuals, including Maxwell Palmer. Would you

2 believe that to be yourself?

3   A.   I'm not surprised by that. I'm sure I gave them

4 brief comments on a draft early on. I wasn't one of the

5 peer reviewers, for example, who reviewed it for publication

6 in the journal.

7   Q.   Okay. Understood.

8   Dr. Palmer, turning to the scope of the data that

9 you looked at for your analysis, for your analysis you

10 performed ecological inference solely using data from the

11 11th Congressional District and illustrative district; is

12 that correct?

13   A.   That's correct.

14   Q.   In other words, you consider data only from

15 precincts in a single existing congressional district and a

16 single illustrative district, correct?

17   A.   Yes.

18   Q.   You did not perform any ecological inference

19 analysis using data from across all of New York City

20 congressional districts and then look at Congressional

21 District 11 within that broader context?

22   A.   I did not do that in my original report. For the,

23 my reply report I did replicate Dr. Voss's analysis. So I

24 ran the code he provided to do that for New York City as a

25 whole in his report.

1   Q.   So you only ran Dr. Voss's code, you didn't perform

2 your own separate analysis?

3   A.   I didn't perform my own analysis, but the code that

4 Dr. Voss used for his city-wide analysis is substantially

5 similar to my own. That is producing results in a similar

6 format, structure. It is run using the same ecological

7 inference algorithm. And I would note in his New York

8 analysis he is also not including covariant. So it is very

9 similar to how I would have done so if I had run, written my

10 own code to do so.

11   Q.   I'm not asking about covariants. Asking about data

12 broader than the two districts that you talk about in your

13 report, you did not look at independently New York City data

14 for your analysis, right?

15   A.   I did not.

16   Q.   And you didn't look at any New York State data for

17 your analysis, did you, other than outside of the two

18 districts?

19   A.   No, I did not.

20   Q.   Okay. In your report you stated that you testified

21 as an expert in Chestnut v. Merrill in the Northern District

22 of Alabama; is that correct?

23   A.   Yes.

24   Q.   And you testified at trial, in that case?

25   A.   Yes.

1   Q.   Your testimony was about ecological inference

2 analysis you performed as an expert in that case, correct?

3   A.   Yes.

4   Q.   Do you recall your testimony in that case?

5   A.   Um, I haven't reviewed that report in many years.

6 I think that was 2019, roughly.

7   Q.   Do you recall testifying we want as much data as we

8 can and that you couldn't do ecological inference on the

9 counties in one congressional district alone because there

10 isn't enough information to look at those and infer with any

11 confidence what the pattern is?

12   A.   Um, that sounds plausible. I don't recall the

13 exact testimony in that case.

14   Q.   Okay. But it is possible that you testified that

15 way in that case?

16   A.   Yes. I think the amount of data you need is going

17 to vary considerably from place to place. So a rural

18 county, for example, with a small number of precincts and a

19 large population, densely populated county with many

20 precincts are not apples to apples comparison.

21   Q.   Dr. Palmer, you reviewed the report of Dr. Voss,

22 correct?

23   A.   I did.

24   Q.   And you're aware Dr. Voss submitted a corrected

25 report, so if I refer to his report, referring to the

1   corrected report?

2   A.   Yes.

3   Q.   Did you also review the report of Dr. Sean Trende?

4   A.   Very minimally.

5   Q.   Did you review the report of John Alford?

6   A.   Yes.

7   Q.   Dr. Palmer, you concluded in your report that Black

8   and Hispanic voters are generally unable to elect their

9   preferred candidates in the 11th Congressional District; is

10   that correct?

11   A.   Yes.

12   Q.   In other words, your conclusion is that the Black

13   and Hispanic preferred candidate is usually defeated, right?

14   A.   Yes.

15   Q.   You say in your report that the Black and Hispanic

16   candidate won five out of the 20 elections you evaluated in

17   Congressional District 11, correct?

18   A.   Yes.

19   Q.   And that amounts to 25 percent?

20   A.   Yes.

21   Q.   Thank you. I trusted your math would be better

22   than mine.

23   So it is your opinion that in a district where the

24   Black or Hispanic preferred candidate wins 25 percent of the

25   time that the Black and Hispanic preferred candidate is

1   usually defeated; is that right?

2   A.   Um, yes, that is my opinion. I think, you know,

3   losing three quarters of the time seems to be, you know, not

4   having a very high success rate.

5   Q.   And that would be not high success rate to be

6   usually defeated?

7   A.   As a legal standard, I don't know. I'm not a

8   lawyer, but in my opinion as a social scientist, yes.

9   Q.   Okay. Dr. Palmer, do you recall Figure 3 from your

10   report, I believe we discussed it yesterday?

11   A.   Yes.

12   Q.   Bear with me one moment. It will be on the screen

13   there.

14   That is Figure 3 from your report?

15   A.   Yes.

16   Q.   And this figure shows the performance of the Black

17   and Hispanic preferred candidate in the 20 elections you

18   analyzed; isn't that right?

19   A.   Yes.

20   Q.   And the green dots in the figure indicate where the

21   Black and Hispanic preferred candidate received more votes

22   in the 11th District than the White preferred candidate,

23   correct?

24   A.   Yes.

25   Q.   And the red dots indicate where the opposite is

1   true, where the Black and Hispanic preferred candidate

2   received fewer votes that the White preferred candidate?

3   A.   Yes.

4   Q.   I believe you also testified about Table 3 from

5   your report which we will pull up in a minute here.

6   A.   Yes.

7   Q.   And this is Table 3 that appears on the screen?

8   A.   Yes, it is.

9   Q.   And just to be clear, that Figure 3 in this Table

10   3, those are the versions from your corrected reports,

11   correct?

12   A.   Yes.

13   Q.   Okay. And Table 3 shows the performance of the

14   Black and Hispanic preferred candidate in the 20 elections

15   you analyze both in terms of votes in the current

16   District 11, as well as, the illustrative district, correct?

17   A.   Yes.

18   Q.   And the first column on Table 3 reflects the same

19   data as in Figure 3, just percentage rather than plotted on

20   a graft; is that right?

21   A.   Yes, that is right.

22   Q.   And again, just to make sure we are on the same

23   page, these numbers are not estimates that you reached,

24   correct, these are the votes that were actually earned by

25   the Black and Hispanic preferred candidates?

1   A.   Yes for, there is probably a very small amount of

2   variation because there is some precincts that may for the

3   earlier elections in particular where the lines didn't

4   exactly lineup with the current balance of the 11th

5   District, but are very, very close with, you know, very

6   small numbers of differences possibly.

7   Q.   You included the 2022 and 2024 congressional

8   elections in Congressional District 11 in your analysis of

9   these 20 election, correct?

10   A.   Yes.

11   Q.   You did not include the 2018 congressional election

12   in District 11 even though it falls within the time period

13   that you analyzed, correct?

14   A.   I didn't include the 2018 or the 2020 congressional

15   election because that was under different boundaries. That

16   was a different Different 11 then the District 11 we are

17   talking about here which was adopted in the more recent map.

18   Q.   You didn't perform any analysis in your reports as

19   to the similarities or differences between the district in

20   those two boundaries in those different time periods, did

21   you?

22   A.   No.

23   Q.   So you don't know if those districts are

24   substantially similar or if there were any differences that

25   would have justified not including the 2018 election?

1   A.   I know there is some small differences, enough I

2 feel like it is appropriate to use the bounds of the current

3 district and only look at elections held under those

4 boundaries for the congressional elections.

5   Q.   Again, you did not actually analyze what those

6 differences were, correct?

7   A.   Um, not extensively, no. I'm sure I looked at it

8 early on at some stage, not in my report.

9   Q.   Okay. In the 2018 congressional election in

10 District 11, do you know which candidate won that election?

11   A.   I believe the democratic candidate.

12   Q.   And the democratic candidate would have been the

13 Black and Hispanic preferred candidate in that election,

14 correct?

15   A.   I didn't do that analysis, but likely, yes. I

16 believe he was, ran multiple times. I believe that

17 candidate in 2018 ran again later and was the Black/Hispanic

18 preferred candidate.

