No. A25-

IN THE

Supreme Court of the United States

NICOLE MALLIOTAKIS, *et al.*,

Applicants,

v.

MICHAEL WILLIAMS, *et al.*,

Respondents.

ON APPLICATION FOR STAY TO THE COURT OF APPEALS OF THE STATE OF NEW YORK TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT

APPENDIX TO EMERGENCY APPLICATION FOR STAY VOLUME VI OF X (PAGES 2001a - 2400a)

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

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

Attorneys for Applicants

390244

COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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STATEMENT OF THE CASE

This proceeding arises from a constitutional challenge to New York's 2024 Congressional Map under Article III, Section 4(c)(1) of the New York State Constitution. On January 21, 2026, the Supreme Court, New York County (Pearlman, J.), issued a Decision and Order declaring that the decades-old configuration of CD-11 unconstitutionally dilutes the voting strength of Black and Latino voters, and it enjoined Appellants from conducting any election under the current map. The Court further directed the non-party Independent Redistricting Commission to reconvene and complete a new congressional map by February 6, 2026. Appellants now seek an emergency stay of this order pending appeal.

The Decision and Order presents grave legal errors and threatens immediate, irreparable harm to the orderly administration of the 2026 election cycle, which is set to commence on February 24, 2026, when candidates may begin circulating designating petitions. A stay is essential to prevent chaos and confusion in New York's electoral system while this Court considers the substantial issues on appeal.

I. Petitioners' claims as pleaded below

Petitioners initiated this special proceeding on October 24, 2025—some nineteen months after the 2024 Congressional Map was enacted into law. The Petition asserted a single claim: that the configuration of CD-11, which encompasses all of Staten Island and a portion of southern Brooklyn, violates the prohibition against racial vote dilution set forth in Article III, Section 4(c)(1) of the New York Constitution.

The centerpiece of Petitioners' legal theory was that the NYVRA, a state statute enacted in 2022—eight years after the 2014 constitutional redistricting amendments took effect—provides the analytical framework for evaluating claims under Article III, Section 4(c)(1). Petitioners alleged that the NYVRA requires the creation of coalition and minority influence districts in which

racial minorities can form coalitions with other racial minorities and White voters to influence elections and elect representatives of their choice. Petitioners asserted this dramatically relaxed standard because it would permit them to achieve what they could not accomplish under established federal law: a judicial reconfiguration of CD-11 to radically alter its partisan geography. Petitioners expressly conceded that their vote dilution claim fails under federal law and that Black and Latino voters in CD-11 cannot constitute a majority in any reasonably configured single-member district.

Petitioners alleged that the Black and Latino population on Staten Island has grown significantly since 1980 while the White population has declined, yet the current configuration of CD-11 perpetuates the alleged dilution of minority voting strength. They alleged that voting is racially polarized in CD-11, that there is a history of discrimination affecting Black and Latino residents, and that racial appeals continue to be made in political campaigns. Based upon these allegations, Petitioners sought a declaration that the 2024 Congressional Map violates Article III, Section 4(c)(1), a permanent injunction barring Appellants from using the 2024 Map in any future elections, and an order directing that a new map be adopted pairing Staten Island with portions of lower Manhattan to create what Petitioners styled a minority influence district.

The relief Petitioners sought is unprecedented. They asked the Court to dismantle a district configuration that has existed since 1980—linking Staten Island with portions of Brooklyn—and replace it with a novel configuration linking Staten Island across open water to lower Manhattan. The evident purpose of this proposal was to import White Democratic voters from lower Manhattan into CD-11 while removing Republican-leaning voters from the district, transforming the only Republican-held congressional seat in New York City into a district favoring Democratic candidates.

II. Appellants' motion to dismiss

Appellants, together with Intervenor-Respondents, filed comprehensive motions to dismiss the Petition. These motions demonstrated that the proceeding must be dismissed because the plain and unambiguous terms of Article III, Section 4(c)(1) expressly require it to be interpreted in accordance with federal statutes—not New York State statutes such as the NYVRA. Article III, Section 4 explicitly provides that redistricting of congressional districts shall be conducted subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements. The deliberate inclusion of "federal statutes" alongside the omission of "state statutes" creates an irrefutable inference that the Legislature intended to exclude subsequently enacted state legislation, including the NYVRA, from the analytical framework governing congressional redistricting challenges.

Appellants further demonstrated that, as a matter of law, the NYVRA cannot modify Article III, Section 4 as Petitioners claimed. The NYVRA was enacted years after Article III, Section 4(c)(1) took effect, and there is no legislative history suggesting that the constitutional provision should be influenced by legislation passed afterward. Under settled canons of constitutional and statutory construction, the exclusion of state statutes from the constitutional text was intentional and must be given effect.

Appellants also argued that even if Article III, § 4(c)(1) provides vote dilution protections, the governing legal standard remains the *Gingles* preconditions established by the U.S. Supreme Court in *Thornburg v Gingles* and its progeny. Under *Gingles*, a minority group must demonstrate, among other things, that it is sufficiently large and geographically compact to constitute a majority in a single-member district. In *League of United Latin American Citizens v Perry* ("*LULAC*"), the Supreme Court explicitly held that Section 2 of the Voting Rights Act does not mandate the creation of minority influence districts where the minority population cannot form a majority. Because New

York specifically modeled Article III, Section 4 on Section 2 of the VRA—and because LULAC was decided well before the 2014 redistricting amendments—Petitioners' claim seeking the creation of an influence district fails under any proper reading of the constitutional text.

Appellants raised substantial objections under the U.S. Constitution as well. They demonstrated that Petitioners' requested remedy—redrawing CD-11 with the express goal of providing Black and Latino voters increased electoral influence—constitutes race-based redistricting that triggers strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court has consistently held that the Equal Protection Clause prevents a State, absent sufficient justification, from separating its citizens into different voting districts on the basis of race. Appellants argued that neither Petitioners nor the Court could demonstrate that this race-based remedy serves a compelling state interest, let alone that it is narrowly tailored to achieve that interest.

Finally, Appellants argued that the proceeding was barred by laches. Petitioners delayed bringing their challenge for nineteen months after the 2024 Map was enacted into law. This delay prejudiced the orderly conduct of elections and created the very time pressure that Petitioners now invoke to justify extraordinary judicial intervention on the eve of the election season.

III. The trial evidence

Supreme Court conducted an expedited evidentiary hearing over several days in early January 2026.

A. Petitioners' evidence

Petitioners' principal expert on racially polarized voting was Dr. Maxwell Palmer, a tenured professor of political science at Boston University. Dr. Palmer testified that he analyzed twenty elections from 2017 to 2024 and concluded that voting in CD-11 is racially polarized, meaning

that Black and Latino voters supported the same candidates of choice while White voters cohesively opposed those candidates. He testified that the Black and Latino–preferred candidate was defeated in fifteen of the twenty elections examined, winning only five times and by narrow margins (Ex. B 155:9-24).

Critically, Dr. Palmer's analysis was limited to general elections and did not include any analysis of primary elections. This limitation proved fatal to Petitioners' case under the standard ultimately adopted by Supreme Court, which requires that minority voters be decisive in primary elections. Dr. Palmer also conceded on cross-examination that he did not attempt to determine the cause of the polarization he observed, testifying that assessing why voters might prefer different candidates was not the purpose of his analysis (Ex. C 226:9-13).

Perhaps most damaging to Petitioners' case, Dr. Palmer conceded that the improved performance of minority-preferred candidates in Petitioners' Illustrative Plan was driven by partisan geography—specifically, by importing White Democratic voters from lower Manhattan into the district. This concession established that Petitioners' proposed remedy was not designed to empower minority voters but to alter the partisan composition of CD-11 (*Id.* 235:13-25; 236:1-7).

Petitioners' demography expert, William S. Cooper, prepared the illustrative map that Petitioners offered as their proposed remedy. Mr. Cooper did not analyze any election results. Mr. Cooper's illustrative plan would increase White non-Hispanic citizen voting age population by approximately 2.6 percentage points while only marginally increasing Black and Hispanic CVAP (Ex. D 553:22-25). He further conceded that he did not analyze whether his illustrative plan would constitute an unconstitutional partisan gerrymander under Article III, Section 4(c)(5), which

prohibits drawing districts to discourage competition or favor particular political parties (Ex. C 364:1-15).

B. Appellants' evidence

Appellants offered the testimony of Dr. John Alford, a tenured professor of political science at Rice University with extensive experience testifying in redistricting and voting rights cases. Dr. Alford accepted Dr. Palmer's methodology and used his data in forming his own conclusions. His analysis went beyond merely verifying Dr. Palmer's statistical results. In addition, he examined the race of the candidates in each election Dr. Palmer studied and reached a fundamentally different conclusion about the nature of the polarization (Ex. E 675:17-25; 676:6-9; 678:8-18; 681:14-25; 682:2-25: 683:1-7).

Dr. Alford concluded that the polarization Dr. Palmer identified is partisan, not racial, in origin. He testified that voters in CD-11—whether Black, Latino, or White—support candidates of the same party at nearly identical rates regardless of the candidate's race. Specifically, Dr. Alford demonstrated that Black voters in CD-11 supported Black Democratic candidates at approximately 89.6 percent while supporting non-Hispanic White Democratic candidates at approximately 90.9 percent—a statistically indistinguishable difference. Similarly, White voters supported Black Democratic candidates at nearly the same rate as they supported White Democratic candidates. Dr. Alford's analysis established that the divergent voting patterns in CD-11 are best explained by partisan affiliation rather than race, meaning that what Petitioners labeled as racial polarization is fundamentally partisan polarization (*Id.* 678:19-25; 679:1-8; 680:14-25; 681:1-25; 685:1-25; 687:1-13; 701:1-18).

This testimony was devastating to Petitioners' claim. Neither Petitioners nor Dr. Palmer offered any evidence to rebut Dr. Alford's determination that the polarization in CD-11 is partisan

rather than racial. Supreme Court did not address this unrebutted expert testimony, nor did it make any credibility findings about Dr. Alford or any other expert witness.

Appellants' demography expert, Thomas Bryan, an applied demographer with three decades of experience including service at the U.S. Census Bureau, provided extensive analysis of Petitioners' proposed illustrative district. Mr. Bryan demonstrated that Petitioners' proposed remedy—linking Staten Island with lower Manhattan—would degrade traditional redistricting criteria (Ex. D 541:18-542:3). His analysis showed that the Illustrative Plan is less geographically compact than the existing CD-11 and separates rather than unites communities of interest, including splitting the cohesive Chinese-American community in Chinatown.

Mr. Bryan's analysis further revealed the disproportionate harm Petitioners' plan would inflict upon Asian voters. Approximately 57.1 percent of Asian citizen voting age population would be moved out of CD-11 under Petitioners' plan, compared to only about 31.5 percent of total population (Ex. D 533:9-19). The Illustrative Plan would reduce Asian CVAP in CD-11 by roughly 4.6 percentage points, from about seventeen percent to approximately twelve percent—a significant diminution of Asian electoral influence that Petitioners' theory of vote dilution protection ignores entirely (Ex. D 554:6-8).

Mr. Bryan's precinct-level analysis further exposed the unabashed partisan motivation underlying Petitioners' proposed remedy. He testified that the precincts Mr. Cooper's illustrative map removes from CD-11 voted heavily Republican in 2024, while the precincts imported from lower Manhattan favored Democrats (Ex. D 537:2-583:19). The net effect of this reconfiguration would be to transform CD-11 from a district that voted 64.1 percent Republican in 2024 to an artificially competitive district—an outcome that Mr. Bryan characterized as partisan line-drawing

by any meaningful measure (Ex. O at 62, 73). Mr. Bryan's testimony was unrebutted at trial, and Supreme Court's Decision and Order did not conclude otherwise.

C. Post-Trial submissions

Appellants' post-trial briefing emphasized the constitutional limitations on Supreme Court's remedial authority. Appellants demonstrated that Petitioners' Illustrative Map constitutes an unconstitutional partisan gerrymander in violation of Article III, Section 4(c)(5). The evidence showed that Petitioners' plan would transform the only Republican-held congressional district in New York City into a district favoring Democratic candidates—not by empowering minority voters, but by substituting Democratic-leaning White voters from Manhattan for Republican-leaning voters of all backgrounds on Staten Island.

On the question of remedy, Appellants filed a Memorandum of Law arguing that the Court lacks authority to order the Legislature to enact specific redistricting legislation. The Legislature, as a body, is not and could not properly be a party to the proceeding. The constitutional framework established in Article III, Section 5 requires that the Legislature be given a full and reasonable opportunity to correct any legal infirmities in redistricting legislation. Appellants argued that the only lawful remedies available are those endorsed in prior redistricting cases: allowing the Legislature to redraw the district, ordering the Independent Redistricting Commission to reconvene and propose a new map for legislative consideration, or—in extraordinary circumstances—appointing a special master.

Appellants provided affidavit testimony from Raymond J. Riley, III, Co-Executive Director of the Board of Elections, establishing the election calendar deadlines and demonstrating the practical impossibility of implementing a remedial map in time for the 2026 primary elections if the Court's remedy process extended beyond early February 2026 (Ex. R).

IV. Supreme Court's Decision and Order violated fundamental principles of due process

A fundamental due process error infected the proceeding below. Petitioners exclusively argued that the NYVRA's standards should be applied to Article III, § 4, and Appellants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy to that theory. When Supreme Court rejected the NYVRA standard as impermissible, due process and the principle of party presentation required dismissal. Instead, without any notice to the parties and without requesting supplemental briefing on the applicable legal standard, Supreme Court adopted an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims—a standard that no party had advocated and that Appellants were denied any opportunity to litigate.

Supreme Court agreed with Appellants that applying the NYVRA's standard in this proceeding would be impermissible. The Court found that Article III, § 4(c)(1)'s text directly contradicts Petitioners' argument since the NYVRA was enacted years after the constitutional provision took effect. The Court further agreed that the exclusion of state legislation from Article III, § 4(c)(1)'s text was intentional and that there is no legislative history suggesting that the constitutional provision should be influenced by subsequently enacted legislation.

At that point, Supreme Court should have dismissed the proceeding. Instead, Supreme Court proceeded without any input from the parties to invent an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims. The Court concluded that the New York Constitution provides greater protections against racial vote dilution than federal law and rejected Appellants' argument that Petitioners must satisfy the first *Gingle*s precondition requiring the minority group to constitute a majority in a reasonably configured single-member district. The Court reasoned that because the New York Constitution is purportedly "more sweeping" than the VRA, a lower

threshold applies, and minority voters need only comprise a sufficiently large portion of the district's primary voting population to influence electoral outcomes.

The Court adopted a novel three-pronged standard for so-called crossover districts. Under this standard, a reconstituted district "adding Black and Latino voters from elsewhere" is required when: first, minority voters are able to select their candidates of choice in the primary election; second, these candidates must usually be victorious in the general election; and third, the reconstituted district should increase the influence of minority voters such that they are decisive in the selection of candidates.

Supreme Court erred in granting relief absent any proof that a reconstituted district satisfying its novel standard is even possible. Petitioners failed to offer, and Supreme Court did not find, any evidence that Black and Latino voters could be decisive in primary elections, let alone any evidence showing Black and Latino voters could influence primary election outcomes under their Illustrative Plan. Dr. Palmer confined his analysis to general elections and did not analyze a single primary election. Mr. Cooper did not analyze election results at all. In fact, the premise of Petitioners' Illustrative Map was to add White Democrats from lower Manhattan with only negligible increases to the Black and Latino voter population.

Despite the conspicuous lack of proof that any such reconstituted district is possible, Supreme Court put the cart before the horse and declared the 2024 Map unconstitutional. It then directed the IRC to complete a new Congressional Map in compliance with its Order without any evidence that it is possible to create a map that complies with that Order.

The Court declined to order the specific district lines Petitioners proposed. Instead, it ordered the IRC to reconvene and propose new congressional district lines that remedy the constitutional violation by February 6, 2026. The Court further enjoined Appellants from

conducting any election under the 2024 Congressional Map or otherwise giving any effect to the boundaries of the map as drawn. This injunction, though purportedly directed at CD-11, applies to any election conducted under the current map—meaning the injunction effectively operates statewide.

Appellants filed a Notice of Appeal on January 26, 2026, which pursuant to CPLR 5519(a)(1) automatically stayed the executory portions of the order—specifically, the directive to the IRC to reconvene by February 6, 2026 (*Hoffmann v New York State Ind. Redistricting Commn.*, 41 NY3d 341, 357 [2023] [holding that automatic stay applied to similar directive to the IRC]). The automatic stay does not apply, however, to the declaratory and prohibitory injunctive portions of the order, including the injunction barring any election under the 2024 Map. As a result of the automatic stay of the remedial process coupled with the ongoing injunction, an untenable situation has emerged: it is now clear that a remedial map cannot be proposed, let alone enacted, by February 6, 2026, yet the Board of Elections remains enjoined from preparing for elections under the existing map.

The accompanying affirmation of Raymond J. Riley, III establishes that the 2026 election calendar formally commences on February 24, 2026—less than one month away—which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). The Board of Elections and local boards must perform substantial preparatory work before petitioning may begin, including processing voter registrations to publish the list of registered voters by congressional district, designating polling places, and preparing to receive ballot access documents. Many of these administrative tasks must be completed on a fixed schedule, and each task builds upon prerequisite tasks that must be completed first.

Since Supreme Court's injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11. The entire statewide congressional election apparatus has been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins.

For these reasons, set forth in further detail below, this Court should issue an interim stay of Supreme Court's order, grant a stay of the order, and grant such and further relief as is just and equitable.

LEGAL STANDARD

Appellants filed a Notice of Appeal from the Order on January 26, 2026. Pursuant to CPLR 5519(a)(1), Appellants' appeal automatically stayed "all proceedings to enforce the judgment or order appealed from pending the appeal" (CPLR 5519 [a] [1]). The automatic stay applies to the "executory" portions of the order appealed from—that is, those directives that "command a person to do an act" (*Matter of Kar-McVeigh, LLC v Zoning Bd. of Appeals of Town of Riverhead*, 93 AD3d 797, 799 [2d Dept 2012], quoting *Pokoik v Dept. of Health Services of County of Suffolk*, 220 AD2d 13, 15 [2d Dept 1996]). Thus, the automatic stay applies to the portion of the Order directing the IRC to "reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026" (Decision and Order at 18; *Hoffmann v New York State Ind. Redistricting Commn.*, 41 NY3d 341, 357 [2023] [holding that "the Appellate Division's order [directing the IRC to "commence its duties forthwith"] was automatically stayed pursuant to CPLR 5519 (a) (1)" and denying motion to vacate the stay]).

The automatic stay does not apply, however, to the non-executory portions of the Decision and Order, including the declaration that CD-11 is unconstitutional and the prohibitory injunction enjoining Appellants "from conducting any election [under the 2024 Congressional Map] . . . or otherwise giving any effect to the boundaries of the map as drawn" (Order at 18).

This Court may nevertheless stay the remaining portions of the Order pursuant to CPLR 5519(c) and its "inherent power" (*Schwartz v New York City Hous. Auth.*, 219 AD2d 47, 48 [2d Dept 1996] [describing the court's "inherent power to grant a stay of acts or proceedings, which, although not commanded or forbidden by the order appealed from, will disturb the status quo and tend to defeat or impair our appellate jurisdiction"]; *see also Schneider v Aulisi*, 307 NY 376, 383-84 [1954] ["[T]he Supreme Court has inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction."]).