19   Q.   So it is safe to assume and you can assume that he

20 was also the Black and Hispanic preferred candidate in 2018

21 when he won, correct?

22   A.   Yes.

23   Q.   In that 2018 election, that Black and Hispanic

24 preferred candidate actually beat a White preferred

25 incumbent; isn't that correct?

1   A.   I don't recall, but if that is what you are telling

2   me then, yes.

3   Q.   Okay. If you were to count the 2018 congressional

4   election, the black and Hispanic preferred candidate would

5   have won the six out of 21 elections in the time period you

6   analyzed; is that correct?

7   A.   Um, yes. I think we should also include the 2020

8   elections for Congress as well if we are going to include

9   additional congressional elections but, yes, you would add

10 one more if you were only to include 2018.

11   Q.   And six out of 21, that is more than 25 percent,

12 correct?

13   A.   Yes.

14   Q.   So it is your opinion that in a district where the

15 Black or Hispanic preferred candidate wins six out of 21

16 elections that Black and Hispanics, the Black and Hispanic

17 preferred candidate is usually defeated?

18   A.   I'm not sure what we, how we want to define the

19 term usually defeated. It is not a social science term that

20 I would use regularly in my work. I think it is, you know,

21 there is some legal standard here. I think obviously we can

22 figure out a rate at which any, you know, which preferred

23 candidates are defeated. Where we draw bright line from

24 usually defeated to not usually defeated, I don't know, but

25 I would think still six of 21 is in a large majority of

1   cases the Black and Hispanic preferred candidate is

2   defeated.

3   Q.   Dr. Palmer, how often would the Black and Hispanic

4   preferred candidate have to win in order for, in order for

5   it to be your opinion that that candidate is not usually

6   defeated?

7   A.   Um, I'm not sure. As I said, I don't think so

8   there is a right line to divide it. It is a spectrum. If

9   there were many more cases where the black and Hispanic

10   candidate were more successful, at some point it would

11   become equal chances, for example, if you had ten more

12   elections with Black and Hispanic preferred candidate was

13   successful. I don't have some bright line where I can say

14   this one election switches it from usually defeated to not

15   usually defeated. It is a spectrum.

16   Q.   You did concluded in your report that five out of

17   20 is usually defeated, didn't you?

18   A.   I did.

19   Q.   So you know that that is usually defeated, but you

20   don't know what makes it not usually defeated or what other

21   potential percentages are still usually defeated, correct?

22   A.   Yes. I would say that, I would say that it is very

23   clear to me that 75 percent is, you're losing three times

24   more often than your winning is usually defeated. I didn't

25   have to draw a line here because it was very clearcut.

1   Q.   I suppose if you are saying you don't know how to

2 define usually defeated, how could it have been clearcut to

3 you?

4   A.   As I said, I think when you are losing a three to

5 one ratio where you are losing three times more often than

6 you're winning, I think it is a clear pattern of being

7 defeated. I think if the results had been say 55 percent or

8 something like that, I wouldn't have drawn that conclusion,

9 but I didn't need to make that, do that, make that

10 evaluation here. That wasn't the case.

11   Q.   You are not aware of any definition of usually

12 defeated in any academic work or scientific literature that

13 you have reviewed, are you?

14   A.   Um, I don't believe so.

15   Q.   So you just decided that 75 percent of the time is

16 usually defeated without any support or any reference to any

17 source that you are aware of?

18   A.   Yes. In my expert opinion, if you are losing three

19 times more than you are winning, I think that is a regular

20 pattern of being defeated. I also see, you know, in this

21 figure that, you know, as a clear pattern, all the recent

22 elections of the Black/Hispanic preferred candidate being

23 defeated and so I drew that conclusion based on, you know,

24 this and then the average being relatively low that they

25 are, that the Black/Hispanic preferred candidate is

1   generally not receiving a high vote share.

2   Q.   2017 and 2018 were considered favorable election

3   cycles for the Black and Hispanic preferred candidates,

4   isn't that fair to say?

5   A.   I believe it is true for 2018. I don't have enough

6   information for the 2017 cycle in New York City to say

7   anything about the elections in that year.

8   (Transcript continues on the next page.)

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1 CROSS-EXAMINATION

2 BY MR. BRAUNSTEIN:

3   Q.   Well, between 2017 and 2018, the Black and Hispanic

4 preferred candidate won five out of the eight elections you

5 analyzed for that time period, correct?

6   A.   That's true.

7   Q.   And if we counted the 2018 congressional 11 or

8 Congressional District 11 election, it would be six out of

9 eight; is that correct?

10   A.   Yes, if we added that election, that's true.

11   Q.   So you'd agree with me, then, that in Congressional

12 District 11, in more favorable election cycles the Black and

13 Hispanic preferred candidate can win more than 60 percent of the

14 time in a two-year period?

15   A.   I would say that was true for this particular election

16 cycle. I think 2020, for example, was also a favorable election

17 cycle, where the Black and Hispanic preferred candidate did not

18 win.

19   Q.   If we count the 2018 Congressional District 11

20 election, the Black and Hispanic preferred candidate could even

21 win 75 percent of the elections in that two-year period,

22 correct, if we're counting six out of eight?

23   A.   For that limited time period alone, that would be

24 correct.

25   Q.   So in another favorable election cycle, the Black and

1   Hispanic preferred candidate could win in Congressional District

2   11; would you agree with that?

3   A.   I'm not saying the Black and Hispanic candidate can't

4   win. I'm saying that across the election I looked at, they

5   usually did not. If you were to add hypothetical election

6   cycles with certain levels of shifts in the vote, then, yes,

7   Black and Hispanic candidates can win.

8   Q.   Do you know whether 2026 is expected to be a favorable

9   election cycle for Black and Hispanic preferred candidates?

10   A.   I'm not going to make predictions about the election in

11 general. I think generally speaking, the midterm elections tend

12 to favor the party that's out of power. But the degree to which

13 there will be any swing in any one direction, I'm not going to

14 make a prediction about.

15   Q.   And the power that is out of power currently is the

16 Democratic party you're referring to, correct?

17   A.   Yes.

18   Q.   Again, Dr. Palmer, when you say the Black and Hispanic

19 preferred candidate is usually defeated in Congressional

20 District 11, what you're really saying is that the Black and

21 Hispanic preferred candidate received fewer votes from voters in

22 that district than the White preferred candidate, correct?

23   A.   Yes.

24   Q.   But that doesn't necessarily mean that the Black and

25 Hispanic preferred candidate actually lost the election, does

1   it?

2   A.   Well, lost the election at which -- the level at which

3   the election was conducted?

4   Q.   Correct.

5   A.   No, certainly not. You can -- statewide election, I'm

6   only looking at if -- the vote within the boundaries of the

7   district.

8   Q.   Isn't it the case that Black and Hispanic preferred

9   candidates routinely win elections on that level in New York

10   City and New York State?

11   A.   Yes. I'm not saying anything about the performance of

12   Black and Hispanic preferred candidates at the city or state

13   level. I'm looking at the district that we're discussing here.

14   Q.   In the 20 elections you analyzed -- and we can put

15   Figure 3 back up if that would be helpful.

16   In these 20 elections that you analyzed, other than the

17   presidential and congressional elections, was the Black and

18   Hispanic preferred candidate ultimately elected?

19   A.   At the state, city, or federal level, yes. But that's

20   an entirely different analysis than what I'm speaking to here.

21   Q.   Okay. Dr. Palmer, you said you reviewed Dr. Trende's

22   report briefly; is that correct?

23   A.   Very briefly, yes.

24   Q.   Okay. I'd like to put up Figure 1 from Dr. Trende --

25   THE COURT: Before you jump from that figure, look

1   at the 2017 and look at the mayor dot that stands out a

2   little bit. Why?

3   THE WITNESS: I haven't analyzed that one election

4   in particular. But voters in this district clearly

5   preferred -- I believe that was Malliotakis who might have

6   run in the 2017 mayoral election, but I'd have to

7   double-check that.

8 BY MR. BRAUNSTEIN:

9   Q.   Dr. Palmer, did you review Figure 1 in Dr. Trende's

10 report?

11   A.   No.

12   Q.   Do you have a copy of Dr. Trende's report with you?

13   A.   No.

14   Q.   I believe I have one.

15   MR. BRAUNSTEIN: Your Honor, may I provide

16   Dr. Palmer a copy of the report?

17   THE COURT: Hand it to the court officer.

18   (Handing.)

19   MR. BRAUNSTEIN: Thank you.

20   THE COURT: Thank you so much.

21 BY MR. BRAUNSTEIN:

22   Q.   I believe it's Tab 5, Dr. Palmer.

23   A.   What page?

24   Q.   Apologies. It is on page 6.

25   Is this Figure 1 that's on the screen, does that appear

kp

1   to be the Figure 1 in Dr. Trende's report that you have in front

2   of you?

3   A.   Yes.

4   Q.   Do you understand this figure to show the vote share

5   for the Black and Hispanic preferred candidate in various

6   elections broken down by congressional districts in New York

7   State?

8   A.   That's not clear from just looking at the figure. But

9   if you represent that, then that could be the case. I haven't

10   read the report.

11   Q.   Right above the table, if you want to look there, I

12   believe Dr. Trende explains that that is what this figure is.

13   A.   Thank you.

14   Q.   So that is your understanding of this figure now?

15   A.   Yes.

16   Q.   And there are 11 elections listed at the top of each

17   column in the first row. Are these all elections that you also

18   analyzed?

19   A.   Yes.

20   Q.   The -- and then in each column, it's -- it's the share

21   of the vote received by the Black and Hispanic preferred

22   candidate; is that correct?

23   A.   Yes.

24   Q.   And on the column all the way on the right, it says "D

25   wins" and "percentage D wins." Do you understand that to mean

1   how many of these 11 elections were won by the Black and

2   Hispanic preferred candidate in each district?

3   MS. BRANCH: Objection. The -- the report that's

4   being referred to, as I understand it, it says here that the

5   following table summarizes the Democratic vote share in

6   various races in congressional districts across the state,

7   and you're being asked questions about the Black and

8   Hispanic preferred candidate which is not the same analysis

9   as I understand in Figure 1.

10   THE COURT: Okay. So I'll sustain the objection

11   and ask counsel to rephrase.

12   BY MR. BRAUNSTEIN:

13   Q.   Dr. Palmer, in Congressional District 11, you

14   determined that the Black and Hispanic preferred candidate in

15   these elections was the Democrat, correct?

16   A.   The Black and Hispanic preferred candidate in

17   District 11. I didn't identify Black and Hispanic preferred

18   candidates anywhere else except in the illustrative district.

19   Q.   Do you have any reason to believe that in New York

20   State, the Black and Hispanic preferred candidate would not be a

21   Democrat?

22   A.   I haven't done that analysis.

23   Q.   Does that sound logical to you, based on what you know

24   about New York State and the analysis you did perform?

25   A.   That sounds plausible for Black preferred candidates.

1   I haven't assessed Hispanic preferred candidates in any other

2   district.

3   Q.   Fair enough.

4   Then I'll rephrase.

5   So Dr. Trende's figure here does show the number of

6   Democrat wins in each district, and then the percentage of those

7   wins as in the total of the 11 elections here; is that correct?

8   A.   Yes.

9   Q.   Dr. Palmer, Districts 5 through 15 in New York are

10   wholly within New York City. Is that your understanding?

11   A.   If that's what you're representing to me, I think

12   that's right. I don't recall the exact numbers.

13   Q.   I believe Dr. Trende says that in his report on page 7,

14   if you would like to look there briefly.

15   A.   Thank you. I see that now.

16   Q.   You have no reason to disagree with that?

17   A.   No, I do not.

18   Q.   Other than in District 11, has the Democratic candidate

19   lost any of these 11 elections in Districts 5 through 15?

20   A.   According to this table, no.

21   Q.   So the Democratic candidate won 100 percent of 10 of

22   these -- 10 New York City-based congressional districts'

23   elections other than District 11?

24   A.   That's what this table shows.

25   Q.   Districts 6 and 13 are partially within the bounds of

1   New York City, are you aware of that?

2   A.   Dr. Trende's report says Districts 3 and 16, is that

3   what you're referring to?

4   Q.   Yes. Correct.

5   In those two districts, did the Democrat win the

6   majority of these 11 elections?

7   A.   Yes. In District 3, the Democrat won seven of the

8   elections. And then in District 16, according to this table,

9   they won all of the elections.

10   Q.   Expanding outside of New York City, I count 20 out of

11 26 districts in New York State where the Democratic candidate

12 won a majority of these elections. Is that your read as well?

13   A.   Yes.

14   Q.   So in New York State as a whole, the Democratic

15 preferred candidate won a majority of these 11 elections in 20

16 out of 26 districts?

17   A.   According to this table, yes.

18   Q.   And, again, you have no reason to doubt the results of

19 this table, correct?

20   A.   I don't. I just did not do this analysis myself.

21   Q.   Do you know how many of New York's 26 congressional

22 districts are currently represented by Democrats?

23   A.   No.

24   Q.   So you performed an analysis of which candidates

25 usually win in one of New York's congressional districts, but

1   you don't know what other districts are represented by Democrats

2   or Republicans?

3   A.   I know some of them. But my focus in this matter was

4   on the 11th District and on the illustrative district, so I

5   didn't examine the entire state.

6   Q.   Dr. Trende's report says that 19 out of 26 districts

7   are represented by Democrats in New York. And I believe that's

8   on page 8. Do you have any reason to doubt that?

9   A.   No.

10   Q.   So in New York State, as a whole, the Democratic

11   candidate represents 19 out of 26 congressional districts?

12   A.   Yes.

13   Q.   You didn't perform any analysis for your reports about

14   whether Black and Hispanic preferred candidates are usually

15   defeated outside of Congressional District 11 and the

16   illustrative district, did you?

17   A.   No, I did not. My focus was on the 11th District.

18   Q.   And you didn't perform any analysis for your reports

19   about whether any areas broader than Congressional District 11

20   and the illustrative district exhibit racially polarized voting

21   patterns?

22   A.   I did not. I'm sorry. I should amend that. I did not

23   with the exception of reviewing Dr. Voss's New York citywide

24   analysis and -- I'll repeat that.

25   Dr. Voss's citywide analysis and assessing racial

1 polarized voting based on his estimates in other districts.

2   Q.   But to be clear, you did not perform your own analysis,

3 correct?

4   A.   I did not. But I did run and evaluate Dr. Voss's

5 analysis.

6   Q.   Okay. Dr. Palmer, switching gears slightly. Am I safe

7 to assume that because you determined that the Black and

8 Hispanic candidate was usually defeated when they lost

9 25 percent of the elections in Congressional District 11, then

10 they would also be usually defeated if they lost an even greater

11 percentage?

12   A.   Yes.

13   Q.   For example, if the Black and Hispanic preferred

14 candidate won only 10 or 15 percent of the elections, you would

15 say they're usually defeated, correct?

16   A.   Yes.

17   Q.   Dr. Palmer, you also examined whether the Black and

18 Hispanic preferred candidate would be usually defeated in the

19 illustrative district, didn't you?

20   A.   I did.

21   Q.   You did? Sorry. I didn't hear.

22   A.   Yes, I did.

23   Q.   Thank you.

24   And in the illustrative district, the Black and

25 Hispanic preferred candidate was still generally different than

1   the White preferred candidate, correct?

2   A.   For the most part, yes. But I found significantly less

3   cohesion among White voters. In some cases it's not clear that

4   White voters had a clear preferred candidate.

5   Q.   But as a whole, you would agree that the Black and

6   Hispanic preferred candidate was different than the White

7   preferred candidate; is that fair to say?

8   A.   In most of the elections, yes. But not always. And

9   then there is some elections -- like in 2022 and 2024 -- where

10   White voters are fairly divided. And so I didn't sort of reach

11   a conclusion about if there was a clear White preferred

12   candidate in those elections.

13   Q.   Well, you say in your report that White voters in the

14   illustrative district only support the Black and Hispanic

15   preferred candidates with 41.8 percent of the vote; is that

16   correct?