This Court may consider "any relevant factor" in granting a discretionary stay as "there is no single factor in determining whether to grant a stay" (*Schaffer v VSB Bancorp, Inc.*, 68 Misc 3d 827, 834 [Sup Ct, Richmond County 2020], quoting *Deutsche Bank Nat. Tr. Co. v Royal Blue Realty Holdings, Inc.*, 2016 WL 4194201 *4 [Sup Ct, NY County 2016]). Courts generally consider "the apparent merit or lack of merit of the appeal, the harm that might result to the appellant if the stay is denied, and the potential prejudice to the respondent if the stay is granted" *Gur Assoc. LLC v Convenience on Eight Corp.*, 83 Misc 3d 903, 906 [Civ Ct 2024], quoting § 8 N.Y. Prac., Civil Appellate Practice § 9:4 [3d ed.]; *see also Colt v New Jersey Tr. Corp.*, 86 Misc 3d 1272(A) [Sup Ct, NY County 2025]; *People ex rel. Schneiderman v Coll. Network, Inc.*, 53 Misc 3d 1210(A) [Sup Ct, Albany County 2016]).

ARGUMENT

I. Appellants are likely to succeed on the merits

A. Supreme Court's rejection of Petitioners' proposed NYVRA standard required dismissal because principles of due process prohibited it from adopting a novel, unbriefed standard that Appellants were denied an opportunity to litigate

Petitioners exclusively argued in this proceeding that the NYVRA's standards should be applied to Article III, § 4, and they structured their pleadings, proof, and requested remedy around the NYVRA's unique features. Petitioners argued that the NYVRA, under certain circumstances, "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 representatives of their choice" (Ex. A ¶ 46). They did so because this dramatically relaxed standard would allow Petitioners to achieve their clear objective—radically altering the partisan geography of CD-11 by importing White Democratic voters from lower Manhattan, as shown in Petitioners' Illustrative Map. Petitioners did not offer any alternative standard and conceded that their dilution claim fails under federal law.

Appellants challenged that argument as pleaded and demonstrated that this proceeding must be dismissed because: (1) the plain and unambiguous terms of Article III, § 4(c)(1) expressly require it to be interpreted in accordance with federal statutes and not New York State statutes, including the NYVRA; (2) as a matter of law, the NYVRA cannot modify Article III, § 4, as Petitioners claimed in their Petition and supporting papers; and, (3) under settled canons of constitutional and statutory construction there is an irrefutable inference that the Legislature intended to omit congressional elections from the analytical framework contained in the NYVRA. Since Petitioners did not offer any other standard to be applied to their Article III, § 4(c)(1) claim, Appellants did not address any other standard (other than the governing federal law), much less offer arguments and proof on any other standard.

Supreme Court agreed with Appellants and held that applying the NYVRA's standard in this proceeding would be "impermissible" (Decision and Order at 5). It found that Article III, § 4(c)(1)'s text directly contradicts Petitioner's argument since the NYVRA was enacted years after Article III, § 4(c)(1). Additionally, Supreme Court agreed with Appellants that the exclusion of "state legislation," such as the NYVRA, from Article III, § 4(c)(1)'s text was intentional and there is no legislative history suggesting that Article III, § 4(c)(1) "should be influenced by legislation that would be passed after" the constitutional enactment took effect (Decision and Order at 5).

Despite rejecting the only standard advanced by Petitioners and briefed by the parties, the Supreme Court fabricated from whole cloth an entirely new standard for vote dilution claims under Article III, § 4(c)(1). This is clear reversible error because due process and the principle of party presentation constrain adjudication of this case to the arguments and facts the parties actually advanced.

The U.S. Supreme Court has made clear that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," under which courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" (*United States v Sineneng-Smith*, 590 US 371, 375 [2020]).[1] As another recent decision put it, "courts call balls and strikes; they don't get a turn at bat" (*Clark v Sweeney*, 607 US __, No. 25-52, 2025 WL 3260170, at *1 [Nov. 24, 2025] [internal punctuation omitted]). New York adheres to the same rule: deciding a case on "a distinct ground that [the court] winkled out wholly on [its] own would pose an obvious problem of fair play" because courts are "not in the business of blindsiding litigants, who expect [courts] to decide their appeals on rationales advanced by the

[1] This rule applies "in both civil and criminal cases, in the first instance and on appeal" (*Sineneng-Smith*, 590 US at 375).

parties, not arguments their adversaries never made" (*Misicki v Caradonna*, 12 NY3d 511, 519 [2009]).

While the party presentation principle is "not ironclad," courts are limited to a "modest initiating role" reserved for narrow circumstances (*Sineneng-Smith*, 590 US at 376). For example, a court may depart from the rule to correct an "an evident miscalculation" of a statute of limitations to prevent an unintentional waiver (*Day v McDonough*, 547 US 198, 202 [2006]), or "to protect a *pro se* litigant's rights" (*Greenlaw v United States*, 554 US 237, 244, 128 S Ct 2559, 2564, 171 L Ed 2d 399 [2008]). None of the narrow exceptions applies here, and Supreme Court's "drastic[]" departure from the principle "constitute[s] an abuse of discretion" (*Sineneng-Smith*, 590 US at 375).

Here, the trial court's creation of a new standard unrelated to any of the standards actually litigated by the parties has worked a manifest injustice to Appellants. The NYVRA standard articulated by Petitioners determined the elements they had to plead and prove, the evidence the parties marshalled, and the remedial possibilities the Court could consider. Petitioners chose a specific standard, and Appellants litigated this case in reliance on Petitioners' choice and the way they framed their case. Appellants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy and presentation to that theory. As a matter of due process, the Supreme Court cannot reject the only standard litigated by the parties and adopt something wholly new.

To be clear, Petitioners brought this proceeding with the singular intent of establishing the NYVRA framework as the standard for vote dilution claims under Article III, § 4(c)(1). Quite candidly, Petitioners alleged the NYVRA would pave the way for their plan to radically alter CD-11's partisan geography while leaving its minority composition intact. For this reason, the trial

court was not free to adopt its own standard, particularly since it did not request supplemental briefing from the parties regarding the standard to be applied for claims under Article III, § 4(c)(1).[2] By adopting a new, entirely unbriefed standard without notice and after the trial record has been closed, the trial court "radically transformed" this case (*see Sineneng-Smith*, 590 US at 379).

B. Petitioners failed to establish a prima facie case, and Supreme Court erred as a matter of law, because Petitioners failed to establish a viable remedy

Even if this Court could look past this glaring error, reversal is still required because Petitioners failed to establish a *prima facie* case of vote dilution under Supreme Court's newly adopted standard.

Under this novel standard, a proposed crossover district "adding Black and Latino voters from elsewhere" is required when a "three-pronged standard" is satisfied (Decision and Order at 13, 15). First, this standard requires that "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"; and, third, "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates" (Decision and Order at 15). Supreme Court clarified that the third prong "requires minority voters to be 'decisive' in primary races" (*id.*).

Supreme Court erred in granting relief absent any proof that such a "reconstituted" district is even possible under its standard, let alone whether such a district would comply with the NY Constitution's other requirements of contiguity, compactness, non-partisanship, and maintenance of cores, pre-existing political subdivisions and communities of interest (NY Const., Art. III, § 4

[2] By contrast, Supreme Court did request supplemental briefing from the parties on available remedies. Inexplicably, Supreme Court did not disclose its intent to adopt an un-briefed standard and did not request briefing on the issue. Now, after a trial and with the election season at our doorstep, that error cannot be remedied.

[c] [3]-[5]). In the absence of such proof, Petitioners failed to establish, and Supreme Court failed to find, an "injury in fact" sufficient to support any redressable constitutional injury (*Socy. of Plastics Indus., Inc. v County of Suffolk*, 77 NY2d 761, 772 [1991]).

A redressable injury is a *prima facie* element of a vote-dilution claim. That is, "[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged [voting] structure or practice, they cannot claim to have been injured by that structure or practice" (*Thornburg v Gingles*, 478 US 30, 51 n 17 [1986]). As one court aptly put it, "[b]ecause 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 [VRA] Section 2 Plaintiff will usually postulate a reasonable alternative voting practice to serve as the benchmark undiluted practice" (*Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] [internal citation omitted] *aff'd sub nom.*, 601 Fed Appx 255 [5th Cir 2015]).

For this reason, under well-developed federal law, a vote-dilution injury is established through the submission of an illustrative map demonstrating that the challenged practice is capable of lawful remedy through the creation of a new district (*see e.g. Allen v Milligan*, 599 US 1, 20 [2023] [agreeing with District Court that the plaintiffs' illustrative maps established a violation of section 2]; *see also Johnson v De Grandy*, 512 US 997, 1008 [1994] ["[T]he first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice"]).

The plaintiff bears the burden of establishing such "hypothetical redistricting schemes" (*Fairley v Hattiesburg, Miss.*, 584 F3d 660, 669 [5th Cir 2009]). "Without a satisfactory remedial plan, [a] plaintiff[] cannot succeed" (*Rose v Secretary, State of Georgia*, 87 F4th 469, 475 [11th Cir 2023] [internal citations and punctuation omitted]). In other words, "the issue of remedy is part

of the plaintiff's prima facie case in section 2 vote dilution cases" and the "[t]he inquiries into remedy and liability, therefore, *cannot be separated* . . . ." (*Nipper v Smith*, 39 F3d 1494, 1530-31 [11th Cir 1994] [emphasis added]).

While federal courts require illustrative maps in connection with the first *Gingles* precondition requiring a majority-minority district, that distinction is irrelevant here. Indeed, although both Petitioners and Supreme Court contend *Gingles* does not apply, Petitioners nevertheless proffered an Illustrative Map in support of their claims, implicitly conceding its requirement. More importantly, like the first *Gingles* precondition, Supreme Court's standard contemplates a remedy that involves increasing minority representation within a remedial district. As Supreme Court put it, a remedial district requires "adding Black and Latino voters from elsewhere" (Decision and Order at 13). While Supreme Court did not identify a minimum percentage of Black and Latino voters, it held that these added voters must be "decisive" in primary elections (Decision and Order at 15). As with the first *Gingles* precondition, this element can only be established through presentation of an illustrative map proving that some new configuration would allow minority voters to be decisive in primaries while complying with the NY Constitution's requirements for contiguity, compactness, non-partisanship, and maintenance of cores, pre-existing political subdivisions and communities of interest (NY Const., Art. III, § 4 [c] [3]-[5]).

Petitioners, however, utterly failed to establish that any such "reconstituted district" could potentially satisfy this standard. They failed to offer, and Supreme Court did not find, any evidence that Black and Latino voters could be "decisive" in primary elections, let alone any evidence showing Black and Latino voters could influence primary election outcomes under their Illustrative Plan. Dr. Palmer confined his analysis to general elections and did not analyze a single

primary election (*see generally* Ex. B 152-179; Ex. C 183-241). Mr. Cooper did not analyze election results at all (*see generally* Ex. C 241-376). In fact, the premise of Petitioners' Illustrative Map was to add *White Democrats* from lower Manhattan with only negligible increases to the Black and Latino voter population (Ex. C 235:13-25; 236:1-7).

Despite the conspicuous lack of proof that any such reconstituted district is possible, Supreme Court put the cart before the horse and declared the 2024 Map unconstitutional. It then directed the IRC to "complete a new Congressional Map in compliance with this Order" without any evidence that it is possible to create a map that complies with its Order.

Since it is undisputed that Supreme Court made no such findings, and the trial court record is devoid of evidence that would allow this Court to remedy this fatal defect, Appellants are likely to succeed on the merits of their appeal.

C. Supreme Court failed to find that the 2024 Map is unconstitutional beyond a reasonable doubt

The lack of record evidence supporting Supreme Court's finding is even worse because it expressly failed to apply the proper standard of review for a constitutional challenge.

As a statutory enactment, the 2024 Map enjoys "a strong presumption of constitutionality" (*Cohen v Cuomo*, 19 NY3d 196, 201 [2012]). The presumption applies with particular force to redistricting challenges and prohibits the courts from upsetting "the balance struck by the Legislature and declar[ing] the redistricting plan unconstitutional" unless the challengers rebut this strong presumption (*id.* at 201-202 [internal punctuation omitted]). Accordingly, "redistricting legislation will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been

found impossible" (*Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [internal citations and punctuation omitted]); *see generally People v Viviani*, 36 NY3d 564, 576 [2021] ["The party attempting to strike down a statute as facially unconstitutional bears the heavy burden" of proving beyond a reasonable doubt that the statute is in conflict with the Constitution] [internal citations and punctuation omitted]). Courts "strike [statutes] down only as a last unavoidable result" (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted]).

Supreme Court failed to acknowledge the beyond a reasonable doubt standard, much less apply it to Petitioners' voter dilution claim. Thus, Supreme Court's sweeping determination that the 2024 Map is unconstitutional rests on a fundamentally incorrect standard.

For example, Supreme Court found that "the current lines of CD-11 are a *contributing* factor in the lack of representation for minority voters" (Decision and Order at 12). It then applied a similarly relaxed standard in evaluating the trial proof, holding that "Petitioners have shown *strong evidence* of racially polarized voting bloc" (*id.* [emphasis added]).[3]

Based upon this limited evidence,[4] the trial court could not and did not conclude that, beyond a reasonable doubt, the 2024 Map conflicts with Article III, § 4(c)(1). Rather, the trial court only concluded that "these circumstances provide *strong support* for the claim that Black and Latino votes are being diluted in the current CD-11" (Decision and Order at 13 [emphasis added]).

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[3] In any event, the finding that there is "strong evidence" of racial polarization is contradicted by the trial record as Respondents' expert testified that the polarization in CD-11 is partisan, not racial (Ex. E 685:17-25; 686:1-25; 687: 1-13). Petitioners and their expert did not dispute that there is partisan polarization in CD-11 and, in fact, Petitioners' expert conceded that the improved performance of minority preferred candidates in Petitioners' Illustrative Plan was driven by partisan geography through importing White Democratic voters (Ex. C 235:13-25; 236:1-7). The trial court did not address the expert testimony regarding the lack of evidence of racial polarization nor did it make any credibility findings about Respondent's expert, or any expert for that matter.

[4] The trial court only considered three of the *Gingles* circumstances: racially polarized voting, history of discrimination and purported racial appeals in political campaigns (Decision and Order at 8-12).

Compounding this problem, the trial court made no attempt to reconcile the 2024 Map with Article III, § 4(c)(1) nor did it determine that such reconciliation is impossible (*Harkenrider*, 38 NY3d at 509).

Supreme Court's express application of the incorrect standard taints the entire proceeding and mandates reversal of its determination that the 2024 Map is unconstitutional (*see Symbax, Inc. v Bingaman*, 219 AD2d 552, 553 [1st Dept 1995] ["Although the decision does not state the theory underlying that finding, if the court found fraud, it committed reversible error because it failed to adhere to the correct standard of truth"]; *Rusoff v Engel*, 89 AD2d 587, 587 [2d Dept 1982] [reversing trial court's determination, following a nonjury trial, because the trial court incorrectly applied the preponderance of evidence standard instead of "the more stringent and demanding standard of clear and convincing proof"]).

D. Supreme Court's remedy is inherently race-based, and Supreme Court failed to find that its remedy withstands strict scrutiny

Even assuming this Court does not find a likelihood of success based on the overwhelmingly dispositive issues discussed above, it should do so based on the fundamentally fatal flaw that Petitioners' case, and Supreme Court's remedy, blatantly violate the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause "prevents a State, in the absence of 'sufficient justification,' from 'separating its citizens into different voting districts on the basis of race'" (*Cooper v Harris*, 581 US 285, 291 [2017], quoting *Bethune-Hill v Virginia State Bd. of Elections*, 580 US 178, 187 [2017]). When race is the "predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district" and "racial considerations predominated over others, the design of the district must withstand strict scrutiny" (*id.* at 292). In other words, strict scrutiny applies whenever race is the overriding consideration in redistricting

such that "traditional race-neutral districting principles" are "subordinated" to racial considerations (*Miller v Johnson*, 515 US 900, 916 [1995]).

Supreme Court did not even attempt to disguise the racial basis of its remedy. The Decision and Order expressly states that "without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely" (Decision and Order at 13). This language alone establishes that race is the predominant—indeed, the determinative—factor in the redistricting remedy ordered by the court. The explicit goal is to reconfigure the district by relocating voters based on their race, which is precisely the kind of racial sorting the Equal Protection Clause strongly forbids.

Moreover, Supreme Court's novel "three-pronged standard" for evaluating so-called "crossover districts" is facially race-based. Under this standard: (1) "minority voters" must be able to "select their candidates of choice in the primary election"; (2) "these candidates must usually be victorious in the general election"; and, (3) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates" (Decision and Order at 15). Each prong of this test turns entirely on the racial composition of the electorate. The standard mandates that district lines be drawn to ensure that minority voters—defined by race—achieve a specified level of electoral influence. This is not a race-neutral inquiry into traditional redistricting principles—it is an explicit racial classification that triggers strict scrutiny under established Supreme Court precedent (*Shaw v Hunt*, 517 US 899, 907 [1996] ["[S]trict scrutiny applies when race is the 'predominant' consideration in drawing the district lines"], quoting *Miller*, 515 US at 916; *Bush v Vera*, 517 US 952, 959 [1996] [plurality opinion] [same]).

There can be no dispute that race was Supreme Court's predominant consideration. It openly declared that its remedy is designed to "add[] Black and Latino voters from elsewhere"

(Decision and Order at 13). Supreme Court's candid acknowledgment of racial motivation satisfies the predominance inquiry and squarely subjects the Decision and Order to strict scrutiny.

E. Neither Petitioners nor the Court identified a compelling state interest or that race-based redistricting is a narrowly tailored remedy

Neither Petitioners nor the Court attempted to identify a compelling government interest, let alone that their remedy is narrowly tailored to achieve that interest. In fact, despite extensive pre- and post-trial briefing on this issue, Supreme Court failed to even address this argument.

"Any exception to the Equal Protection Clause's guarantee must survive a *daunting* two-step examination known as strict scrutiny" (*Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 206 [2023] [emphasis added] ["*SFFA*"]). To survive this daunting inquiry, a race-based redistricting plan must serve a "compelling state interest" (*Miller*, 515 US at 904) and be supported by a "strong basis in evidence" (*Shaw v Hunt*, 517 US at 910 [internal citation and punctuation omitted]). "A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy" (*id.* at 909 [internal citation and punctuation omitted]).

Here, while Petitioners offered generalized allegations of past discriminatory practices, they failed to present a strong basis in evidence, let alone any evidence that a new redistricting plan can remedy that past discrimination.

Even assuming Petitioners or Supreme Court had identified a compelling state interest in race-based redistricting, they utterly failed to show that their race-based redistricting plan is "narrowly tailored to achieve [that] compelling interest" (*Miller*, 515 US at 920). This requirement

means that the use of race must not go "beyond what was reasonably necessary" (*Shaw v Reno,* 509 US 630, 655 [1993]; *see also SFFA*, 600 US at 207).

Supreme Court's redistricting standard cannot be narrowly tailored because it is untethered to any limiting principle (*SFFA*, 600 US at 207). It explicitly requires "adding Black and Latino voters from elsewhere" (Decision and Order at 13), and its "three-pronged standard" demands that district lines be drawn to guarantee that minority voters are "decisive" in primary elections and that their candidates "usually" prevail in general elections (*id.* at 15). Neither Petitioners nor Supreme Court provided any evidence or argument as to why sorting voters by race is "necessary" to remedy any past discrimination. Moreover, they failed to even examine whether a race-neutral remedy is unavailable.