17   A.   That's the average across all of these elections. It

18   doesn't mean that I'm identifying a White preferred candidate.

19   I'm reporting the average support for the Black and Hispanic

20   preferred candidate.

21   So, for example, if White voters were split 50-50 then

22   there would not be a White preferred candidate. But I would

23   still report that the support for the Black and Hispanic

24   preferred candidate was 50 percent.

25   Q.   So you wouldn't say that a 58-42 split indicates that

1   the White preferred candidate is different than the Black and

2   Hispanic preferred candidate?

3   A.   I think that's a fuzzy gray area. There's some experts

4   who use 50-50 as an exact cutoff for polarized and not

5   polarized.

6   I think that we have to think about polarization as a

7   spectrum. And when you see a case where, say, four in six White

8   voters are supporting the minority preferred candidate, that's a

9   fairly high level of crossover voting.

10   I didn't make a determination for each individual

11   election here about if there was a clear White preferred

12   candidate. I'm just reporting the average across all of them.

13   But at the individual election level, we have some cases here

14   where there is fairly high crossover voting.

15   Q.   But the Black and Hispanic preferred candidate is only

16   the White -- is only also the White preferred candidate

17   41.8 percent of the time on average in the illustrative

18   district; isn't that right?

19   A.   On average, White voters are supporting the Black and

20   Hispanic preferred candidate 41 percent -- 41 percent of White

21   voters are supporting the Black and Hispanic preferred candidate

22   on average. But there are elections where the Black and

23   Hispanic preferred candidate might be the White preferred

24   candidate or where White voters don't actually have a clear

25   preferred candidate.

1   Q.   So then approximately 58 percent of the time, White

2 voters are supporting the White preferred candidate?

3   A.   I think we're differing on what you mean "of the time."

4 On average, 58 percent of White voters are not voting for the

5 Black and Hispanic preferred candidate. I think when you say

6 "of the time" to me, that means across elections, what percent

7 of elections is this happening, and I'm talking about the

8 percentages of voters.

9   Q.   Understood.

10   So you determined that 58 percent, approximately, of

11 White voters prefer the White preferred candidate?

12   A.   Are not voting for the Black and Hispanic preferred

13 candidate. So I think we're just differing here whether there

14 is or is not a White preferred candidate in every election. The

15 fact that there is a Black and Hispanic preferred candidate does

16 not mean that there has to exist a White preferred candidate.

17 That's assuming polarization where it may or may not exist. You

18 have to first find that there is -- that White voters are

19 cohesive behind a single candidate in order to say that there is

20 a White preferred candidate.

21   Q.   Understood.

22   So approximately 58 percent of the time -- let me

23 rephrase that.

24   Only 41.8 percent of the time, White voters are

25 supporting the Black and Hispanic preferred candidate?

1   A.   Again, I think the "of the time" is a confusing way to

2 phrase it.

3   On average, 41.8 percent of White voters are voting for

4 the Black and Hispanic preferred candidate across a set of

5 elections.

6   Q.   Okay. I'll move on.

7   You understand that the New York Voting Rights Act

8 protects -- protects voters of all races, don't you?

9   A.   That's my understanding. But I'm not a lawyer or an

10 expert on this act.

11   Q.   So if that's your understanding, then the New York

12 Voting Rights Act would protect White voters, wouldn't it?

13   A.   I believe so.

14   Q.   Your analysis determined that the White preferred

15 candidate would only win 2 out of 18 elections in the

16 illustrative district; isn't that right?

17   A.   No. Again, I'm not identifying a White preferred

18 candidate in all 18 elections. And I'm saying that the Black

19 and Hispanic preferred candidate would win 18 of the 20. It

20 does not mean there is a White preferred candidate in all 18 of

21 these elections. Or that they would lose.

22   For example, in 2022, where White voters are voting in

23 the high 40 percent range for Black and Hispanic preferred

24 candidates, I don't say that there is a White preferred

25 candidate here. I don't think White voters are cohesive enough

1   to identify a White preferred candidate, so you can't say the

2   White preferred candidate lost.

3   Q.   But, again, as a whole, your analysis showed in the

4   illustrative districts that the White preferred candidate is

5   different than the Black and Hispanic preferred candidate,

6   correct?

7   A.   No. I'm not identifying a set of White preferred

8   candidates here. I'm identifying a set of Black and Hispanic

9   preferred candidates.

10   If you look at my Figure 4 of my report, which is on

11   page 7, what we see is a pattern where White voters are, you

12   know, in that sort of 40 to 60 percent range most of the time,

13   with a couple of exceptions. And, for instance, in 2018, a

14   majority of White voters appeared to be voting for the Black and

15   Hispanic preferred candidate, so that would be four cases where

16   first I'm not finding a White preferred candidate, but if you

17   were going to use that strict 50-50 cutoff, that would be four

18   cases right there where the White preferred candidate would win.

19   So I don't think we can talk about in the illustrative map a set

20   of White preferred candidates the way we can in the

21   11th District because the degree of racially polarized voting is

22   very, very different.

23   It's not the case that we have White preferred

24   candidates in all of the elections here or that they're going to

25   be different from Black and Hispanic preferred candidates

kp

1   necessarily.

2   Q.   In the illustrative district, the Republican candidate

3   only won 2 out of 18 elections; is that correct?

4   A.   Yes.

5   Q.   So if we were to assume that the White preferred

6   candidate was the Republican, that would mean that their

7   candidate of choice was defeated 16 out of 18 times; isn't that

8   right?

9   A.   I don't think that is a good assumption to make in the

10   illustrative district. I don't think we have the evidence to

11   make that assumption.

12   We actually have evidence to say that we shouldn't make

13   that assumption because White voters are not a cohesive block in

14   most of these elections. If we need to have racial block

15   voting, you need cohesion among White voters to say there is a

16   White preferred candidate, and then to say -- to identify that

17   candidate is or is not a Republican.

18   There is a difference, I think, between a small

19   majority of White voters or even a majority of White voters who

20   are voting for Republicans and there is a White preferred

21   candidate of White voters in this district.

22   Q.   But if we were to determine that in the illustrative

23   district, the White preferred candidate was the Republican, then

24   you would agree that the White preferred candidate is being

25   defeated 16 out of 18 times, correct?

1   MS. BRANCH: Objection. He's already answered that

2   question.

3   THE COURT: Sustained.

4   MR. BRAUNSTEIN: I'm sorry. I didn't hear the

5   objection.

6   MS. BRANCH: It's asked and answered. You just

7   asked that question.

8 BY MR. BRAUNSTEIN:

9   Q.   Setting aside any questions of cohesion, would you

10 agree that winning only 2 out of 18 elections means the

11 candidate was usually defeated?

12   A.   I'm -- I'm not following how that is different here. I

13 think that if you're talking about party performance, if you

14 were to just say how often are Republican candidates defeated,

15 that is an entirely different question than how often are White

16 preferred candidates defeated in this district.

17   Q.   I'm only asking you about the usually defeated piece.

18   So in a district where one group's preferred candidate

19 is defeated 16 out of 18 times, wouldn't you agree that that

20 candidate is usually defeated by the standards that you

21 articulated for usually defeated here today?

22   A.   In a hypothetical district, where there are

23 perfect -- where there is identifiable -- a set of identifiable

24 candidates who are defeated 16 of the 18 times, I would say yes,

25 they're usually defeated, but that's not the case in the

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1   illustrative district.

2   Q.   Would the voters whose preferred candidate lost 16 out

3   of 18 times, in that hypothetical you just discussed, have a

4   claim under the New York Voting Rights Act that their candidate

5   is being usually defeated?

6   MS. BRANCH: Objection. I think that calls for a

7   legal conclusion and Dr. Palmer, obviously, isn't a lawyer.

8   THE COURT: Sustained. Rephrase.

9   BY MR. BRAUNSTEIN:

10   Q.   You would agree that if the petitioners here have a

11   claim that losing 15 out of 20 elections means their candidate

12   is usually defeated, would another group, whose candidate lost

13   16 out of 18 elections, also have a claim that their candidate

14   is usually defeated?