In *Alabama Legislative Black Caucus v Alabama*, the Supreme Court held that the State of Alabama erred by asking "How can we maintain present minority percentages in majority-minority districts?" rather than asking "To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?" (575 US 254, 279 [2015]). The Court held that asking the "wrong question may well have led to the wrong answer," resulting in a redistricting plan that was not narrowly tailored (*id.*).

Here, Supreme Court committed the same error by adopting a mechanical standard that mandates a specific level of minority electoral influence—*i.e.*, that minority voters must be "decisive" and minority-preferred candidates must "usually" win—without regard to whether such a drastic remedy is necessary to cure any actual constitutional violation.

Furthermore, Supreme Court's remedy disregards traditional redistricting principles entirely. As the Supreme Court held in *Bush v Vera*, when a district is drawn on racial lines but is "far from compact," it cannot be narrowly tailored to any compelling interest because the VRA

"does not require a State to create, on predominantly racial lines, a district that is not reasonably compact" (*Bush v Vera*, 517 US 952, 979 [1996] [internal citation and punctuation omitted]).

Supreme Court ordered redrawing of CD-11 under a standard that, by its own terms, requires racial considerations to predominate. It provided no analysis of whether its three-pronged test is the least restrictive means of addressing any alleged vote dilution, nor did it consider whether traditional, race-neutral redistricting principles could achieve compliance with the NY Constitution. Its failure to consider race-neutral alternatives, by definition, means it is not narrowly tailored.

Since neither Petitioners nor the Court demonstrated that a race-based remedy serves a compelling state interest, and because the Court's novel standard is not narrowly tailored to any permissible objective, the Decision and Order squarely violates the Equal Protection Clause of the Fourteenth Amendment.

II. Appellants, candidates, and voters would be irreparably harmed in the absence of a stay and the equities weigh in favor of allowing election activities to proceed

Irreparable harm is "any injury for which money damages are insufficient" (*Di Fabio v Omnipoint Communications, Inc.*, 66 AD3d 635, 636 [2d Dept 2009]; *SportsChannel Am. Assoc. v Natl. Hockey League*, 186 AD2d 417, 418 [1st Dept 1992] [collecting cases]). It is well established that voter disenfranchisement constitutes irreparable harm (*Montano v Suffolk County Legislature*, 268 F Supp 2d 243, 260 [EDNY 2003]; *Coleman v Bd. of Educ. of City of Mount Vernon*, 990 F Supp 221, 226 [SDNY 1997]; *Natl. Coalition on Black Civic Participation v Wohl*, 498 F Supp 3d 457, 474 [SDNY 2020], quoting *Arizona Democratic Party v Arizona Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *11 [D Ariz Nov. 4, 2016] ["Further, if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those

voters can be identified, their votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact."]).

Here, Appellants, voters, candidates, and the public at large stand to suffer irreparable harm without a stay. Supreme Court's order presents an untenable situation. While Supreme Court purported to declare only the configuration of CD-11 as unconstitutional, it enjoined Appellants from conducting "any" election under the current map, meaning the injunction applies statewide. And although it directed the IRC to adopt a new map by February 6, 2026, that directive has been automatically stayed under CPLR 5519(a)(1) by Appellants' appeal of the order. As a result, it is now clear that a remedial map cannot be proposed, much less enacted, by February 6, 2026.

As explained in the affirmation of Raymond J. Riley, the Co-Executive Director of the New York State Board of Elections, the election calendar formally commences on February 24, 2026, which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). As Mr. Riley attests, this statutory petitioning deadline is not the sole relevant consideration. The NYSBOE and local boards of election must perform substantial preparatory work before petitioning may begin. This preparatory work includes the processing of voter registrations in preparation for publishing the list of registered voters by congressional district, the designation of polling places, and preparation to receive all ballot access documents. Many of these administrative tasks must be completed on a fixed schedule, and in many instances, each task builds upon previous prerequisite tasks that must be completed first.

Significantly, since the Court's injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards of elections from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11—not merely the election for CD-11 itself.

This cascading effect means that the harm caused by the injunction is not limited to the voters and candidates in CD-11. Rather, the entire statewide congressional election apparatus has been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins. As Mr. Riley attests, this situation is untenable and will inevitably result in delay, disruption, and confusion that will prejudice voters and candidates across New York—regardless of the outcome of this appeal.

This chaos can be avoided. A stay of the injunctive portion of the Decision and Order would allow the NYSBOE and local boards of elections to continue preparing for the February 24, 2026 petitioning date under the current, legislatively adopted congressional map. As Mr. Riley explains, proceeding with preparations under existing district lines would allow the election process to continue unencumbered in the event of a reversal. Candidates could continue to prepare for the election and plan to collect designating petitions under the adopted map, and boards of elections could move forward with their necessary administrative tasks for all offices and districts.

Simply put, with a stay, it would be possible for the election calendar to proceed without delay. Without a stay, regardless of the outcome of this appeal, delay and disruption are guaranteed.

Finally, the equities indisputably weigh in Appellants' favor because Petitioners cannot establish that they will sustain a more burdensome injury (*New York State Off. of Victim Services on behalf of Sutton v Wade*, 79 Misc 3d 254, 261 [Sup Ct, Albany County 2023] ["Where the movant . . . satisfies both the merits and irreparable injury prongs, the balance of the equities always tips in that party's favor absent some greater hardship that the nonmovant would suffer should the injunction issue."]; *see also Felix v Brand Serv. Group LLC*, 101 AD3d 1724, 1726 [4th Dept 2012]).

Moreover, the equities cannot weigh in Petitioners' favor because they delayed bringing their lawsuit for nineteen months after the 2024 Map was enacted. Thus, the time pressure of this litigation was entirely of Petitioners' making, tipping the equities solidly in Appellants' favor. Under circumstances such as this, even if there were hope for the Decision and Order being ultimately affirmed, the Court of Appeals has already instructed that it is preferable to allow elections to proceed in the normal course rather than injecting unnecessary chaos and confusion on the eve of an election cycle (*see Badillo v Katz*, 32 NY2d 825, 827 [1973] [finding that map was invalid but allowing elections to proceed under existing map "as a temporary measure"]). In the unlikely event the Order is affirmed, new maps may be drawn through an orderly and timely process for the 2028 election cycle.

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

Appellants respectfully request that this Court grant leave to appeal directly to the Court of Appeals pursuant to CPLR 5602(b)(1). Under this provisions, leave to appeal is appropriate when novel or significant issues of law are presented that involve matters of statewide importance or questions that have not previously been addressed by the Court of Appeals. This is particularly true in matters affecting the electoral process, where the need for authoritative and timely resolution is paramount (*see e.g. Harkenrider v Hochul*, 38 NY3d 494 [2022]). This case satisfies these criteria. It presents novel constitutional questions of extraordinary statewide importance that no prior decision of the Court of Appeals has addressed.

The fundamental question at the heart of this appeal—what legal standard governs vote dilution claims under Article III, § 4(c)(1) of the NY Constitution—has never been decided by the Court of Appeals. Supreme Court rejected the NYVRA standard advocated by Petitioners but then crafted an entirely novel, explicitly race-based standard for "crossover districts" that no party had

briefed and that finds no support in any prior New York or federal precedent. Whether this novel standard properly governs claims under Article III, § 4(c)(1) is a question that can only be definitively resolved by the Court of Appeals. The statewide significance of this question cannot be overstated. Every redistricting cycle for the foreseeable future will require application of Article III, § 4(c)(1), and the standard governing such claims must be established by the Court of Appeals to ensure uniform application throughout the State.

This case also presents the question of whether Supreme Court's remedy—which explicitly requires "adding Black and Latino voters from elsewhere" to create a "reconstituted district"—can satisfy strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court has consistently held that the Equal Protection Clause "prevents a State, in the absence of 'sufficient justification,' from 'separating its citizens into different voting districts on the basis of race'" (*Cooper v Harris*, 581 US at 291). Supreme Court's remedy is facially race-based, yet neither Petitioners nor Supreme Court identified a compelling state interest nor demonstrated that race-based redistricting is narrowly tailored to achieve that interest. How the Equal Protection Clause applies to remedies ordered under Article III, § 4(c)(1) has never been addressed by the Court of Appeals and has profound implications for the constitutional limits on redistricting in New York.

The urgency of the electoral calendar further underscores the need for immediate review. The 2026 election calendar formally commences on February 24, 2026—less than one month away—which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). Supreme Court's injunction has placed the entire statewide congressional election apparatus in a state of suspended animation, with election administrators unable to perform the preparatory tasks that New York law requires them to complete before the petitioning

period. The Court of Appeals has recognized that election-related matters often require expedited resolution to prevent disruption to the electoral process (*see* Harkenrider, 38 NY3d at 521-22). Given the imminent commencement of the election season and the statewide impact of Supreme Court's order, immediate review by the Court of Appeals is essential.

For all these reasons, this Court should grant leave to appeal. The questions presented are novel, significant, and of statewide importance. No prior decision of the Court of Appeals has addressed the proper standard for vote dilution claims under Article III, § 4(c)(1) or the Equal Protection Clause implications of race-based redistricting remedies under the NY Constitution. Appellants respectfully request that this Court grant leave to appeal and certify the question of what legal standard governs vote dilution claims under Article III, § 4(c)(1) of the New York Constitution to the Court of Appeals.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court enter an order staying Supreme Court's Order in its entirety and granting such other and further relief as this Court deems equitable or appropriate.

Dated: January 28, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*

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

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

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 NOTICE UNDER RULE 1250.4(b)(2)

Appellate Division Index No: 2026-00384

NY County Index No.: 164002/2025

I, NICHOLAS J. FASO, ESQ., affirm this 29th day of January, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the

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

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, "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. Pursuant to this Court's 22 NYCRR § 1250.4(b)(2), on Tuesday, January 27, 2026, I notified my adversary, via email, of the day and time (morning) that Appellants intended to file this application and the relief sought, and requested my adversary's position on the application.

3. As stated in the Summary Statement on Application for Expedited Service and/or Interim Relief, my adversary opposes this application.

Dated: January 29, 2026
Albany, New York

/s/ *Nicholas J. Faso*

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 ELECTRONIC SERVICE

Appellate Division Index No: 2026-00384

NY County Index No.: 164002/2025

I, NICHOLAS J. FASO, ESQ., affirm this 29th day of January, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the

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

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, "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. On January 29, 2026, I emailed copies of Appellants' application seeking an interim stay, stay pending appeal, and leave to appeal to the Court of Appeals to all counsel of record in this matter, including the Summary Statement on Application for Expedited Service and/or Interim Relief, Affirmation of Nicholas J. Faso, and Appellants' Memorandum of Law in Support.

Dated: January 29, 2026
Albany, New York

/s/ *Nicholas J. Faso*

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

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

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

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

Appeal by Intervenor-Res from Order ☑ Judgment ☐ Decree ☐ of Supreme ☑ Surrogate's ☐ Family ☐ County New York

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 action or proceeding Special Proceedings - Article 4

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

This application by ☑ appellant ☐ 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 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

Attorney for Movant	Attorney for Opposition
Name Bennet J. Moskowitz/Troutman Pepper Locke LLP	Name Aria Branch / Elias Law Group LLP
Address 875 Third Avenue	Address 250 Massachusetts Avenue - NW, Suite 400
New York, NY 10022	Washington, D.C. 20001
Tel. No. 212-704-6000	Tel. No. 202-968-4518
Email bennet.moskowitz@troutman.com	Email abranch@eliaslaw.com
Appearing by	Appearing by

(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

"Revised 08/25"

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-

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

Intervenors-Respondents.

Appellate Division Index No.: 26-00384

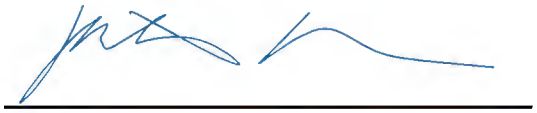
New York County Index No.: 164002/2025

ADDENDUM TO SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICES AND/OR INTERIM RELIEF

This application by Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, "Appellants-Intervenor-Respondents") is for an emergency relief stay of the Supreme Court's Decision and Order dated January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026. Appellants-Intervenor-Respondents respectfully request that this Court grant an immediate stay pending determination of this Motion. Appellants-Intervenor-Respondents further request that this Court grant its Motion to stay all proceedings pending resolution of the Appeal and grant leave to appeal to the Court of Appeals.

Dated: New York, New York
January 27, 2026

TROUTMAN PEPPER LOCKE LLP



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

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

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

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

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-

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

Intervenors-Respondents.

Appellate Division Index No.: 26-00384

New York County Index No.: 164002/2025

NOTICE OF EMERGENCY MOTION FOR STAY

PLEASE TAKE NOTICE that upon the annexed Affirmation of Attorney Bennet J. Moskowitz and the exhibits annexed thereto, the annexed memorandum of law, and upon all proceedings heretofore had herein, the Intervenor-Respondents-Appellants Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, the "Movants") will move this Court at a Term thereof to be held at the Appellate Division, First Department Courthouse located at 27 Madison Avenue, New York, NY 10010, on _____, 2026, at 10:00 a.m., or as soon thereafter as counsel can be heard, pursuant to CPLR § 5519(c) for an Order:

1. Staying enforcement of the Supreme Court's Opinion and Order dated January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026, and all trial court proceedings, pending this Court's determination of the appeal from the Opinion and Order; and
2. Granting leave to appeal to the Court of Appeals of the State of New York.

Dated: New York, New York
January 27, 2026

Bennet J. Moskowitz
875 Third Avenue
New York, NY 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

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

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

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-

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

Intervenors-Respondents.

Appellate Division Index No.: 26-00384

New York County Index No.: 164002/2025

PROPOSED ORDER

UPON the papers filed in support of the appeal from the Opinion and Order of the Supreme Court, New York County, dated January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026, and the papers filed in opposition thereto, it is

ORDERED that enforcement of the Supreme Court's Opinion and Order dated January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026 is hereby stayed, along with all trial court proceedings, pending this Court's determination of the appeal; and

ORDERED that leave to appeal to the Court of Appeals is hereby granted.

Dated: New York, New York
_____, 2026

_____
J.S.C.

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-

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

Intervenors-Respondents.

Appellate Division Index No.: 26-00384

New York County Index No.: 164002/2025

AFFIRMATION OF BENNET J. MOSKOWITZ IN SUPPORT OF MOTION FOR STAY, INTERIM STAY, AND LEAVE TO APPEAL

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

1. I am a Partner at the law firm Troutman Pepper Locke LLP, counsel for Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, the "Intervenor-Respondents") in this CPLR Article 4 Proceeding.

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

3. A true and correct copy of the Decision and Order of the Supreme Court of the State of New York, New York County, by the Hon. Jeffrey H. Pearlman, signed on January 21, 2026 and duly entered by the Clerk of the Court on January 22, 2026, is attached hereto as **Exhibit A**, originally available at NYSCEF No.217.

4. A true and correct copy of the Expert Report of Dr. Sean Trende is attached hereto as **Exhibit B**, originally available at NYSCEF No.112.

5. A true and correct copy of the Affidavit of Congresswoman Nicole Malliotakis is attached hereto as **Exhibit C**, originally available at NYSCEF No.23.

6. A true and correct copy of the New York State Independent Redistricting Commission, *Congressional Plan 2024*, is attached hereto as **Exhibit D**, originally available at NYSCEF No.19.

7. A true and correct copy of *A Redistricting Surprise in New York: A Map That Plays Few Favorites* is attached hereto as **Exhibit E**, originally available at NYSCEF No.20.

8. A true and correct copy of *Democrats Propose N.Y. Congressional Map With Slight Tilt in Their Favor* is attached hereto as **Exhibit F**, originally available at NYSCEF No.21.

9. A true and correct copy of the Petition filed by Petitioners is attached hereto as **Exhibit G**, originally available at NYSCEF No.1.

10. A true and correct copy of the Expert Report of Dr. John Alford is attached hereto as **Exhibit H**, originally available at NYSCEF No.119.

11. A true and correct copy of Petitioners' Memorandum of Law in Support of Their Petition is attached hereto as **Exhibit I**, originally available at NYSCEF No.63.

12. A true and correct copy of the Attorney General Respondents' Letter to the Court Regarding the Petition is attached hereto as **Exhibit J**, originally available at NYSCEF No.95.

13. A true and correct copy of Intervenor-Respondents' Memorandum of Law in Support of Their Motion to Dismiss is attached hereto as **Exhibit K**, originally available at NYSCEF No.115.

14. A true and correct copy of Respondents Kosinski, Casale, and Riley's Memorandum of Law in Support of Their Motion to Dismiss is attached hereto as **Exhibit L**, originally available at NYSCEF No.122.

15. A true and correct copy of the *Amicus* Brief submitted by the New York Civil Liberties Union et al. is attached hereto as **Exhibit M**, originally available at NYSCEF No.139.

16. A true and correct copy of the *Amicus* Brief submitted by Professors Ruth Greenwood and Nicholas Stephanopoulos is attached hereto as **Exhibit N**, originally available at NYSCEF No.135.

17. A true and correct copy of Intervenor-Respondents' Reply Memorandum of Law in Further Support of Their Motion to Dismiss is attached hereto as **Exhibit O**, originally available at NYSCEF No.161.

18. A true and correct copy of the complete trial transcript is attached hereto as **Exhibit P**.

19. A true and correct copy of the Expert Report of Dr. Thomas Sugrue is attached hereto as **Exhibit Q**, originally available at NYSCEF No.61.

20. A true and correct copy of the Expert Report of Joseph Borelli is attached hereto as **Exhibit R**, originally available at NYSCEF No.114.

21. A true and correct copy of the Expert Report of William Cooper is attached hereto as **Exhibit S**, originally available at NYSCEF No.187.

22. A true and correct copy of the Expert Report of Dr. Maxwell Palmer is attached hereto as **Exhibit T**, originally available at NYSCEF No.60.

23. A true and correct copy of the Expert Report of Dr. Stephen Voss is attached hereto as **Exhibit U**, originally available at NYSCEF No.160.

24. A true and correct copy of the Expert Report of Thomas Bryan is attached hereto as **Exhibit V**, originally available at NYSCEF No.194.

25. A true and correct copy of Intervenor-Respondents' Proposed Findings of Fact and Conclusions of Law is attached hereto as **Exhibit W**, originally available at NYSCEF No.207.

26. A true and correct copy of Respondents' Briefing Regarding the Proposed Remedy is attached hereto as **Exhibit X**, originally available at NYSCEF No.205.

27. A true and correct copy of the Affirmation of Edward L. Lai is attached hereto as **Exhibit Y**, originally available at NYSCEF No.24.

28. A true and correct copy of the Affirmation of Joel Medina is attached hereto as **Exhibit Z**, originally available at NYSCEF No.25.

29. A true and correct copy of the Affirmation of Solomon B. Reeves is attached hereto as **Exhibit AA**, originally available at NYSCEF No.26.

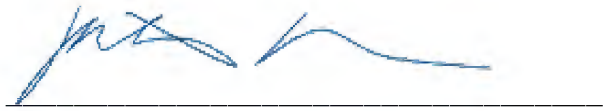
30. A true and correct copy of the Affirmation of Angela Sisto is attached hereto as **Exhibit BB**, originally available at NYSCEF No.27.

31. A true and correct copy of the Affirmation of Faith Togba is attached hereto as **Exhibit CC**, originally available at NYSCEF No.28.

32. A true and correct copy of Intervenor-Respondents' Notice of Appeal to the Appellate Division is attached hereto as **Exhibit DD**, originally available at NYSCEF No.247.

33. A true and correct copy of Intervenor-Respondents' Notice of Appeal to the Court of Appeals is attached hereto as **Exhibit EE**, originally available at NYSCEF No.238.