15   MS. BRANCH: I have the same objection, Your Honor.

16   THE COURT: I'll allow it.

17   You may answer.

18   A.   I'm not sure what the grounds for a claim are.

19   Q.   Well, you testified in your report that the Black and

20   Hispanic voters here are being usually defeated because they

21   lost 15 -- or 15 out of 20 elections; is that right?

22   A.   As an empirical calculation, that is correct. I don't

23   know the degree to which that is sufficient or not sufficient

24   for legal claims. I'm not a lawyer.

25   Q.   Okay. Dr. Palmer, do you understand that petitioners

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1   have argued in this case that the New York Voting Rights

2   Act -- Act standards apply at the congressional district level?

3   A.   That's my very broad understanding from listening to

4   lawyers yesterday morning. I haven't read all of the briefing

5   in this matter.

6   Q.   And if that were the case, could a district be drawn so

7   that one group's preferred candidate is losing more than

8   25 percent of the time?

9   A.   I'm sorry, could you repeat that? I'm not following

10 the hypothetical.

11   Q.   If the New York Voting Rights Act applies at the

12 congressional district level, could a map be drawn where in a

13 congressional district, a group's preferred candidate is losing

14 more than 25 percent of the time?

15   A.   When you say "could a map be drawn," is that a question

16 of could a map legally be drawn, or could a map be drawn in any

17 case?

18   Q.   Would you say that -- excuse me. Would you say that

19 that group's preferred candidate is being usually defeated?

20   A.   In a hypothetical where a district was drawn where

21 there was high levels of racially polarized voting and a group's

22 candidate was defeated 75 percent of the time, is that the right

23 question -- is that the right hypothetical?

24   Q.   Yes. If the candidate was being defeated 75 percent of

25 the time or more, would you say that group -- that candidate is

1 being usually defeated?

2   A.   If there is strong evidence of racially polarized

3 voting so that we know who the preferred candidates of each

4 group are, like we have in CD 11 is the sort of the

5 non-hypothetical version of this, then that candidate is usually

6 defeated. But it requires that there is polarization and there

7 are preferred candidates for the different groups.

8   (Senior Court Reporter Karen Perlman was replaced

9   by Senior Court Reporter Monica Hahn.)

10   (Transcript continues on the following page.)

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1   MR. BRAUNSTEIN: I believe that is all I have

2 now.

3   Thank you.

4   THE COURT: Redirect?

5   MR. BUCKEY: May I go first, your Honor?

6   THE COURT: Oh, yeah. I'm sorry, yes. This is

7 still cross.

8 CROSS-EXAMINATION

9 BY MR. BUCKEY:

10   Q.   Good morning, Dr. Palmer. My name is Christopher

11 Buckey. I represent three of the respondents here, Kosinski

12 Casale & Riley.

13   A.   Good morning.

14   Q.   In your report, sir, you did not reference race of

15 the candidates in the 20 elections that you examined, right?

16   A.   That's correct.

17   Q.   So it is fair to say you did not consider the race

18 of the candidates in those 20 elections, right?

19   A.   No. I'm not focused on the race of the winning

20 candidates, just on the preferred candidates of each group

21 which may or may not be of the same race as the voters.

22   Q.   The answer is, no, you did not consider race of

23 candidates, right?

24   A.   That's correct.

25   Q.   In your reply, which you discussed on your direct,

1   you mention that you reviewed Dr. Alford's report; is that

2   right?

3   A.   Yes.

4   Q.   And, in fact, during your direct you testified

5   about Dr. Alford's report, right?

6   A.   Yes.

7   MR. BUCKEY: Can we pull it up?

8   Your Honor, may I approach the --

9   THE COURT: You may hand it to the court

10   officer.

11   MR. BUCKEY: Thank you, your Honor.

12   (Handed to the witness.)

13   THE COURT: Thank you.

14   Q.   Can we go to Table 4.

15   Dr. Palmer, you recall when you were reviewing

16   Dr. Alford's report that he, in fact, analyzed the race of

17   the respective candidates in those 20 elections that you

18   analyzed, right?

19   A.   Yes.

20   Q.   And that is at Table 4?

21   A.   Yes.

22   Q.   Okay. And is it your understanding, sir, he

23   actually did this by reproducing your EI results from your

24   report, is that your recollection?

25   A.   Yes, I believe he just uses the same EI results

1 from my report and just adds the column for the race of the

2 candidate.

3   Q. Okay. In your reply, you did not dispute the

4 accuracy of Dr. Alford's analysis with respect to the race

5 of the candidates in those 20 elections, did you?

6   A. No.

7   Q. No. Nor did you during your direct testimony,

8 right?

9   A. I did not.

10   Q. So if we look at Table 4 it appears that Black

11 voters supported the Black democratic candidates about 89.6

12 percent of the time, right?

13   A. Yes, that is the average here.

14   Q. So -- and you would agree that is very similar to

15 the Black voter support of non-Hispanic White democratic

16 candidates that you found at roughly 90.9 percent, right?

17   A. Yes.

18   Q. And according to Dr. Alford's report which you

19 haven't challenged, Hispanic voters, they supported Black

20 democratic candidates at about 86.3 percent, right?

21   A. Yes.

22   Q. And you would agree that figure is similar to the

23 Hispanic voter support of non-Hispanic White democratic

24 candidates that you found which was 88.5 percent, right?

25   A. Yes.

1   Q.   And so last according to Dr. Alford's analysis,

2   White voters supported Black democratic candidates at about

3   24.9 percent, right?

4   A.   Yes.

5   Q.   So you would agree this too is similar to the White

6   voter support for non-Hispanic White democratic candidates,

7   which is at 27.6 percent, right?

8   A.   Yes.

9   Q.   And would you agree you referred to it in direct as

10   you didn't necessarily look at the why behind the racial

11   polarization, right?

12   A.   I did not. I don't think that is the purpose of

13   this analysis or necessarily something we can do here.

14   Q.   You would agree to determine whether race rather

15   than partisanship explains polarization, the race of the

16   candidate can be usable, right?

17   A.   Can you repeat that, please.

18   Q.   Sure.

19   You would agree to determine whether race rather

20   than partisanship explains the polarization, the race of the

21   candidates, that would be useful?

22   A.   No. I think we're not interested in -- first of

23   all, we're not trying to explain why. That is not the

24   purpose of the analysis.

25   Second, the focus isn't on the race of the

1   candidates. It is on the race of the voters. This is a

2   voter-centered analysis, not candidate-centered analysis.

3   Q.   In your view, race of the candidate is irrelevant?

4   A.   Irrelevant to determining if racially-polarized

5   voting exists.

6   Q.   Is it relevant to determining why polarization

7   exists?

8   A.   Um, it is really hard to untangle race and party

9   and I don't think looking at the race of the democratic

10 candidates and any differences or lack of differences

11 necessarily tells us whether it is driven by the race of the

12 candidate or not.

13   Q.   You've been retained as an expert in, on

14 racially-polarized voting on a number of occasion, right?

15   A.   Yes.

16   Q.   And you testified a number of times, right?

17   A.   Yes.

18   Q.   You've given a number of reports, right?

19   A.   Yes.

20   Q.   And you were retained by the plaintiffs in a case

21 known as Pendergrass V. Raffensperger which was litigation

22 in the federal court in the Northern District of Georgia?

23   A.   Yes.

24   Q.   Ring a bell?

25   A.   It does.

1   Q.   In that case, you were retained to offer an opinion

2   on extent of racially-polarized voting in North West

3   Georgia, right?

4   A.   Yes.

5   Q.   You were also asked to evaluate the performance of

6   the plaintiffs illustrative map in the Sixth Congressional

7   District of Georgia, right?

8   A.   That sounds correct. I haven't reviewed that

9   report.

10   Q.   Okay. And in that case, you were also asked to

11   analyze the extent to which minority candidates have won

12   elections in a particular focus area, weren't you?

13   A.   I believe so.

14   Q.   And you provided data and plotted the vote shares

15   from the Black candidates in each election for this focus

16   area, didn't you?

17   A.   Yes.

18   Q.   According to your data, the Black candidate was

19   defeated by the White candidates in all 13 elections in your

20   focus area, does that ring a bell?