I affirm this 27th day of January 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



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

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

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

----------X

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

Petitioner,

- v -

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

Respondent.

----------X

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

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

Background

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

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

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

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

> When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

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

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

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

Analysis

Article III, Section 4(c)(1) was part of a series of 2014 constitutional amendments regarding redistricting approved by the voters of New York State. As stated by State Respondents, it calls for a totality of the circumstances standard, reading in relevant part: "Districts shall be drawn so that, *based on the totality of the circumstances*, racial or minority language groups do

not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." *New York State Constitution, Article III, Section 4(c)(1)* (Emphasis Added). The state constitution provides no guidance as to how to evaluate the totality of the circumstances, nor does the legislative history of the redistricting amendments. Petitioners point to the NY VRA, which bans vote dilution in local subdivisions based on the protections provided by Article III, Section 4, while providing detailed guidance on evaluating the totality of the circumstances. *NYSCEF Doc. No. 1.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1/21/2026
DATE

JEFFREY H. PEARLMAN, J.S.C.

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

EXHIBIT B

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

Michal Williams, et al., Petitioners, -against- **Board of Elections of the State of New York, et al.**, Respondents, -and- **Nicole Malliotakis, et al.**, Intervenor-Respondents,	Index No. 164002/2025 Hon. Jeffrey H. Pearlman

EXPERT REPORT OF SEAN P. TRENDE, Ph.D.

IRX01

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1 Introduction

My name is Sean P. Trende. I am over 18 years of age and I hold a Ph.D. in Political Science. I have been retained by Troutman Pepper Locke, LLP, on behalf of their clients in the above-captioned matter, *Williams v. Bd. of Elections of the State of New York*, Index No.164002/2025 (N.Y. Sup. Ct. N.Y. Cnty.). I have been asked to conduct certain evaluations and to respond, to the extent appropriate, to the "Expert Report of William S. Cooper," dated November 17, 2025 (hereinafter "Cooper Report"). I am being compensated at a rate of $500/hr. My compensation is in no way dependent upon the conclusions I reach. All opinions are offered to a reasonable degree of scientific certainty.

2 Qualifications

2.1 Professional Experience

I serve as Senior Elections Analyst for Real Clear Politics. I joined Real Clear Politics in January of 2009 and assumed a fulltime position in March of 2010. Real Clear Politics is a company of approximately 50 employees, with its main offices in Washington D.C. It produces one of the most heavily trafficked political websites in the world, which serves as a one-stop shop for political analysis from all sides of the political spectrum and is recognized as a pioneer in the field of poll aggregation. Real Clear Politics produces original content, including both data analysis and traditional reporting.

My main responsibilities with Real Clear Politics consist of tracking, analyzing, and writing about elections. I collaborate in rating the competitiveness of Presidential, Senate, House, and gubernatorial races. As a part of carrying out these responsibilities, I have studied and written extensively about demographic trends in the country, exit poll data at the state and federal level, public opinion polling, and voter turnout and voting behavior. In particular, understanding the way that districts are drawn and how geography and demographics interact is crucial to predicting United States House of

Representatives races, so much of my time is dedicated to that task.

I am currently a Visiting Scholar at the American Enterprise Institute, where my publications focus on the demographic and coalitional aspects of American politics. I am also a Lecturer at The Ohio State University. My course load is detailed in my c.v., attached as Exhibit 1.

2.2 Publications and Speaking Engagements

I am the author of the 2012 book, *The Lost Majority: Why the Future of Government Is Up For Grabs and Who Will Take It.* In this book, I explore realignment theory. It argues that realignments are a poor concept that should be abandoned. As part of this analysis, I conducted a thorough analysis of demographic and political trends beginning in the 1920s and continuing through modern times, noting the fluidity and fragility of the coalitions built by the major political parties and their candidates.

I also co-authored the 2014 Almanac of American Politics. The Almanac is considered the foundational text for understanding congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. My focus was researching the history of and writing descriptions for many of the 2012 districts, including for New York State. This required tracing the history of how and why they were drawn the way that they were drawn. Because the 2014 Almanac covers the 2012 elections, analyzing how redistricting was done was crucial to my work. I have also authored a chapter in Dr. Larry Sabato's post-election compendium after every election dating back to 2012.

I have spoken on these subjects before audiences from across the political spectrum, including at the Heritage Foundation, the American Enterprise Institute, the CATO Institute, the Bipartisan Policy Center, and the Brookings Institution. In 2012, I was invited to Brussels to speak about American elections to the European External Action Service, which is the European Union's diplomatic corps. I was selected by the United States Embassy in Sweden to discuss the 2016 elections before a series of audiences there

and was selected by the United States Embassy in Spain to fulfill a similar mission in 2018. I was invited to present by the United States Embassy in Italy, but was unable to do so because of my teaching schedule.

2.3 Education

I received my Ph.D. in political science at The Ohio State University in 2023. I passed comprehensive examinations in both Methodology and American Politics. My dissertation applied historical and spatial statistical approaches to analyzing American political institutions, including (1) an analysis of Supreme Court voting patterns from 1900 to 1945; (2) methodological development in the use of integrated nested LaPlace approximations (INLA) to incorporate spatial statistics into election analysis; and (3) simulation-based evaluation of "communities of interest" in redistricting. In pursuit of this degree, I also earned a Master's Degree in Applied Statistics. My coursework for my Ph.D. and M.A.S. included, among other things, classes on G.I.S., spatial statistics, issues in contemporary redistricting, machine learning, non-parametric hypothesis tests and probability theory. I also earned a B.A. from Yale University in History and Political Science in 1995, a Juris Doctor from Duke University in 2001, and a Master's Degree in Political Science from Duke University in 2001.

In the winter of 2018, I taught American Politics and the Mass Media at Ohio Wesleyan University. I taught Introduction to American Politics at The Ohio State University for three semesters from Fall of 2018 to Fall of 2019, and again in Fall of 2021. In the Spring semesters of 2020, 2021, 2022 and 2023, I taught Political Participation and Voting Behavior at The Ohio State University. This course spent several weeks covering all facets of redistricting: how maps are drawn, debates over what constitutes a fair map, measures of redistricting quality, and similar topics. It also covers the Voting Rights Act and racial gerrymandering claims. I also taught survey methodology in Fall of 2022 and Spring of 2024. In Spring of 2025, I taught Introduction to the Policy Process. In Spring of 2026, I will teach American Government Culture and Behavior.

2.4 Prior Expert Engagements

A full copy of all cases in which I have testified or been deposed is included on my C.V., attached as Exhibit 1. In 2021, I served as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the Commonwealth's representatives to the House of Delegates, state Senate, and U.S. Congress in the following decade. The Supreme Court of Virginia accepted those maps, which were praised by observers from across the political spectrum. *See, e.g.*, *New Voting Maps, and a New Day, for Virginia*, The Washington Post (Jan. 2, 2022), *available at* `https://www.washingtonpost.com/opinions/2022/01/02/virginia-redistricting-voting-maps-gerrymander`; Henry Olsen, *Maryland Shows How to do Redistricting Wrong. Virginia Shows How to Do it Right*, The Washington Post (Dec. 9, 2021), *available at* `https://www.washingtonpost.com/opinions/2021/12/09/maryland-virginia-redistricting`; Richard Pildes, *Has VA Created a New Model for a Reasonably Non-Partisan Redistricting Process*, Election Law Blog (Dec. 9, 2021), *available at* `https://electionlawblog.org/?p=126216`.

In 2019, I was appointed as the court's expert by the Supreme Court of Belize. In that case I was asked to identify international standards of democracy as they relate to malapportionment claims, to determine whether Belize's electoral divisions (similar to our congressional districts) conformed with those standards, and to draw alternative maps that would remedy any existing malapportionment.

I served as a Voting Rights Act expert to counsel for the Arizona Independent Redistricting Commission in 2021 and 2022. I have also served as an expert in six cases involving redistricting in North Carolina, including *Williams v. Hall*, No. 1:23-CV-1057 (M.D.N.C. 2023), *Pierce v. N. Carolina State Bd. of Elections*, No. 4:23-CV-193 (E.D.N.C. 2023), *NCLCV v. Hall*, 21-CVS-15426 (Wake Super. Ct. 2021), *Common Cause v. Rucho*, No. 1:16-CV-1026 (M.D.N.C. 2016), *Dickson v. Rucho*, 11-CVS-16896 (Wake Super Ct. 2011), and *Covington v. North Carolina*, No. 1:15-CV-00399 (M.D.N.C. 2015).

3 "Usually" Defeated Analysis

I was asked to re-examine whether minority candidates of choice, as identified by Dr. Palmer, are "usually" defeated, not only in the district in question here, but also in other districts throughout New York City and in the state as a whole. For this analysis, it makes little sense to use the mayoral races that Dr. Palmer utilizes, since many of these districts are not in the City or are only partly so. I also understand that no court has weighed in on the question of what threshold is needed for "usual" defeat under the NYVRA. I don't weigh in on this question, but simply provide the numbers.[1]

3.1 Jurisdiction-Wide Races

To my understanding, one unanswered question in this litigation is the level at which courts are required to assess the ability of the minority candidate of choice to win. We might look at just the individual district. We might take a broader look at the ability of minority candidates of choice to win in a particular area. Or we might look at minority performance overall at whatever level of government is drawing the challenged districts. That is for lawyers to fight about and judges to decide in my view, but I look at results at the various levels.

I start by looking at partisan performance at the jurisdiction-wide level, looking both at New York City as a whole and at New York state. It almost goes without saying that in New York City overall, the minority candidate of choice from District 11 routinely wins. The last registered Republican to win a mayoral election was Michael Bloomberg in 2005. No Republican has been elected Comptroller since 1938, and it does not appear that any Republican has ever been elected NYC Public Advocate. At the citywide level, Democrats carried each statewide election in Dr. Palmer's dataset. It is clear that Democrats can obviously win citywide elections in New York City; in fact we might debate whether Republicans can do so at all.

If we look at the statewide results in New York—the level at which congressional

[1]Given that this is a federal race, with elections held in even years, the federal elections are likely more probative than citywide elections held in odd-numbered years.

districts are drawn—it is likewise clear that the Democratic candidate routinely wins statewide elections. The last Republican to carry New York state in a presidential election was Ronald Reagan in 1984. The last Republican to win a gubernatorial election was George Pataki in 2002. The last Republican to win a Senate election was Al D'Amato in 1992. The last Republican to win an attorney general election was Dennis Vacco in 1994. The last Republican to win a Comptroller election was Edward Regan, who won the office in 1990. At the statewide level, it is Democrats all the way down.

3.2 Individual Congressional Districts

We might also conduct our analysis at the level of individual congressional districts. The following table summarizes the Democratic vote share in various races in the congressional districts across the state.

Figure 1: Results of Elections, by NY Congressional District

District	Gov 18	AG 18	Sen 18	Comp 18	Pres 20	Comp 22	Sen 22	Gov 22	AG 22	Sen 24	Pres 24	# D Wins	% D Wins
1	50.9%	50.7%	53.1%	53.5%	49.1%	46.0%	44.3%	41.0%	42.7%	47.1%	44.9%	4	36.4%
2	52.0%	53.3%	54.0%	56.0%	48.9%	43.2%	41.0%	39.0%	40.1%	45.2%	43.0%	4	36.4%
3	58.0%	57.7%	60.0%	62.2%	53.7%	50.8%	49.0%	45.0%	46.7%	50.1%	47.8%	7	63.6%
4	60.0%	59.6%	61.0%	63.3%	57.3%	51.9%	50.6%	47.1%	48.1%	52.0%	50.6%	9	81.8%
5	88.2%	86.2%	88.3%	88.6%	83.9%	75.5%	76.0%	73.3%	74.8%	74.1%	71.3%	11	100.0%
6	76.7%	74.6%	75.0%	75.2%	66.9%	58.3%	59.0%	53.7%	55.7%	58.1%	57.3%	11	100.0%
7	90.1%	90.3%	90.3%	90.2%	80.3%	77.0%	80.3%	74.0%	77.7%	77.4%	75.6%	11	100.0%
8	86.0%	86.2%	88.1%	86.0%	77.0%	73.9%	74.7%	71.7%	73.0%	75.2%	72.5%	11	100.0%
9	82.9%	80.9%	83.5%	80.2%	76.2%	74.1%	73.1%	68.7%	72.8%	75.2%	70.6%	11	100.0%
10	89.5%	89.1%	90.1%	89.7%	83.7%	82.7%	83.1%	80.0%	82.3%	82.8%	81.0%	11	100.0%
11	34.0%	33.5%	33.0%	33.7%	46.1%	39.4%	40.1%	38.3%	37.4%	41.2%	37.6%	4	36.4%
12	86.2%	84.7%	86.6%	85.3%	86.0%	80.9%	83.5%	80.1%	79.9%	81.9%	82.4%	11	100.0%
13	95.3%	95.5%	95.2%	95.0%	86.8%	86.5%	89.1%	86.4%	87.7%	85.5%	80.1%	11	100.0%
14	86.4%	86.7%	86.7%	86.8%	77.8%	70.6%	73.1%	69.1%	70.7%	70.0%	66.2%	11	100.0%
15	88.1%	88.0%	88.9%	88.3%	85.5%	81.0%	83.5%	80.3%	81.9%	78.1%	74.4%	11	100.0%
16	74.2%	74.5%	72.6%	76.0%	72.5%	65.0%	66.2%	63.3%	64.0%	65.6%	60.6%	11	100.0%
17	55.6%	56.4%	60.0%	61.8%	55.1%	52.4%	52.9%	45.3%	50.4%	55.1%	50.3%	10	90.9%
18	49.5%	55.8%	59.3%	59.3%	54.6%	55.3%	52.2%	49.1%	51.0%	56.9%	51.7%	9	81.8%
19	48.8%	52.6%	57.6%	59.1%	52.7%	52.2%	50.3%	46.3%	48.5%	54.4%	50.9%	8	72.7%
20	49.4%	51.0%	62.1%	60.7%	59.8%	60.4%	56.6%	52.9%	54.8%	60.1%	57.2%	10	90.9%
21	35.0%	42.2%	50.0%	52.4%	42.0%	45.1%	40.0%	34.4%	37.6%	44.1%	39.6%	2	18.2%
22	49.2%	54.5%	59.5%	62.3%	53.6%	54.3%	54.1%	48.9%	50.1%	56.2%	53.6%	9	81.8%
23	36.4%	37.9%	46.0%	48.4%	40.7%	40.7%	38.0%	35.5%	36.4%	41.0%	39.4%	0	0.0%
24	31.1%	37.7%	41.3%	41.0%	39.6%	38.1%	37.2%	32.7%	34.1%	41.0%	38.4%	0	0.0%
25	54.3%	57.0%	60.2%	63.2%	60.9%	57.4%	57.0%	53.5%	54.8%	60.0%	59.3%	11	100.0%
26	59.8%	58.5%	60.9%	64.3%	62.8%	62.1%	61.6%	58.4%	58.8%	62.6%	59.3%	11	100.0%

3.2.1 Statewide Results in District 11

We can start with District 11 and build outward from there. I understand that the question "usually wins" is contested in this litigation. I do not take a position on the ultimate question of how broadly or narrowly that should be defined. The minority candidate of choice, however, is capable of winning elections in District 11. They have won four of eleven elections in this dataset. Joe Biden carried 46% of the vote in 2020.

3.2.2 Statewide Results in Congressional Elections in New York City

The minority candidate of choice routinely wins elections in congressional districts across New York City.

In the chart above, Districts 5–15 are wholly within New York City limits, while Districts 3 and 16 are partly within New York City. In every district wholly within New York City outside of District 11, Democrats have never lost a statewide election.

Start with districts based in Queens. In District 5, Democratic performance has ranged from a low of 71% in the 2024 presidential election to a high of 89% in the 2018 New York Comptroller election. In District 6, Democratic performance has ranged between 53% in the 2024 presidential election and 75% in the 2018 races for Senate, Governor, Attorney General, and Comptroller.

Moving to Brooklyn, District 7 straddles the Queens/Brooklyn County boundary. Democratic performance ranges between 74% (President 2024) and 91% (Attorney General and Senate 2018). In District 8, the range is 72% (Governor 2022) to 86% (the four 2018 elections). In District 9, the range is from 69% (Governor 2022) to 87% (Attorney General 2018).

In Manhattan-based districts, Democratic performance ranges between 81% (Governor 2022 and President 2024) and 90% (Senate, Governor, and Attorney General 2018) in District 10. In District 12, the range is 80% (Attorney General and Governor 2022) and 87% (Senate 2018). In District 13, the range is 80% (President 2024) and 95% (the four 2018 elections).

Finishing up in the Bronx, District 14 ranges from 66% (President 2024) to 87% (Comptroller, Senate, and Attorney General 2018). In District 15, the range is 74% (President 2024) to 93% (the four 2018 elections).

If we add in the two districts partially within New York City, we see that the range in District 16—primarily in Westchester—is from 63% (Governor 2022) to 76% (Comptroller and Senate 2018). In District 3—primarily based in Nassau County—the range is from 46% (Governor 2022) to 62% (Comptroller 2018).

In short, Democrats have won every statewide election in almost every one of these districts. The only exceptions are District 3,where they have won nearly two-thirds of recent races, and District 11, where they have won a third of recent races. That means that of the eleven districts wholly within New York City limits, ten have always elected the minority candidate of choice. Not only that, they have typically done so by wide margins. The only district where a Democratic candidate has ever dropped below 60% in these elections is NY-6.

As we would expect, all of the districts wholly or partially within New York City, with the exception of the 11th, elect Democrats to Congress. This represents 92% of the delegation. Of those Members of Congress, 66% are minorities. And 80% of the Democrats elected from wholly within the City identify as minorities. One is Asian (Meng), three are Hispanic (Velázquez, Espaillat, and Ocasio-Cortez), and three are Black (Meeks, Jeffries, and Clarke). One identifies as both Black and Hispanic (Torres). Four are White (Suozzi, Goldman, Nadler, Latimer); Latimer and Suozzi represent districts that are primarily located outside of the City.

3.2.3 Statewide Results in Congressional Elections in New York State

If the relevant jurisdiction is the New York congressional delegation, little changes in our analysis. Recall first that New York's congressional delegation statewide currently includes only seven Republicans, comprising 27% of the total delegation. These Republicans are located in Districts 1, 2, 11, 17, 21, 23, and 24. Democrats thus constitute 73% of the New York congressional delegation.

The only districts where statewide Democratic candidates have never won in this set of recent elections are Districts 23 and 24, in upstate New York. Democrats have won twice in District 21, also upstate. The rest of the delegation is more complex. Democrats have won four elections in Districts 1 and 2 on Long Island. Democrats have won a majority of the statewide elections in the remaining districts throughout the state: nine elections in District 4, ten elections in District 17, nine elections in District 18, eight elections in District 19, and nine elections in District 22. Thus, Democratic statewide candidates have won an outright majority of the statewide races in Dr. Palmer's selections in all but six of the 26 districts (77%). While District 17 is a difficult district for Republicans, they nevertheless presently hold the congressional seat.

Note that in the state of New York, persons of color make up 34.1% of the voting age population, while in the New York City districts persons of color comprise 58.2% of the voting age population. In other words, the share of the New York congressional delegation that consists of the minority candidate of choice is well in excess of proportionality in the State.