21   A.   Um, that sounds right. I would have to look at the

22   report, but.

23   Q.   Would you like to see the report?

24   A.   If you want more detailed answers about it I'm

25   happy to look at it, but I don't need it to say that sounds

1   familiar.

2   Q.   Okay. So you would agree at least in that case,

3   the race of the candidates was relevant to your analysis,

4   wasn't it?

5   A.   It was relevant to analysis of a different question

6   which was were minority candidates able to be elected, and

7   my analysis here, does racially-polarized voting exist and

8   what is the degree of it. So I believe in that case I did

9   different analysis to answer different questions. That

10   wasn't a question I was asked to answer in that matter.

11   Q.   Let's take a quick look. If we can pull up the,

12   what I think is now marked as Respondent's Exhibit 3, for

13   identification?

14   MR. BUCKEY: Your Honor, we're only offering

15   this, using this for impeachment. Not seeking to admit

16   it.

17   May the record reflect that I'm giving a copy

18   of Dr. Palmer's report in the aforementioned case.

19   (Handed to the witness.)

20   MR. BUCKEY: He now has it.

21   Would you like a copy?

22   MS. BRANCH: Yes, please.

23   (Handed to counsel.)

24   Q.   Let's go to Page 2, Paragraph 5.

25   Dr. Palmer, do you see that?

1   A.   I do.

2   Q.   That appears to be the scope of your analysis for

3   this particular engagement, right?

4   A.   That is what I wrote here, yes.

5   Q.   And so what you wrote is that you were retained by

6   the plaintiffs to provide an expert opinion on the extent to

7   which voting is racially-polarized in North West Georgia,

8   right?

9   A.   Yes.

10   Q.   Also asked to evaluate the performance with

11 particular congressional district in a proposed illustrative

12 map, right?

13   A.   Yes. And then in the section and minority

14 candidate performance, I know I was asked to analyze a

15 different question that I did not include in that summary

16 paragraph number five.

17   Q.   That was just omitted?

18   A.   Um, potentially, yes.

19   Q.   So the scope of your analysis is far broader than

20 what you said in your report?

21   A.   In Paragraph 24 of that report I said I was asked

22 to analyze the extent to which minority candidates won

23 elections in the focus area.

24   Q.   You would agree upon the expressed words in this

25 report that you gave, your analysis was racially-polarized

1   voting, right?

2   A.   I also note in Paragraph 24 of that report that I

3   was asked to do this additional analysis.

4   Q.   But there is nothing about that in the scope of the

5   engagement at the beginning of this report, right?

6   THE COURT: Well, Paragraph 5 the only portion

7   of the engagement in this document or are there other

8   paragraphs that discuss your engagement?

9   THE WITNESS: Paragraph 24 discusses another

10   thing I was asked to do. It is not included as a

11   summary, the top of the report in Paragraph 5, but it is

12   discussed in the section on Page 8 starting with

13   Paragraph 24 that I was asked to do this.

14   THE COURT: Okay. Let's keep going.

15   MR. BUCKEY: Can you pull up the Cooper report

16   and the illustrative plan, Figure 8.

17   (Displayed in open court.)

18   Q.   Now, Dr. Palmer, of course you looked at and

19   reviewed Cooper's illustrative plan in connection with

20   preparing your report, right?

21   A.   I didn't review his report. I haven't read it. I

22   received a shape file or block assignment file of the map

23   which I used to identify the precincts.

24   Q.   Are you familiar with what the vote shares were for

25   the various groups within the illustrative plan?

1   A.   From my racially-polarized voting analysis, yes.

2   Q.   So would you agree that in the illustrative plan

3 the Black CD-8 shares increased from CD-11 by roughly one

4 percent?

5   A.   I'm sorry. I misunderstood your previous question.

6 I understand the voting rates of each group. I don't have

7 all the demographic data in front of me.

8   Q.   Did you understand -- at some point were you

9 familiar with the demographic data?

10   A.   Yes. I haven't done any of that analysis myself.

11   Q.   No. Okay. So if we want, if I told you that from

12 CD-11 to the illustrative plan that the Black CDAP increased

13 only about one percent, would that make sense to you; is

14 that consistent with your recollection?

15   A.   Yes.

16   Q.   Okay. And same thing with respect to the Hispanic

17 CDAP, it increased only about one percentage point into the

18 illustrative district, right?

19   A.   Yes.

20   Q.   Okay. In fact, the White share from CD-11 to the

21 illustrative plan, that increased by 2.5 percent, right?

22   A.   Yes.

23   Q.   So obviously the White share, it increased by a

24 greater percentage of the total of the increase of the Black

25 and Hispanic share, right; 2.5 percent is greater than two

1   percent?

2   A.   In percentage point terms, yes.

3   Q.   Okay. And according to your analysis, the average

4   cohesion for Black voters in the illustrative plan declines,

5   right, it goes from about 90.6 percent to 87.9 percent?

6   A.   Um, the average declined slightly, but well within

7   the balance of the confidence intervals. We know there is

8   uncertainty here. I don't believe that the difference in

9   cohesion is significant between the two maps.

10   Q.   The cohesion went down though, right?

11   A.   The point estimate went down. That doesn't mean

12   there is statistically significant decrease.

13   Q.   Confirming that it went down?

14   A.   Sorry. I'm not agreeing that it went down. I'm

15   saying there is a small difference in the estimates, but you

16   need to assess the full results of the ecological inference

17   analysis, and the confidence intervals are wide enough we

18   cannot say with any certainty that it went down.

19   Q.   You would agree according to the numbers, the

20   average cohesion per Hispanic voters, that also declined

21   from about 87.7 percent to about 83.1 percent in terms of

22   the raw numbers?

23   A.   Not in terms of raw numbers. In terms of just the

24   point estimates. Improper to think just about difference in

25   point estimates without also thinking about the uncertainty

1 associated with them.

2   Q.   And in your report, your analysis shows that the

3 illustrative plan, that it performs better for the minority

4 preferred candidate, right?

5   A.   Yes. Minority preferred candidates win more

6 elections.

7   Q.   You would agree the illustrative plan, the way it

8 is drawn, it brings in more democratic-leaning White voters,

9 right?

10   A.   That is the case, and we know that not from how it

11 is drawn, but from the racially-polarized voting analysis

12 which shows more support by White voters for

13 minority-preferred candidates.

14   Q.   Right. To try to be precise on that, the White

15 support for democrats increased from roughly 23.8 percent in

16 the current CD-11 to about 41.8 percent in the illustrative

17 plan, right?

18   A.   Yes. That is the average of the point estimates.

19   Q.   So you would, excuse me, agree that the improvement

20 that you identified in the illustrative plan comes largely

21 from the change in the White voter composition and to a

22 lesser extent the Asian composition?

23   A.   Yes. Increased support from White voters does

24 allow minority candidates to one win more often here. I

25 don't have the exact numbers for Asian voters in front of

1   me.

2   Q.   And proves it doesn't come in from a substantial

3   increase in the Black or the Hispanic share of the vote or

4   cohesion, right?

5   A.   That is a hard thing to determine without a further

6   analysis when you say where the improvement comes from.

7   For example, in 2022, we see very, very narrow

8   electoral results. 51.2 to 54 percent, um, those are tight

9   margins. Any one percent, two percent changes, there can be

10   enough to change the results. So when we are thinking about

11   narrow margins and tight elections, small differences can

12   matter a lot.

13   Q.   You agree though that the improvements comes

14   largely from the change in the White voter composition in

15   the illustrative plan?

16   A.   Um, there is substantial improvement from White

17   voter composition. Doesn't mean any one shift is

18   determinative.

19   Q.   Is it fair to say, it is fair to say the

20   improvement then is driven in part by partisan geography by

21   bringing in more White democratic voters?

22   A.   Yes. When you draw maps of different precincts, it

23   is going to change election results.

24   Q.   You agree this so-called improvement wouldn't occur

25   unless the democratic-leaning voters were brought into the

1   illustrative plan, right.

2   A.   Sorry. Can you repeat that?

3   Q.   You would agree that the improvements that you have

4   identified, it would not occur but for bringing in these

5   democratic leaning voters from, into the illustrative plan?