4 The NYVRA's standards can collapse upon themselves without guardrails

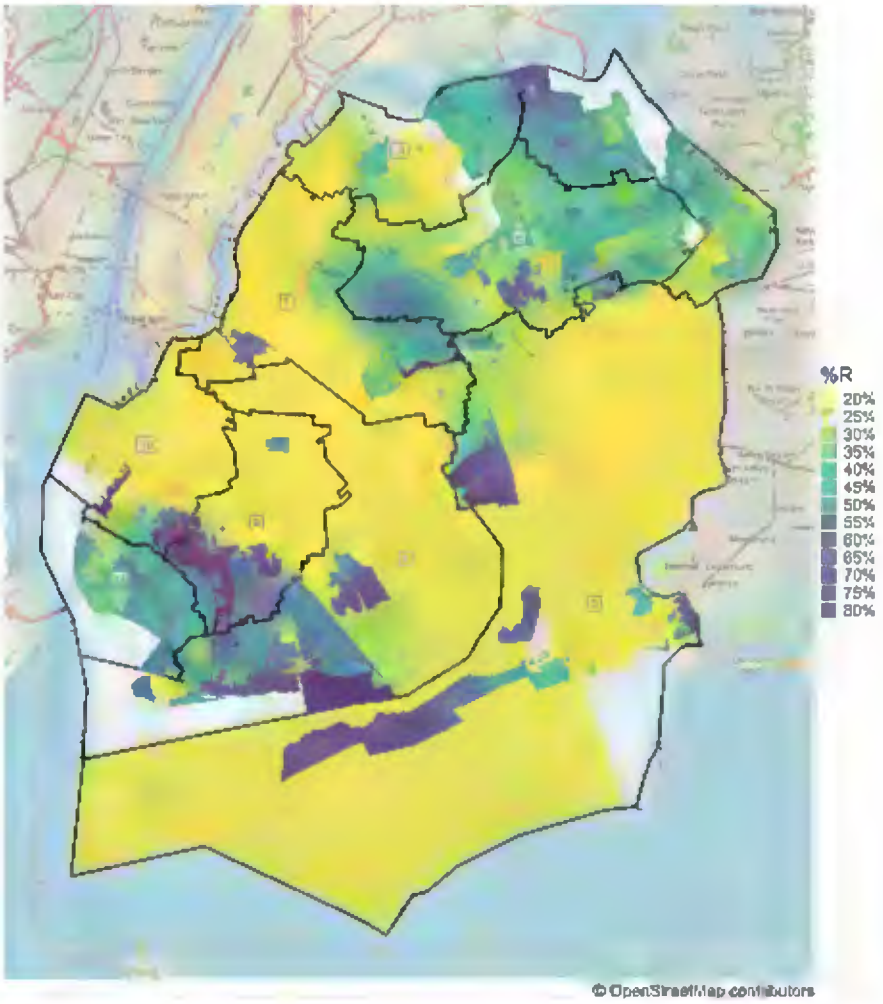
The NYVRA (which Petitioners assert in this litigation is incorporated for congressional maps via the New York Constitution), to my understanding, can be triggered upon a showing that the minority candidate of choice would "usually be defeated" and that either (a) racially polarized voting exists or (b) the totality of the circumstances demonstrates that the protected class member suffers from an impaired ability to influence the outcomes of elections. The statute does not seem to define what the measuring jurisdiction should be—if it is a particular district, the city or region where the district is located, or the jurisdiction that enacted the map, and the statute does not define the threshold for what "usually defeated" means.

Conducting the analysis only on the basis of the district in question—especially without a stringent requirement that the racial group's candidate of choice be "usually defeated"—can collapse the NYVRA standards upon themselves, as can be shown by looking at some hypotheticals below.

If the NYVRA protects White voters, as New York courts have so far held, see Clarke v. Town of Newburgh, 237 A.D.3d 14, 33 (2d Dep't 2025), then it would appear that White voters would have viable claims all over New York's congressional map. And changing districts so that minority-favored candidates of choice win more would then mean the same district would need to be changed back so that White voters' candidates of choice are not usually defeated. White voters are not a majority of the population, however measured, in New York City, in the New York portion of the New York City Metropolitan Division, or in the New York portion of the New York–Newark–Jersey City, NY–NJ Metropolitan Statistical Area. Nor are Whites a majority in the New York portion of the New York–Newark, NY–NJ–CT–PA Combined Statistical Area. Yet one can see that the Illustrative Map is drawn such that they would not usually elect their candidate of choice in any district in the city under any definition (since Democrats win every election in every district under the Illustrative Map), and would arguably do so in just two districts in the area (a third, District 17, most recently elected a Republican to Congress but frequently votes for Democrats statewide as shown above).

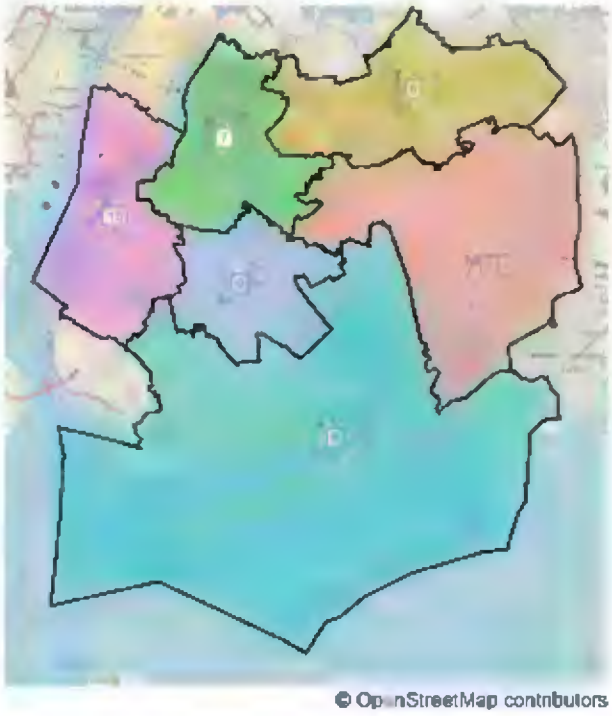
This is not a purely hypothetical concern. It is my understanding that a separate expert report demonstrates racially polarized voting in the area covered by district 5, 8 and 9. If we look at a heatmap of voting in Brooklyn and Queens, there is, in fact, a large cluster of Republican precincts contained within these heavily Democratic districts. Whites are a minority in each of these precincts, constituting 16.7% of the citizen voting age population in 5, 30.7% in 8 and 33.6% in 9.

Figure 2: R voting percentage by precinct using index of statewide elections, NYC



The maps also have several problems that Mr. Cooper discussed. For example, the southeastern "bulge" in District 7 cuts across multiple neighborhoods, including Forest Park, Woodhaven and Ozone Park. Suppose that White voters in these districts sue—for simplicity's sake we will exclude the possibility that White voters in Cooper's reconfigured District 10 might join the suit. Now, consider the following reconfiguration:

Figure 3: Potential reconfiguration of Districts 5, 7, 8 and 9, with Republican-performing district



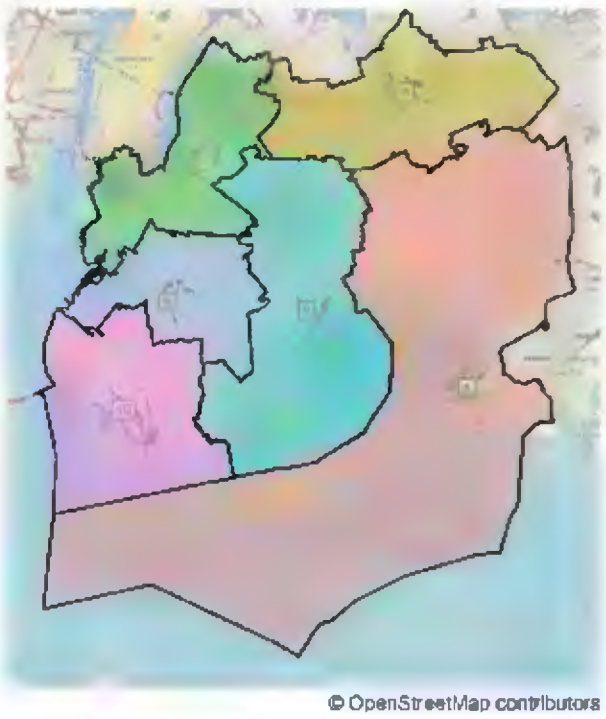
It's not perfect—it's meant to be conceptual and not a demonstration map for actual litigation—but it actually makes the districts here more compact on balance than those in the Cooper Maps for these districts. It also creates a District 8 where Republican candidates win more often than not. They have also won every statewide election since 2020. It would seem to satisfy all of the requirements of the NYVRA, at least under a very permissive construction.

Table 1: Reock and Polsby-Popper Scores, Various Maps

Measure	Reock	Reock	Reock	Reock	PP	PP	PP	PP
District	Ill. 1	Ill. 2	Enacted	Cooper	Ill. 1	Ill. 2	Enacted	Cooper
5	0.4849	0.2758	0.2758	0.2758	0.2685	0.273	0.273	0.2511
7	0.4903	0.3345	0.3701	0.3701	0.2477	0.1539	0.2548	0.2548
8	0.3965	0.5554	0.3315	0.3315	0.307	0.2982	0.2338	0.2338
9	0.5021	0.3583	0.5585	0.5585	0.2822	0.2269	0.3754	0.3754
10	0.56	0.5403	0.56	0.3913	0.3643	0.4349	0.3643	0.1929
Average	0.48676	0.41286	0.41918	0.38544	0.29394	0.27738	0.30026	0.2616

Or, assume that plaintiffs were to win their claim now. Conservative white residents of newly created District 10 are not content with their new district. They can offer an even stronger map, changing only districts 7, 8, 9 and 10:

Figure 4: Potential reconfiguration of Districts 7, 8, 9, and 10 with Republican-performing district

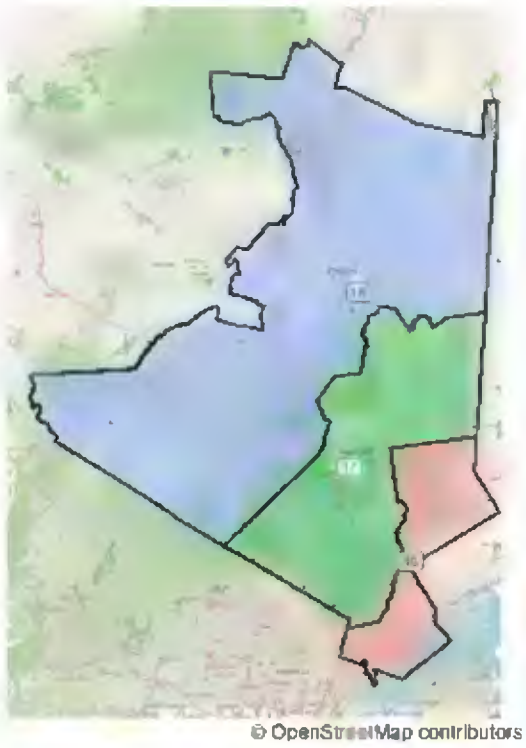


Here, the compactness scores are again in excess of those in Mr. Cooper's map. Republicans have again won every election in the newly configured District 10 since 2022; in 2024, Kamala Harris performed better in Alabama than she did in this district.

But of course, now the minorities in District 8 in the first version, or District 10 in the second, would have a claim. They can demonstrate that the preceding map gave them four districts that would elect their candidate of choice. There is still racially polarized voting in District 8. They would therefore win their claim.

Or consider districts 16 and 17. They could be reconfigured as follows:

Figure 5: Potential reconfiguration of Districts 16 and 17 with Republican-performing district



These are not terribly compact, but neither is Mr. Cooper's version of District 11. In this version, Democrats would have won the district in every statewide election in our dataset with the exception of the 2022 New York gubernatorial race (where they received 49.6% of the two-party vote). But then conservative Whites would have been shut out of every district in the northern suburbs and exurbs of New York City. If they can establish racially polarized voting, they would be able to countersue.

Redistricting is always a zero-sum game. Moves that benefit one side hurt another side. Unless one measures "usually defeated" on a jurisdiction-wide basis and with a stringent threshold of "usually defeated"—or builds in constraints such as those found under Section 2 of the VRA—one gets caught in the types of endless loops we find here.

5 Mr. Cooper's Maps

Next, I was asked to examine Mr. Cooper's maps to determine whether they are compact or historically grounded. Compactness is a tricky determination, as there are no widely agreed-upon measures for when a district becomes "compact" or when districts are "similarly" compact. However, Mr. Cooper employs a conceptualization of compactness that has, to my knowledge, never been used before.

Mr. Cooper acknowledges that the Illustrative Map decreases the compactness in districts 10 and 11. We can see this more clearly if we place the Polsby-Popper and Reock scores for both maps side-by-side. Here I am using his measures as reported in his report; note that different shapefiles and different projections can yield different scores.

Table 2: Comparison of Reock and Polsby-Popper Scores, Cooper and Enacted Maps.

District	Reock – Enacted	Reock – Illus.	PP – Enacted	PP – Illus.
10	0.43	0.3	0.35	0.2
11	0.52	0.18	0.57	0.27

Mr. Cooper attempts to justify this in two ways. He initially claims that these districts are within range for New York and nationally. There are two problems with this. First, compactness scores are often constrained by geographic features and state boundaries. For example, Maryland will almost always have a district with a low Reock score, because the panhandle of that state forces it. Likewise, things like river boundaries or coastlines with irregular edges can cause Polsby-Popper scores to fall. Here, Long Island will result in New York having at least one district with a poor Reock score (the Suffolk County-based district). Upstate New York features a few mid-sized metropolitan areas capable of almost supporting a district on their own, surrounded by lightly populated rural areas; failure to split those metropolitan areas will leave the resulting districts dis-

torted. Here, there is no doubt that more compact districts can be drawn, as we see in the Enacted Map. Mr. Cooper is simply sacrificing compactness—in the case of District 11 by cutting the Polsby-Popper score in half and the Reock Score by two thirds—to achieve his other goals.

The second problem with his argument is that his own data from Table G demonstrate that the 11th district would actually have the worst Reock score in the entire state and would be well below average. In the Enacted Map, District 10 is the 4th-most compact district on Reock, while District 11 is the 9th; in the Illustrative Map they fall to the 20th-most compact and least compact, respectively. In the Enacted Map, District 11 is the 3rd-most compact district, while District 10 is the 12th-most compact; both have above-average compactness scores. He transforms them to the 19th- and 24th-most compact districts, respectively.

Mr. Cooper's other response is that, when you remove the intervening waterways and look at the land areas of District 11, the parts of the district are quite compact. First, this overlooks the fact that both districts are made less compact, not just District 11. Second, I have never heard of a district's compactness being judged by breaking it up into pieces and examining the pieces. New York has long had districts that have crossed New York Bay, the East River, or even (in one famous example) passed along the northern edge of Long Island in non-contiguous chunks. This would likely be precedent-setting. One can imagine, for example, a district traversing Puget Sound, giving rise to a terrible Reock Score that is forgiven because the intervening water is ignored (Puget Sound is traversed by a multitude of ferry routes). The district that lumped together portions of metro Buffalo and Rochester in the 2000s could be forgiven if it hadn't included a land bridge between the district portions and had simply skipped along Lake Erie. Or one might imagine a district that hops along Long Island Sound and displays a good Reock Score because the land areas are calculated separately from one another. Ferries from lower Manhattan depart not only to Staten Island, but also to Rockaway Beach, Soundview, and Astoria. This is either a contiguous district or it isn't, and it should be

judged as such.

Finally, Mr. Cooper overstates his case when he suggests that there is ample precedent for connecting Staten Island with Manhattan. In terms of Congressional maps, he points only to a single congressional map, drawn in the first Nixon Administration. This map was drawn just seven years after the opening of the Verrazano Narrows bridge. Before that, travel to Brooklyn and to Manhattan both required ferry rides; direct travel by car to other places in New York required a drive through New Jersey. One imagines the connection to Brooklyn is much less tenuous 55 years later. More importantly, the following maps illustrate every New York congressional map since. As you can see, Staten Island has always been connected to Brooklyn, much as it is in the current map. Even the initial 2021 map, which was struck down as a partisan gerrymander, failed to link Staten Island with lower Manhattan.[2]

[2]The shapefiles for the following maps are taken from Jeffrey B. Lewis, Brandon DeVine, Lincoln Pitcher, and Kenneth C. Martis. (2013) Digital Boundary Definitions of United States Congressional Districts, 1789-2012. Retrieved from `https://cdmaps.polisci.ucla.edu` on July 11, 2022.

Figure 6: Enacted Congressional Districts, 98th Congress (1982)

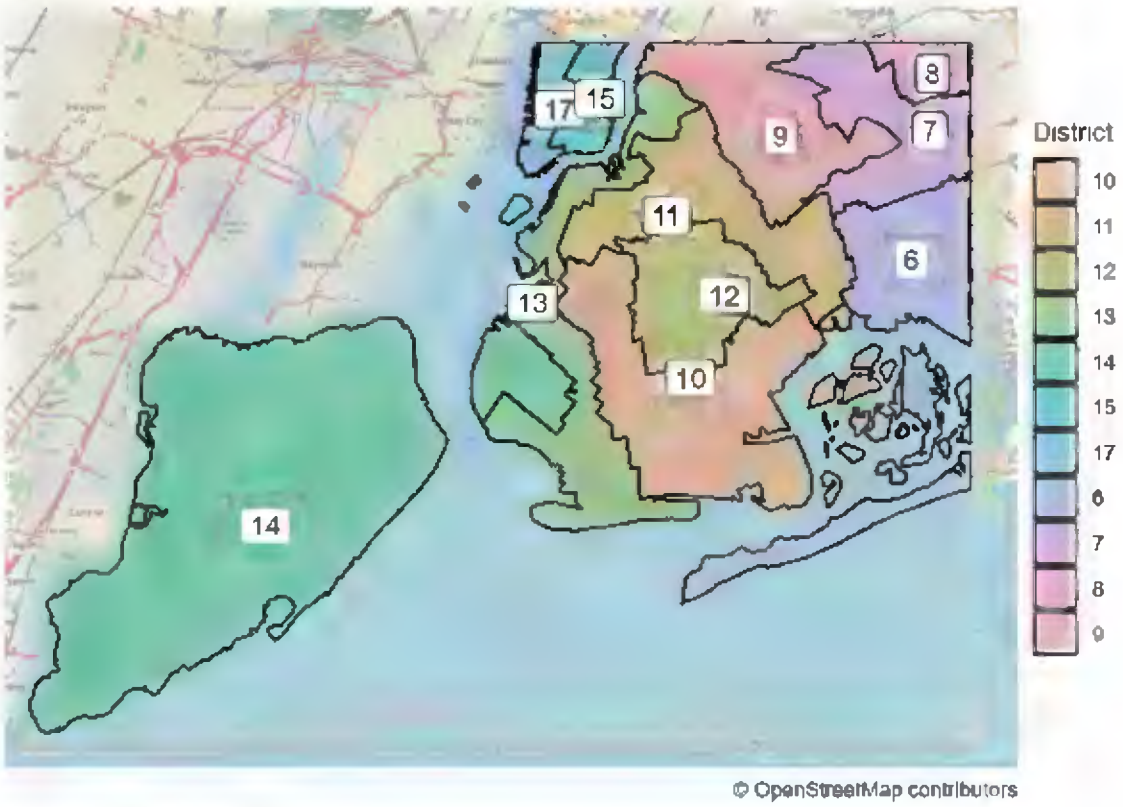


Figure 7: Enacted Congressional Districts, 103rd Congress (1992)