6   A.   Yes. There is improvement because we're changing

7   the composition of the district.

8   Q.   Okay.

9   MR. BUCKEY: That is it. Thank you.

10   THE COURT: Thank you.

11   MS. BRANCH: Just a few.

12   THE COURT: Do you want to take a break? Do

13   you need a break?

14   THE WITNESS: I'm fine. Thank you.

15   THE COURT: Anybody need a break? I don't need

16   a break. I'll keep going.

17   MS. BRANCH: I have just a few questions.

18   THE COURT: All right. Redirect. Thank you.

19   REDIRECT EXAMINATION

20   BY MS. BRANCH:

21   Q.   Good morning, again, Dr. Palmer. Aria Branch, for

22   the Petitioners. I would like to ask you a couple of

23   questions to follow up on some of the points you've been

24   discussing.

25   On cross-examination you were asked about the 2018

1   congressional election. Can you explain why you did not

2   include the 2018 or 2020 congressional elections in your

3   analysis?

4   A.   We're looking at a map that was adopted in, I

5   believe 2022. So it was only the boundaries of that

6   district didn't exist for the congressional district

7   elections in 2018 or 2020, even though the district might

8   have been generally similar.

9   Q.   Why was that?

10   A.   Because of the census and redirecting the

11 boundaries had to change.

12   Q.   Are you aware of whether the Black and Hispanic

13 preferred candidate won in the 2020 election in CD-11?

14   A.   Um, I don't recall. I would have to look at the

15 election results.

16   Q.   If I represent to you that representative Nicole

17 Malliotakis won in 2020, and if you included both the 2020

18 election and the 2018 election in your analysis, that would

19 include -- that would mean that you would look at 22

20 elections in total; is that correct?

21   A.   Yes.

22   Q.   And if we included those two elections in the Black

23 and Hispanic preferred candidate would have won six of the

24 22 elections; is that correct?

25   A.   Yes.

1   Q.   And is that about 27 percent of winning rate?

2   A.   That sounds right.

3   Q.   Would that change your conclusion about whether the

4   Black and Hispanic preferred candidate is usually defeated

5   in Congressional District 11?

6   A.   No.

7   Q.   On cross-examination you were also asked about

8   whether you can conduct a racially-polarized voting analysis

9   using the data from one congressional district.

10   Is your answer to that question the same in every

11   state across the country?

12   A.   No. Districts vary widely the way that precincts

13   are drawn. Is going to vary widely across the state, across

14   different states. It is not an apples to apples comparison.

15   If you are in rural areas it can have bigger

16   and fewer precincts. In urban areas we tend to have more

17   precincts. It is the amount of information available. I've

18   had cases where I couldn't draw -- sorry. Couldn't run a

19   collection inference at the district level, especially state

20   legislative elections, or where I would only be able to run

21   it in some of the districts, but not all of them, depending

22   on the electoral geography there.

23   Q.   Did you have enough data to draw conclusions about

24   racially-polarized voting in this case?

25   A.   I did.

1   Q.   Did Dr. Voss's analysis of city-wide data change

2 your conclusions about racially-polarized voting in the 11th

3 Congressional District?

4   A.   It did not.

5   Q.   I would like to call up Figure 3 from Dr. Palmer's

6 report. I believe during the cross-examination your Honor

7 asked a question about the 2017 mayoral election which is

8 displayed in this Figure 3.

9   Are you aware who ran for mayor in the 2017 mayoral

10 election?

11   A.   I believe the democratic candidate was Bill de

12 Blasio and republican candidate was Nicole Malliotakis.

13   Q.   What does it mean that the red dot in the 2017

14 mayoral election is so far below all the others?

15   A.   It means that there was more support for

16 Malliotakis in the district, in this district in that

17 election compared to other offices being elected at the same

18 time.

19   Q.   And what does it mean with respect to Black and

20 Hispanic support for Nicole Malliotakis in that 2017 mayoral

21 election?

22   A.   Um, the racially-polarized voting analysis shows

23 slightly higher support by Hispanic voters. There is still

24 cohesive in supporting de Blasio, but slightly higher share

25 support Malliotakis compared to Black voters in that

1   election.

2   Q.   We can leave up Figure 3.

3   Does this figure show that, which candidate won

4   each election in Congressional District 11?

5   A.   Yes, by color.

6   Q.   And can voting be racially polarized in some parts

7   of New York and not in others?

8   A.   Yes.

9   Q.   What conclusions are you able to make with respect

10   to Congressional District 11 and whether or not

11   racially-polarized voting existed in that district?

12   A.   In the other analysis in my report I show that

13   there is strong evidence of racially-polarized voting in

14   District 11.

15   Q.   You were asked about whether a White preferred

16   candidate would usually be defeated in the illustrative

17   district.

18   Were you able to determine whether there was or is

19   or would be a White preferred candidate in the illustrative

20   district?

21   A.   In some of the elections I think we can identify

22   White preferred candidate, but in many of them we can't or

23   at least not a strongly preferred candidate. There isn't a

24   consistent pattern of cohesion across the elections that say

25   there is a clear White preferred candidate in each contest.

1   MS. BRANCH: No further questions.

2   Thank you, Dr. Palmer.

3   THE COURT: Thank you.

4   Okay. Let's have the witness step down.

5   Thank you for your testimony.

6   (Whereupon, the witness steps off the stand.)

7   THE COURT: Are there any other questions?

8   MR. DODGE: We are preparing to call our next

9 and final witness. Now might be a good time for us, a

10 short break.

11   THE COURT: We'll start to 11:45. Take a ten

12 minute break.

13   (Whereupon, a short recess is taken.)

14   THE COURT: Okay. Back on the record.

15   MR. DODGE: Thank you, your Honor. Christopher

16 Dodge on behalf of petitioners.

17   Petitioners call Mr. Bill Cooper as their next

18 witness.

19   THE COURT: Bring the witness up, swear him

20 in.

21   THE COURT OFFICER: Remain standing. Raise

22 your right hand.

23   Do you swear or affirm to tell the truth, the

24 whole truth and nothing but the truth?

25   THE WITNESS: I do.

1   W I L L I A M   S E A T O N   C O O P E R,

2   called by the Petitioner, after being duly sworn, testified

3   as follows:

4   THE COURT OFFICER: Have a seat.

5   State your full name and address, for the

6   record.

7   THE WITNESS: My name is William Seaton Cooper.

8   202 Northwinds Drive, Bristol, Virginia.

9   THE COURT: Welcome.

10   THE WITNESS: Thank you.

11   DIRECT EXAMINATION

12   BY MR. DODGE:

13   Q.   Good morning, Mr. Cooper. Can I hand the deputy a

14   binder with some materials --

15   THE COURT: You may hand it to the court

16   officer.

17   (Handed to the witness.)

18   Q.   Good morning, Mr. Cooper.

19   You've been retained as an expert for the

20   petitioners in this case; is that right?

21   A.   That's correct.

22   Q.   The parties have already stipulated to your

23   expertise to speak to the issues in your report. I would

24   like to introduce you a bit to the court.

25   Can you tell the court what your profession is?

1   A.   I provide demographic analysis and do a lot of

2 redistricting work. Some of it is litigation-related. Some

3 of it is for local governments. Some non-profits around the

4 country frankly.

5   Q.   Fair to say you draw maps for a living?

6   A.   Yes.

7   Q.   And that includes drawing maps for jurisdictions,

8 counties, cities, schools and the like?

9   A.   Exactly.

10   Q.   As you said that also includes drawing maps in the

11 course of lawsuit?

12   A.   Yes.

13   Q.   And how long have you been doing this for?

14   A.   Um, actually goes all the way back to around 1988

15 or '87 when I first began drawing redistricting maps in

16 Virginia for litigation purposes under Section 2 Gingles,

17 G I N G L E S, related case.

18   Q.   Doing this work for about 40 years?

19   A.   Nearly, yes. It is frightening.

20   Q.   And have you previously been accepted as an expert

21 witness in lawsuits involving redistricting?