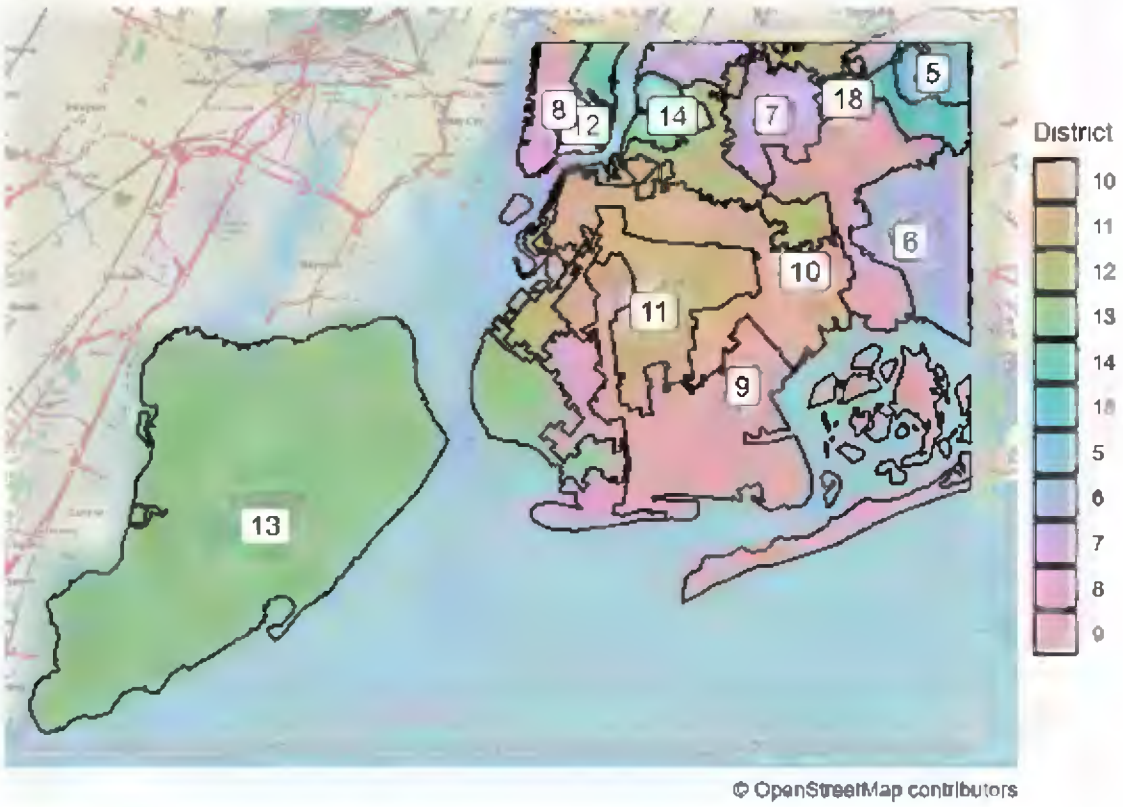


Figure 8: Enacted Congressional Districts, 108th Congress (2002)

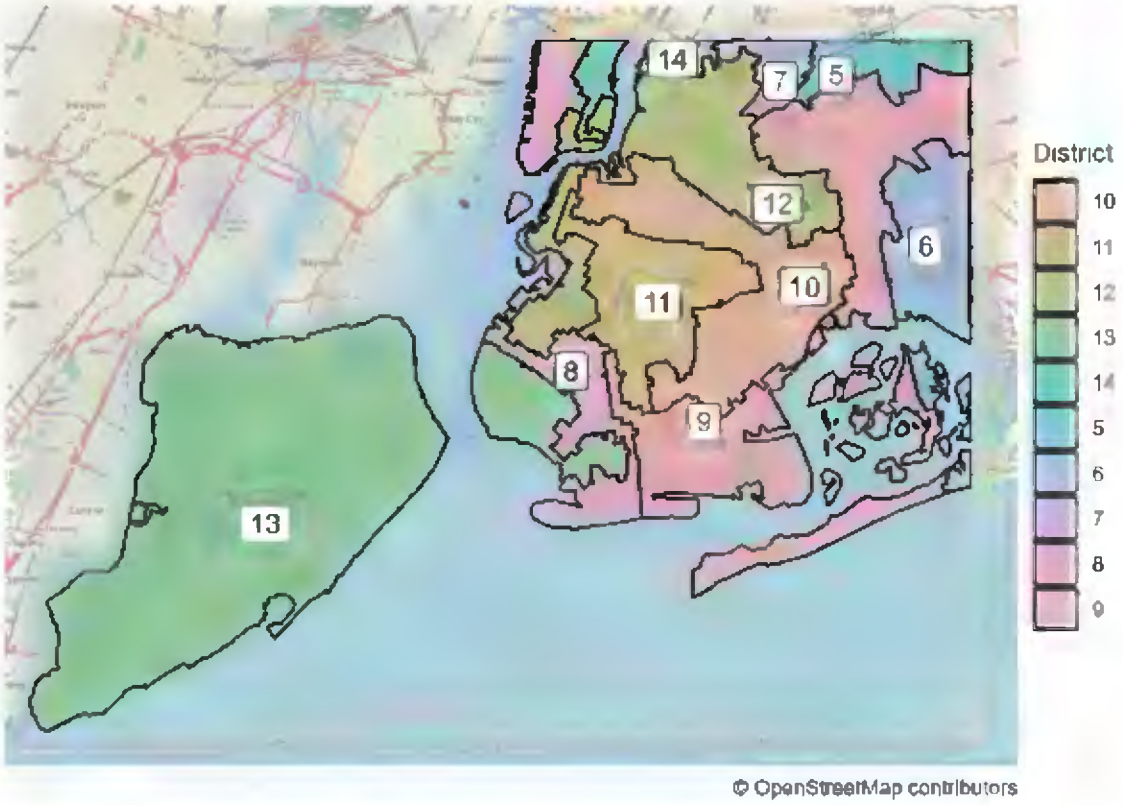


Figure 9: Enacted Congressional Districts, 113th Congress (2012)

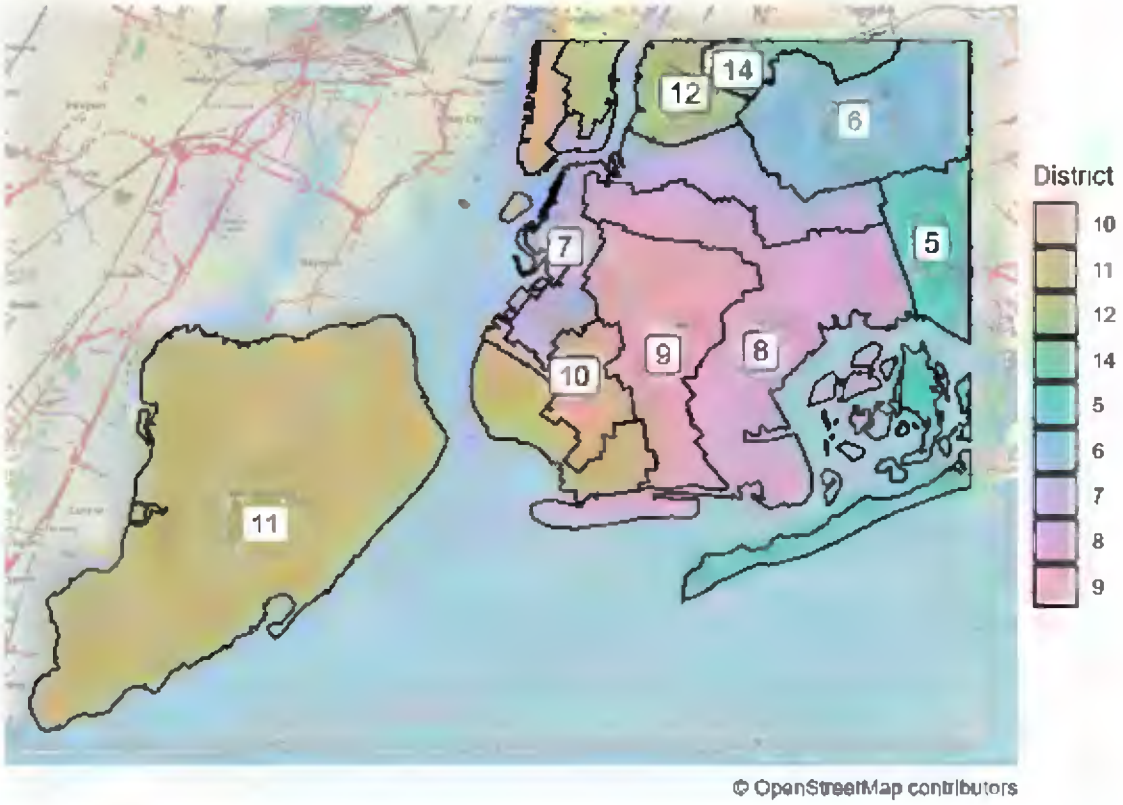
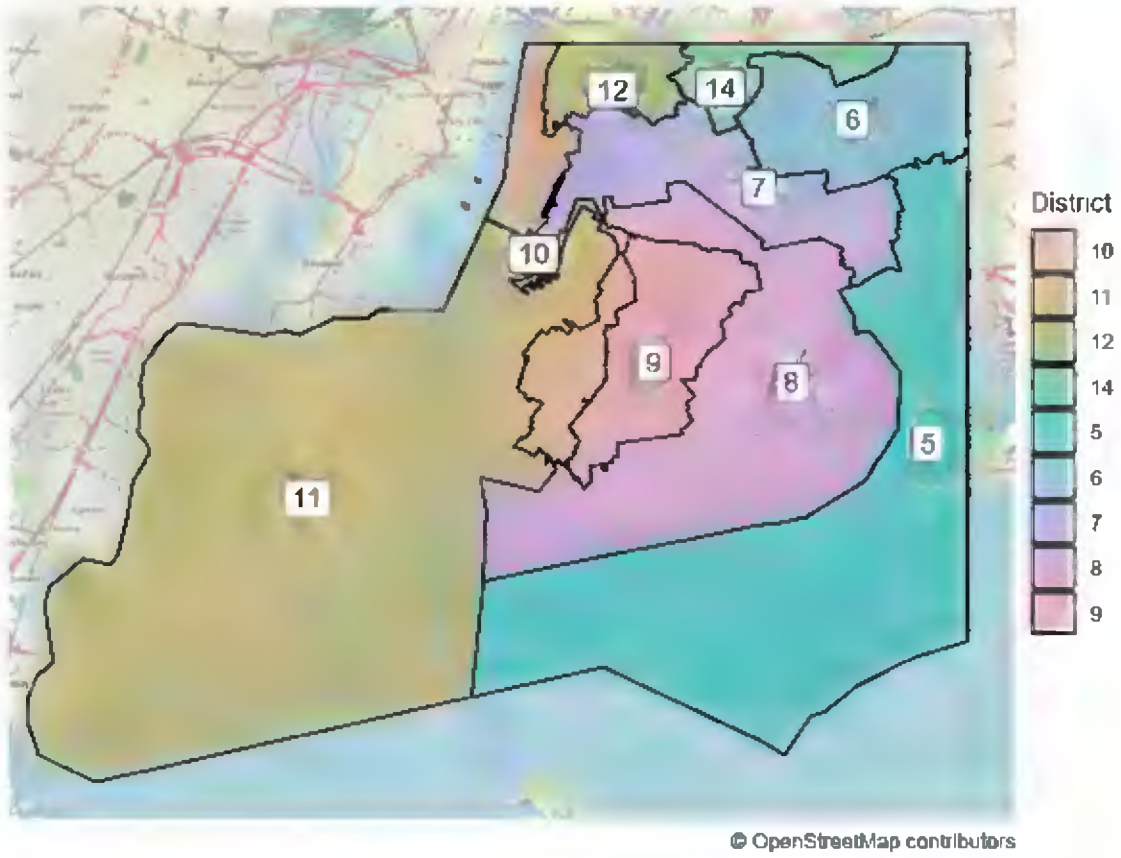


Figure 10: Enacted Congressional Districts, 118th Congress (Never Employed) (2022)



Finally, that Staten Island and Lower Manhattan were combined in 1972 does not mean that the connection did not raise eyebrows. The *Almanac of American Politics*, a standard reference work relied upon in peer-reviewed literature, wrote that "the conservative homeowners of Staten Island find themselves in the same congressional seat with elderly Jewish people living in housing projects, and well-to-do Greenwich Village liberals. The Manhattan portion of the 17th also contains many other groups, but these

do not cast enough votes to assume any significance." Michael Barone, Grant Ujifusa, and Douglas Matthews, *Almanac of American Politics 1974* 688 (1973). It goes on to describe the "incongruous linking" between the two portions of the district.

This leaves only the Assembly district map, which was drawn by the same legislature that drew the maps struck down in the *Harkenrider* litigation. It carves Staten Island up into four districts, only two of which are wholly located on the island. The map already employs the Verrazzano Narrows bridge as a traversal into Brooklyn for the 64th District; the ferry is employed only as a secondary route. In other words, even in this map, the map makers linked Staten Island with Brooklyn first.

6 Conclusion

The outcome of the analysis of "usually" defeated can vary based upon the jurisdiction looked at, as well as the threshold employed. This is important, because with too 'loose" of guardrails, the NYVRA's standards can collapse upon themselves and give rise to endless litigation loops. Moreover, Mr. Cooper's maps depart from traditional redistricting criteria in several respects.

I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is true and correct to the best of my knowledge and belief. Executed on December 8th, 2025 in Delaware, Ohio.

Sean P Trende

Sean P. Trende

7 Exhibit 1 – Sean Trende C.V.

SEAN P. TRENDE
1146 Elderberry Loop
Delaware, OH 43015
strende@realclearpolitics.com

EDUCATION

Ph.D., The Ohio State University, Political Science, 2023. Dissertation titled *Application of Spatial Analysis to Contemporary Problems in Political Science*, September 2023.

M.A.S. (Master of Applied Statistics), The Ohio State University, 2019.

J.D., Duke University School of Law, *cum laude*, 2001; Duke Law Journal, Research Editor.

M.A., Duke University, *cum laude*, Political Science, 2001. Thesis titled *The Making of an Ideological Court: Application of Non-parametric Scaling Techniques to Explain Supreme Court Voting Patterns from 1900-1941*, June 2001.

B.A., Yale University, with distinction, History and Political Science, 1995.

PROFESSIONAL EXPERIENCE

Law Clerk, Hon. Deanell R. Tacha, U.S. Court of Appeals for the Tenth Circuit, 2001-02.

Associate, Kirkland & Ellis, LLP, Washington, DC, 2002-05.

Associate, Hunton & Williams, LLP, Richmond, Virginia, 2005-09.

Associate, David, Kamp & Frank, P.C., Newport News, Virginia, 2009-10.

Senior Elections Analyst, RealClearPolitics, 2010-present.

Columnist, Center for Politics Crystal Ball, 2014-17.

Visiting Scholar, American Enterprise Institute, 2018-present.

BOOKS AND BOOK CHAPTERS

Larry J. Sabato, ed., *The Red Ripple*, Ch. 15 (2023).

Larry J. Sabato, ed., *A Return to Normalcy?: The 2020 Election that (Almost) Broke America* Ch. 13 (2021).

Larry J. Sabato, ed., *The Blue Wave*, Ch. 14 (2019).

Larry J. Sabato, ed., *Trumped: The 2016 Election that Broke all the Rules* (2017).

Larry J. Sabato, ed., *The Surge:2014's Big GOP Win and What It Means for the Next Presidential Election*, Ch. 12 (2015).

Larry J. Sabato, ed., *Barack Obama and the New America*, Ch. 12 (2013).

Barone, Kraushaar, McCutcheon & Trende, *The Almanac of American Politics* 2014 (2013).

The Lost Majority: Why the Future of Government is up for Grabs – And Who Will Take It (2012).

PREVIOUS EXPERT TESTIMONY AND/OR DEPOSITIONS

Dickson v. Rucho, No. 11-CVS-16896 (N.C. Super. Ct., Wake County) (racial gerrymandering).

Covington v. North Carolina, No. 1:15-CV-00399 (M.D.N.C.) (racial gerrymandering).

NAACP v. McCrory, No. 1:13CV658 (M.D.N.C.) (early voting).

NAACP v. Husted, No. 2:14-cv-404 (S.D. Ohio) (early voting).

Ohio Democratic Party v. Husted, Case 15-cv-01802 (S.D. Ohio) (early voting).

Lee v. Virginia Bd. of Elections, No. 3:15-cv-357 (E.D. Va.) (early voting).

Feldman v. Arizona, No. CV-16-1065-PHX-DLR (D. Ariz.) (absentee voting).

A. Philip Randolph Institute v. Smith, No. 1:18-cv-00357-TSB (S.D. Ohio) (political gerrymandering).

Whitford v. Nichol, No. 15-cv-421-bbc (W.D. Wisc.) (political gerrymandering).

Common Cause v. Rucho, No. 1:16-CV-1026-WO-JEP (M.D.N.C.) (political gerrymandering).

Mecinas v. Hobbs, No. CV-19-05547-PHX-DJH (D. Ariz.) (ballot order effect).

Fair Fight Action v. Raffensperger, No. 1:18-cv-05391-SCJ (N.D. Ga.) (statistical analysis).

Pascua Yaqui Tribe v. Rodriguez, No. 4:20-CV-00432-TUC-JAS (D. Ariz.) (early voting).

Ohio Organizing Collaborative, et al v. Ohio Redistricting Commission, et al, No. 2021-1210 (Ohio) (political gerrymandering).

NCLCV v. Hall, No. 21-CVS-15426 (N.C. Sup. Ct.) (political gerrymandering).

Szeliga v. Lamone, Case No. C-02-CV-21-001816 (Md. Cir. Ct.) (political gerrymandering).

In the Matter of 2022 Legislative Districting of the State , Misc. No. 25 (Md. Ct. App.) (political gerrymandering)

Montana Democratic Party v. Jacobsen, DV-56-2021-451 (Mont. Dist. Ct.) (early voting; ballot collection).

Carter v. Chapman, No. 464 M.D. 2021 (Pa.) (map drawing; amicus).

NAACP v. McMaster, No. 3:21-cv-03302 (D.S.C.) (racial gerrymandering).

Alexander v. NAACP, Case No. 3:21-cv-03302-MBS-TJH-RMG (D.S.C.) (racial gerrymandering).