22   A.   Yes.

23   Q.   About how many cases have you testified in court as

24 an expert witness on map drawing and demographics?

25   A.   Now, over 60. Sometimes I've made multiple

1 appearances, but 60 cases without taking account of multiple

2 appearances.

3   Q.   Some of those cases made it all the way up to the

4 Supreme Court, right?

5   A.   Yes.

6   Q.   And does it ring a bell that Chief Justice Roberts

7 made a note of your testimony recently being highly credible

8 in a case from Alabama?

9   A.   Yes.

10   Q.   And in those past cases where you testified, you

11 typically served as expert in the field of demographics and

12 map drawing, correct?

13   A.   Correct.

14   Q.   Has a court ever refused to recognize you as an

15 expert in the field of demographics or map drawing?

16   A.   No, never been, never.

17   Q.   In the 60 cases where you testified, has a court

18 ever discounted your testimony under either Daubert or Frye

19 standards?

20   A.   No.

21   Q.   You have a binder in front of you. Can you take a

22 quick look at Tab 1.

23   A.   Yes.

24   Q.   Does this material reflect your testimony, your

25 expert testimony up through the present?

1   A.   Yes.

2   Q.   Mr. Cooper, you prepared two reports in this case,

3 right?

4   A.   I did.

5   Q.   That includes an opening report and rebuttal

6 report?

7   A.   Yes.

8   Q.   For the opening report, did you later submit some

9 amendments to that report?

10   A.   Yes. I corrected some typographical errors and

11 copy and paste errors and tables in that report.

12   Q.   Those amendments were listed to typographical

13 errors in a handful of figures?

14   A.   Yes.

15   Q.   Did those amendments change any of the substantive

16 analysis in your report?

17   A.   No. The text was not changed at all.

18   Q.   Did the amendments change or affect any conclusions

19 you reached in your report?

20   A.   No.

21   Q.   Could you take a brief look at Tabs 2 and 3 in the

22 binder in front of you, confirm those are your reports in

23 this matter.

24   A.   Um, I see two. I see two.

25   Q.   Three is going to be a bit further back. Two

1 includes the exhibits?

2   A.   Oh, it is at the end of the -- yes, I see Tab 3 and

3 that is my reply declaration, right.

4   MR. DODGE: Your Honor, the parties already

5   stipulated to this. At this time, I would move

6   Petitioner's Exhibit 7 and 8 into evidence, which are

7   Mr. Cooper's amended opening report and rebuttal report.

8   THE COURT: Without objection, we'll admit

9   those.

10   (Petitioner's Exhibits 7 and 8 admitted into

11   Evidence by the Court.)

12   (Transcript continues on the next page.)

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1 DIRECT EXAMINATION

2 BY MR. DODGE:

3   Q.   Turning to your work in this matter, Mr. Cooper, can

4 you tell the Court what you were asked to do in this case?

5   A.   I was asked by the petitioners' attorneys to develop a

6 plan that would join Staten Island with Manhattan in a

7 congressional district.

8   Q.   And did you reach any conclusion as to whether it would

9 be feasible to draw such a district using traditional

10 redirecting criteria?

11   A.   Yes, I did, and it's clearly feasible.

12   Q.   Does your report reflect one illustration of how to

13 draw such a Staten Island-Lower Manhattan district?

14   A.   Yes.

15   Q.   Is that illustrative map the only possible

16 configuration for drawing such a Staten Island-Lower Manhattan

17 district?

18   A.   No. There would be multiple other configurations.

19   Q.   So, in essence, your report just provides one example?

20   A.   Correct.

21   Q.   Would it be fair to say that your report provides,

22 essentially, proof of concept for such a district?

23   A.   Yes.

24   Q.   In drawing your illustrative map in this case, were you

25 asked to look at whether Black and Latino voters would be able

1   to elect their candidate of choice in any illustrative district?

2   A.   No.

3   Q.   Were you asked to aim for any racial targets when

4   drawing the illustrative plan?

5   A.   No.

6   Q.   Were you asked to look at any partisanship figures when

7   drawing the illustrative plan?

8   A.   No.

9   Q.   Were you asked to achieve any sort of partisan targets

10   when drawing the illustrative plan?

11   A.   No.

12   Q.   So let's get into your report a little bit. We

13   mentioned the term "traditional redistricting criteria." Can

14   you tell the Court at a high level what traditional

15   redistricting criteria are?

16   MR. DODGE: And at this point, can we also pull up

17   page 7 of Mr. Cooper's report.

18   A.   Yes. It's just a set of factors that a plan drawer

19   should take into account when creating election districts. So

20   the obvious one would be that the districts should be

21   contiguous, unless it's a strange geography that includes

22   disparate parts that are not connected by water or land.

23   Also, of course, one needs to draw reasonably compact

24   districts and there are ways to measure that using statistical

25   tools. And, also, just looking at it individually, one must

kp

1 also take into consideration political subdivisions where

2 appropriate; that would include things like municipalities.

3 There are no municipalities under New York City in this case, so

4 that's less of an item to consider here. We have the separate

5 boroughs, of course.

6   Also, one should take into account other communities of

7 interest that are more important to people at the ground level,

8 like neighborhoods. And I really prioritized neighborhoods in

9 the way I drew this plan, the illustrative map.

10   Other factors you need to consider are precinct or

11 voting districts, which are designated areas that people

12 actually vote at in any given election.

13   Q.   Would you also have to account for equal population

14 between districts?

15   A.   Well, of course, that is a given, right. In a

16 congressional plan in New York, in particular, the districts

17 should be plus or minus one person.

18   Q.   And how should a map drawer -- drawer consider all of

19 those different criteria when drawing a district?

20   A.   It is a constant balancing factor that one has to

21 approach when drawing a plan. You're constantly balancing the

22 different -- the different factors.

23   Q.   You mentioned the concept of compactness. Can you tell

24 us in laymen's terms what compactness refers to in the

25 redistricting context?

1   A.   It's -- it's just the overall shape of the district.

2 Frankly, that's -- there's a way to measure it, using something

3 called the Reock score, which measures the area of a district as

4 it relates to a circle. And then there is the Polsby-Popper --

5   THE COURT: Spell the type of method for the court

6   reporter.

7   THE WITNESS: Polsby-Popper. P-o-l-s-b-y, dash,

8   P-o-p-p-e-r. Two lawyers who designed that -- devised that

9   measure. And it's -- it's perimeter based.

10   So you get different scores. But at the same

11   token, a district that is perfectly compact, and you almost

12   would never see that unless it's a perfect circle, would be

13   one, and a district that had a very bad compacting score --

14   I don't think you can possibly get to zero, but that would

15   be the lower limit.

16   Q.   And in your experience, is there a bright-line standard

17 for when a district is sufficiently compact?

18   A.   No, there is absolutely not. There are many different

19 factors that come into play with compactness.

20   Q.   So generally speaking, how do you determine whether a

21 district is sufficiently compact?

22   A.   Ultimately, it's a judgment call. You look at the

23 compactness scores, and you look at the map, and you say is that

24 reasonable? And, you know, different people can come up with

25 different conclusions in some cases.

kp

1   Q.   You also mentioned the term "contiguous" when

2 discussing the traditional redistricting criteria. What does

3 that term mean in the redistricting context?

4   A.   Well, all parts of the district need to connect with

5 one another, either by land or water.

6   Q.   I also heard you use the term "community of interest"

7 in describing what that can entail a bit.

8   Can economic ties among different groups of individuals

9 reflect a community of interest?

10   A.   Yes.

11   Q.   Can cultural or language ties amongst --

12   A.   Absolutely.

13   Q.   -- individuals reflect a community of interest?

14   A.   Yes.

15   Q.   Shifting gears somewhat. Can you briefly tell the

16 Court what the concept of core retention is in the redistricting

17 context?

18   A.   Well, core retention is just a measure of how a new

19 plan stacks up against an old plan, in terms of the population

20 shifting around. So the largest subset of the population that

21 has moved from one district to another while still keeping that

22 component of the population together would represent one part of

23 the equation. The other being the remaining population.

24   So in this particular case, it's Staten Island, which

25 is the -- the core that stays together no matter which plan