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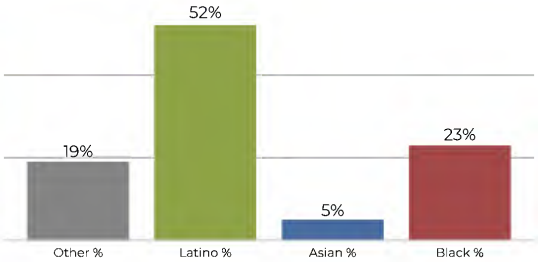
REDISTRICTING PARTNERS

State of New York

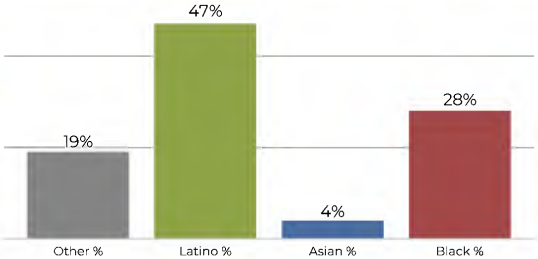
NYIRC Congress 2024

District 13

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	149,602	19.3%	406,407	52.3%	39,265	5.1%	181,697	23.4%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
515,756	102,201	19.8%	245,258	47.6%	23,074	4.5%	145,223	28.2%

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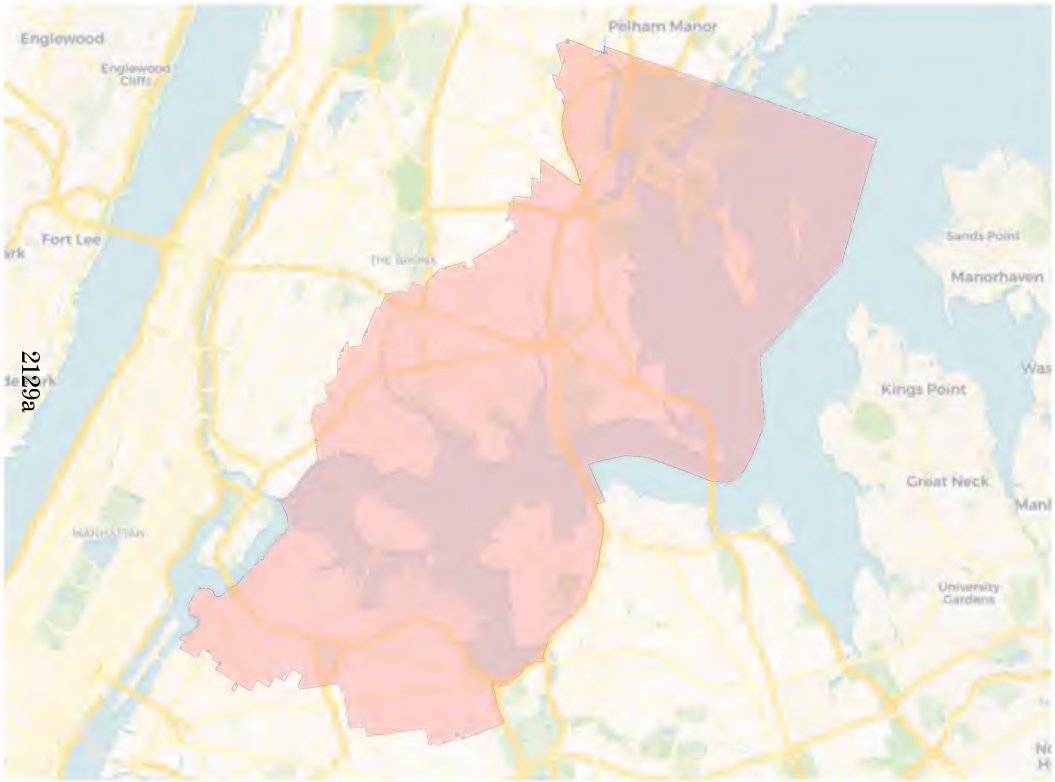
REDISTRICTING PARTNERS

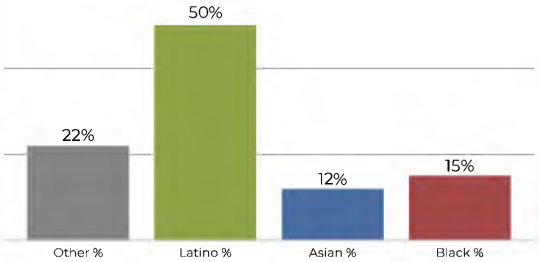
State of New York

NYIRC Congress 2024

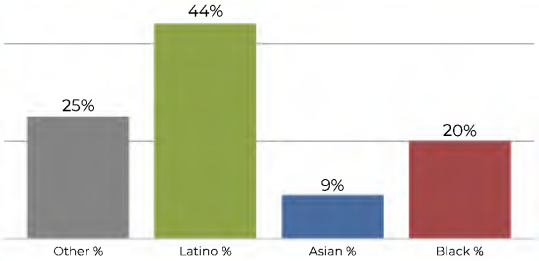
District 14



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	172,698	22.2%	388,880	50.1%	93,855	12.1%	121,538	15.6%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
439,815	112,077	25.5%	197,038	44.8%	42,559	9.7%	88,141	20.0%

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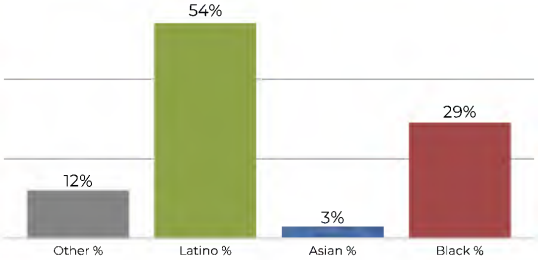
REDISTRICTING PARTNERS

State of New York

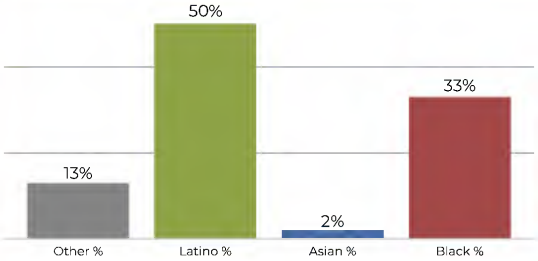
NYIRC Congress 2024

District 15

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	95,577	12.3%	424,926	54.7%	24,983	3.2%	231,485	29.8%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
438,428	57,202	13.0%	222,669	50.8%	11,420	2.6%	147,137	33.6%

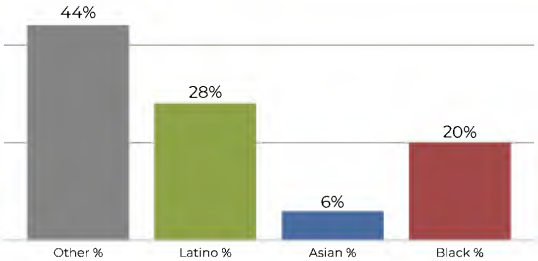
REDISTRICTING PARTNERS

State of New York

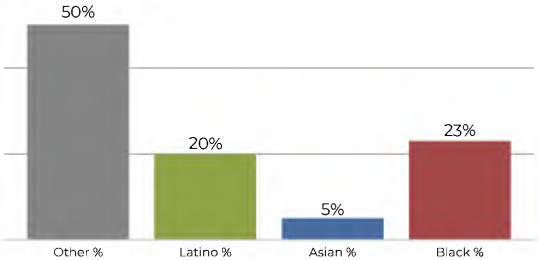
NYIRC Congress 2024

District 16

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	342,017	44.0%	224,212	28.9%	51,734	6.7%	159,008	20.5%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
498,671	249,430	50.0%	103,360	20.7%	28,857	5.8%	117,024	23.5%

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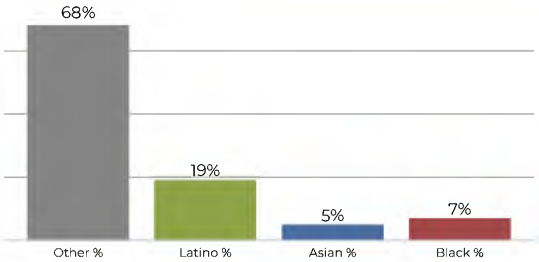
REDISTRICTING PARTNERS

State of New York

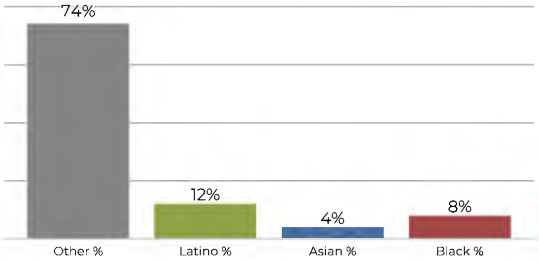
NYIRC Congress 2024

District 17

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	528,416	68.0%	154,546	19.9%	38,971	5.0%	55,038	7.1%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
523,482	387,653	74.1%	65,842	12.6%	25,693	4.9%	44,293	8.5%

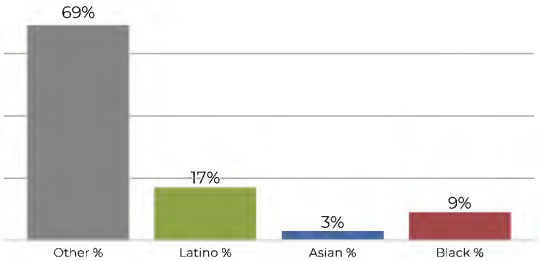
REDISTRICTING PARTNERS

State of New York

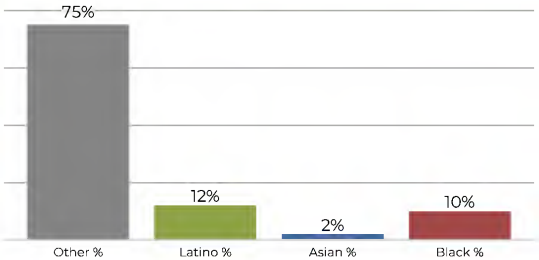
NYIRC Congress 2024

District 18

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	541,006	69.6%	138,208	17.8%	23,283	3.0%	74,474	9.6%

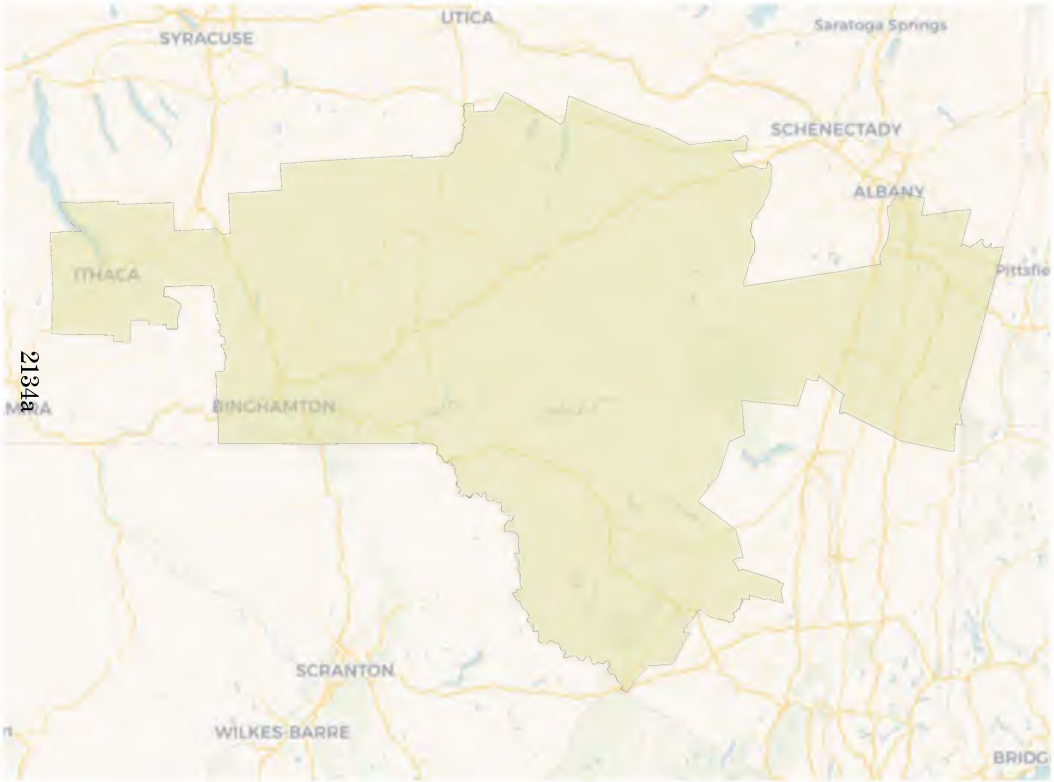
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
553,725	415,826	75.1%	67,619	12.2%	13,527	2.4%	56,753	10.2%

REDISTRICTING PARTNERS

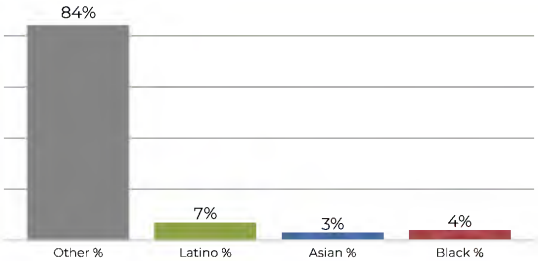
State of New York

NYIRC Congress 2024

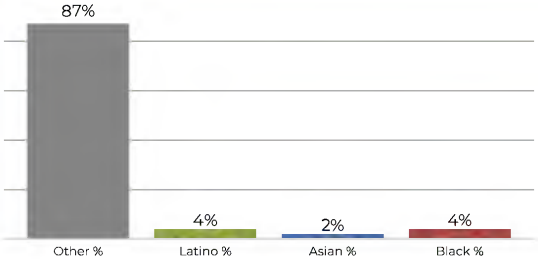
District 19



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	659,189	84.8%	55,354	7.1%	27,602	3.6%	34,826	4.5%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
603,393	530,272	87.9%	29,142	4.8%	15,697	2.6%	28,282	4.7%

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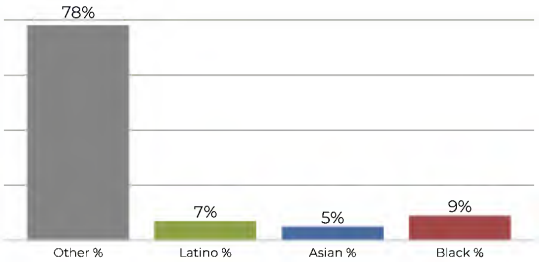
REDISTRICTING PARTNERS

State of New York

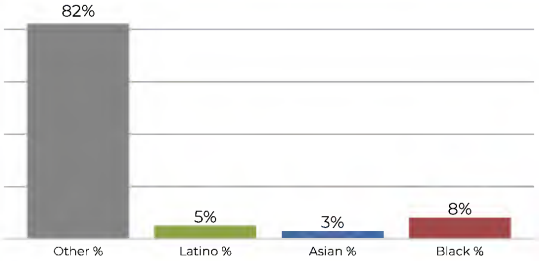
NYIRC Congress 2024

District 20

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	605,973	78.0%	55,502	7.1%	44,142	5.7%	71,354	9.2%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
581,865	481,405	82.7%	29,514	5.1%	19,061	3.3%	51,885	8.9%

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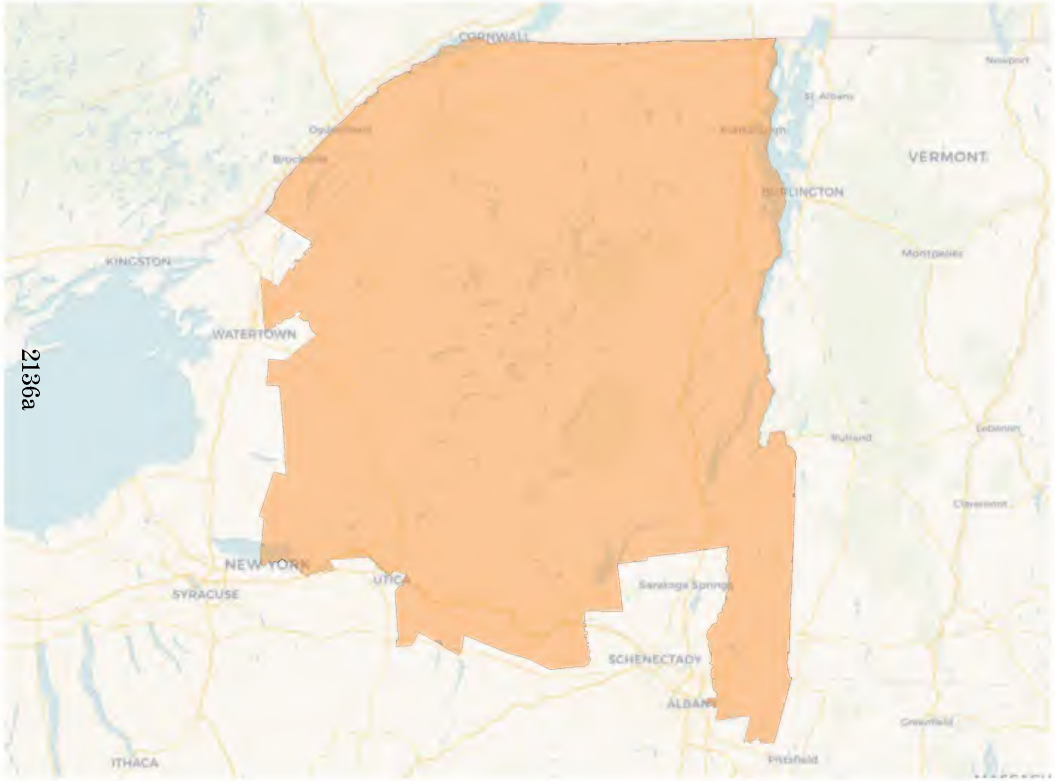
REDISTRICTING PARTNERS

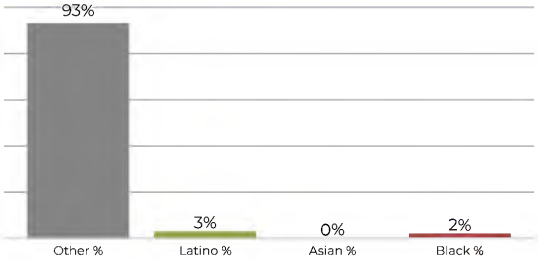
State of New York

NYIRC Congress 2024

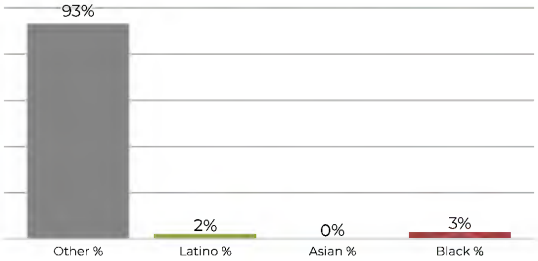
District 21



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	723,193	93.1%	26,635	3.4%	7,185	0.9%	19,958	2.6%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
612,111	570,903	93.3%	16,362	2.7%	4,938	0.8%	19,907	3.3%

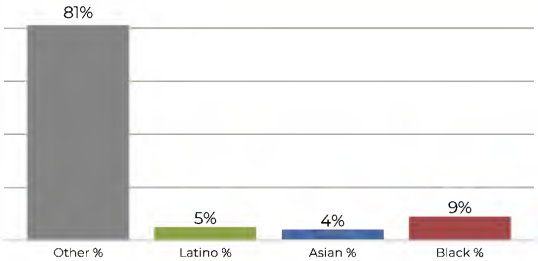
REDISTRICTING PARTNERS

State of New York

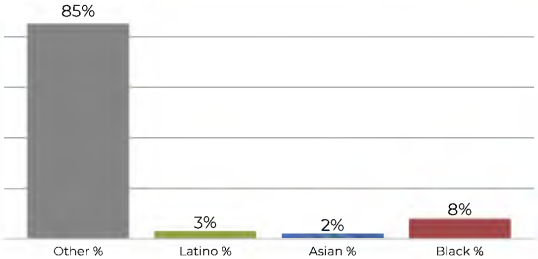
NYIRC Congress 2024

District 22

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	631,458	81.3%	43,315	5.6%	31,832	4.1%	70,366	9.1%

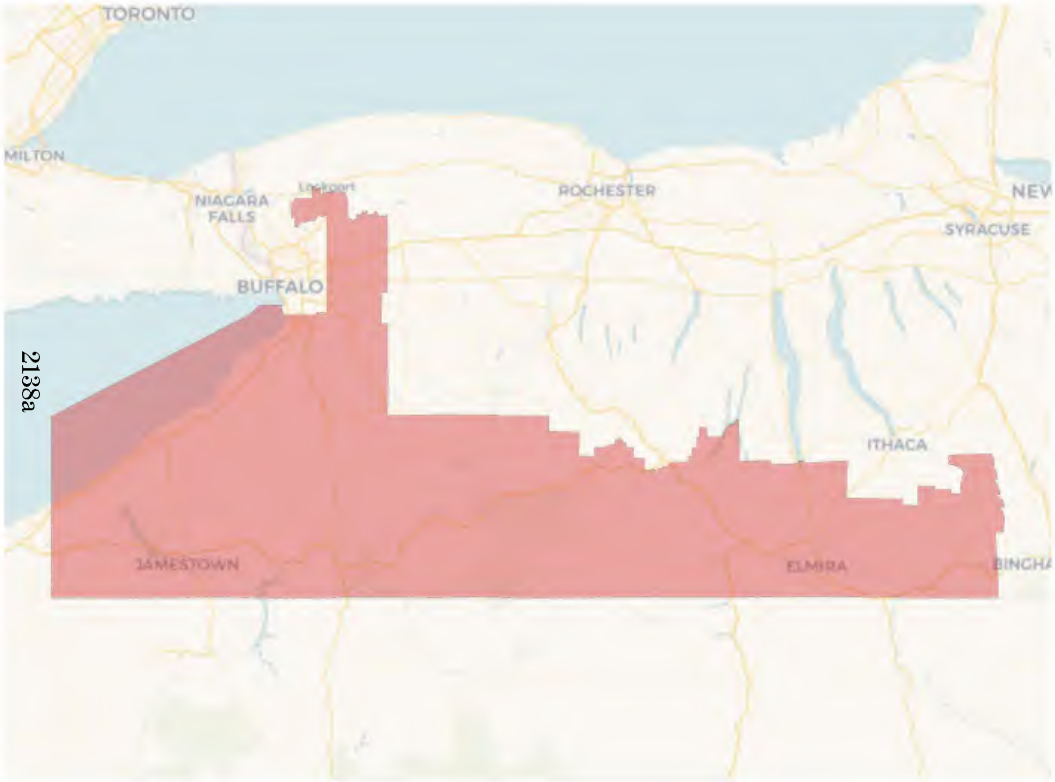
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
582,210	498,495	85.6%	22,369	3.8%	13,240	2.3%	48,106	8.3%

REDISTRICTING PARTNERS

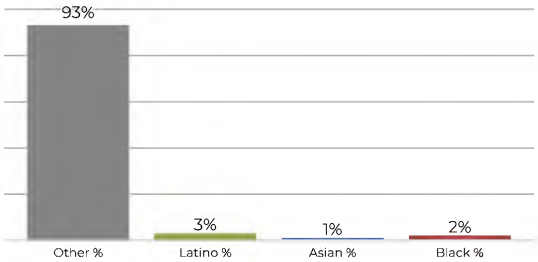
State of New York

NYIRC Congress 2024

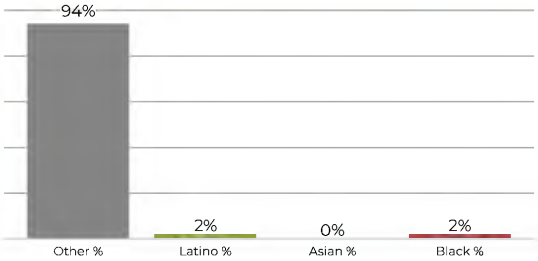
District 23



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	723,539	93.1%	28,159	3.6%	8,985	1.2%	16,288	2.1%

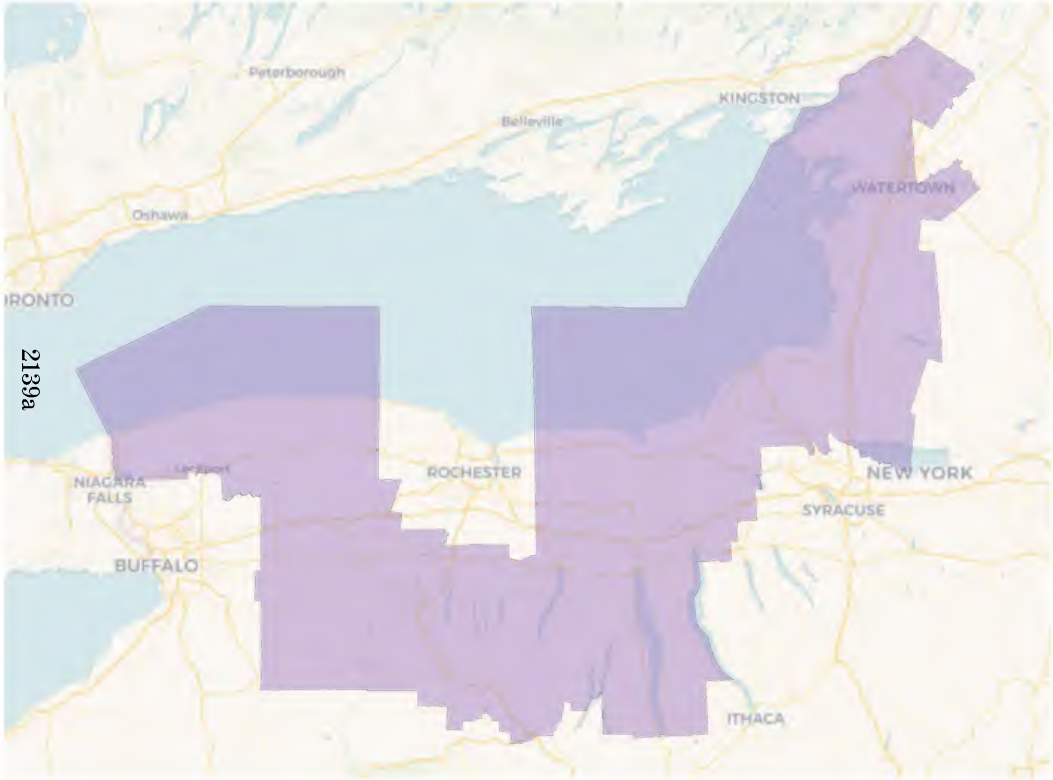
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
607,385	572,369	94.2%	14,765	2.4%	4,558	0.8%	15,692	2.6%

REDISTRICTING PARTNERS

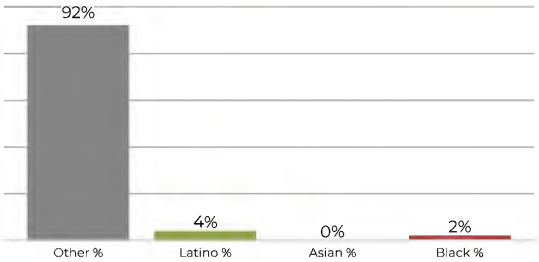
State of New York

NYIRC Congress 2024

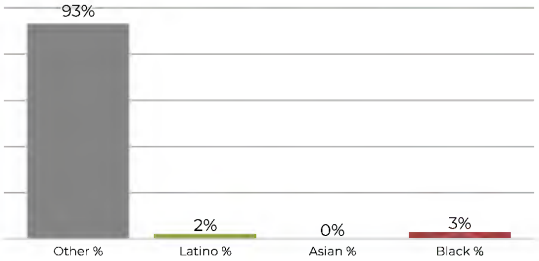
District 24



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	719,980	92.7%	32,163	4.1%	5,753	0.7%	19,075	2.5%

Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
606,535	565,567	93.2%	16,627	2.7%	4,437	0.7%	19,903	3.3%

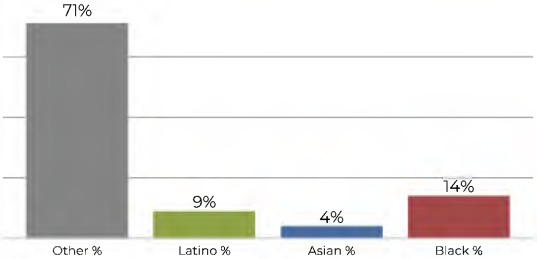
REDISTRICTING PARTNERS

State of New York

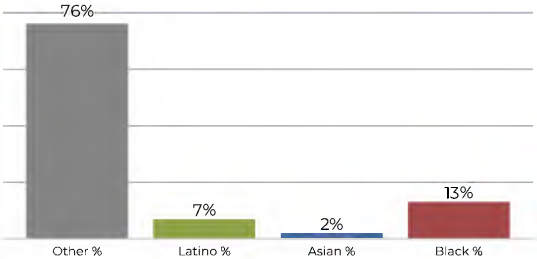
NYIRC Congress 2024

District 25

2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	558,106	71.8%	73,263	9.4%	32,725	4.2%	112,877	14.5%

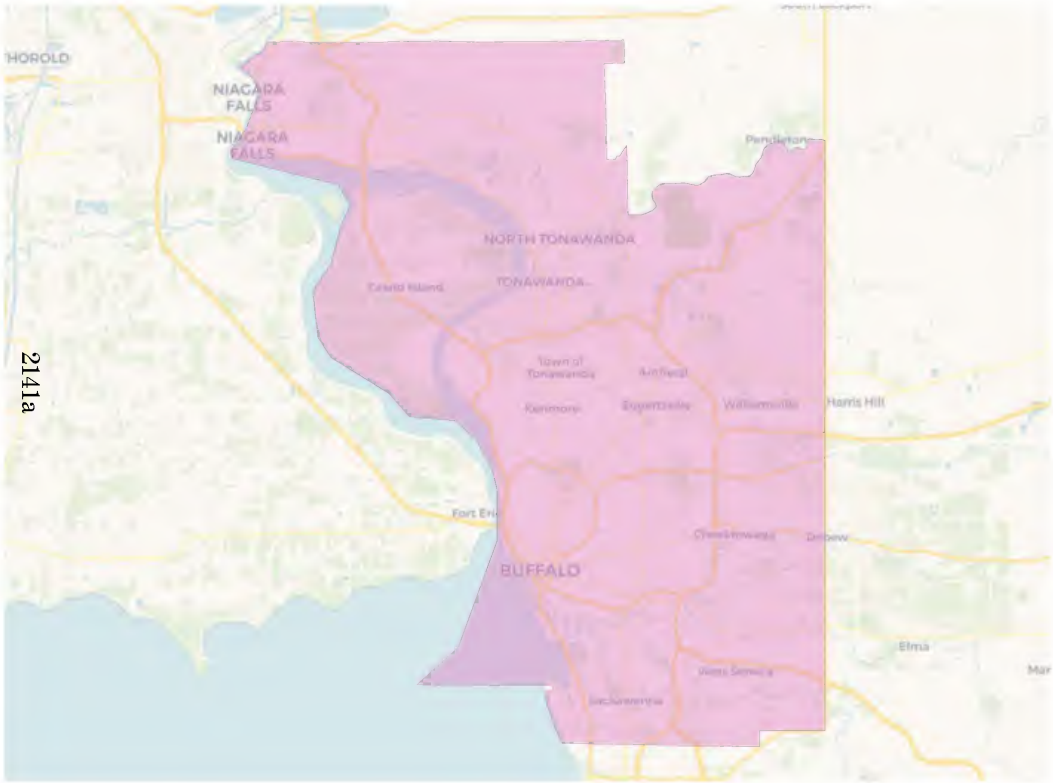
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
579,385	443,216	76.5%	42,030	7.3%	14,962	2.6%	79,177	13.7%

REDISTRICTING PARTNERS

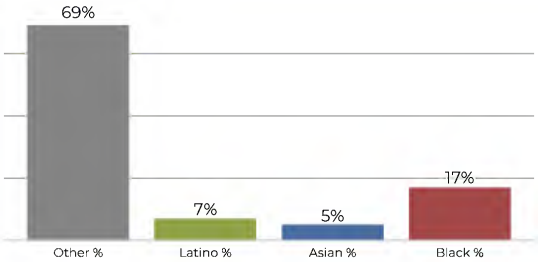
State of New York

NYIRC Congress 2024

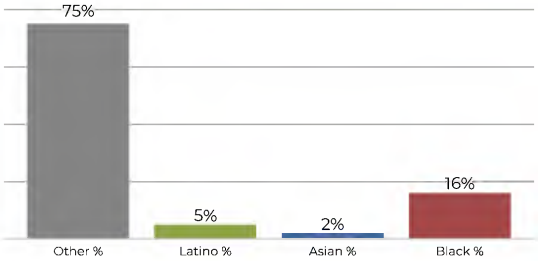
District 26



2020 Census



Citizen Voting Age Population



Population	Deviation	Deviation %	Other	Other %	Latino	Latino %	Asian	Asian %	Black	Black %
776,971	0	0.0%	537,459	69.2%	56,553	7.3%	44,211	5.7%	138,748	17.9%

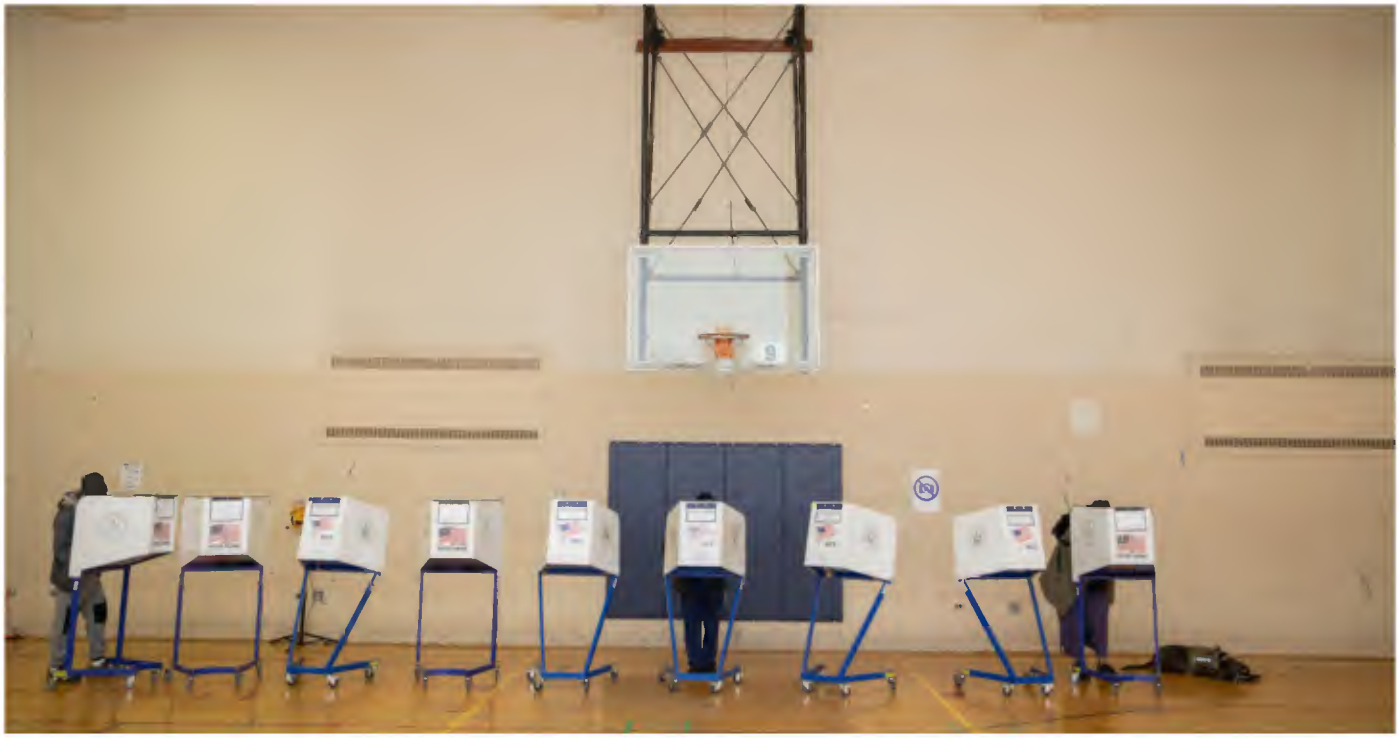
Total CVAP	Other CVAP	Other CVAP %	Latino CVAP	Latino CVAP %	Asian CVAP	Asian CVAP %	Black CVAP	Black CVAP %
567,694	429,930	75.7%	30,124	5.3%	14,344	2.5%	93,296	16.4%

EXHIBIT E

A Redistricting Surprise in New York: A Map That Plays Few Favorites

hbx.media.net/checksync.php

Nicholas Fandos February 15, 2024



When New York's top court ordered the state to redraw its congressional map late last year, the state's ruling Democrats were widely expected to exploit the opening to aggressively reshape district lines in their favor.

But on Thursday, a bipartisan state commission created to guide the redistricting process overwhelmingly approved a new proposed map that looks a lot like the current court-drawn map that helped Republicans pick up seats in 2022.

The panel's 9-to-1 vote now thrusts a politically and legally thorny choice on the state's Democratic-led Legislature. It can rubber-stamp the compromise, dashing the hopes of Representative Hakeem Jeffries and other Democrats in Washington, or reject it and risk ending up back in court by pushing for more favorable lines.

The answer could have far-reaching consequences for the national fight for control of the House this fall, where New York's swing seats alone could be enough to tip the contest.

The commission's map includes modest tweaks that would help Democrats flip one seat in Syracuse, and would most likely make a pair of vulnerable incumbents — one Democrat and one Republican — safer in the Hudson Valley.

But it does not touch lines on Long Island or in Westchester County, both major suburban battlegrounds where Democratic campaigns were looking for a leg up, or on Staten Island, where the party has long coveted a right-leaning seat. Even subtle shifts in those areas could have made a handful of Republican-held seats virtually unwinnable for incumbents in November.

The commission's leaders began selling the deal on Thursday as an equitable conclusion to a haywire redistricting saga that has transfixed New York's political world for two years.

Ken Jenkins, the commission's Democratic chairman, called it a "victory for the commission process and for small-d democratic participation in the State of New York," while his Republican counterpart, Charles H. Nesbitt, lauded the deal as a "historic moment."

Addressing potential critics in his own party, Mr. Jenkins added that the commission's work, "based on all the legal input we have had, requires compromise."
It was unclear how Democratic leaders in the Legislature, which is not scheduled to be back in session until Feb. 26, would proceed. If lawmakers reject the plan, they would then take over the mapmaking power themselves, thus claiming far greater latitude to draw lines as Democrats wish.

They proceeded cautiously on Thursday. "We are committed to concluding it in a manner that upholds fairness and democracy," Andrea Stewart-Cousins, the State Senate majority leader, said.

But Ms. Stewart-Cousins and Speaker Carl Heastie of the Assembly are likely to face intense pressure in the coming days, both from people close to Mr. Jeffries, the House Democratic leader, who has spent a year blasting the current lines as unfair and a small fortune on a lawsuit trying to scrap them, and from other partisan interests.

Though Mr. Jeffries did not comment, Democratic lawmakers and political strategists fumed that the proposal too closely resembled the very map they were trying to replace, which was drawn by a court-appointed special master from Pennsylvania. And they questioned why New York would settle when Republicans use their own monopolies in other states to enact stark gerrymanders.

Trump Administration: Live Updates

- Trump finds a purpose for his overtures to Kim Jong-un.
- As China and the United States split over energy, South Korea is stuck in the middle.
- South Korea's president gives Trump a crown evoking ancient history.

Tim Persico, who oversaw House Democrats' campaign arm in 2022, predicted the party would still "win a bunch of these seats either way."

"But," he added, "it's insane that after a year and a half and countless dollars spent in court, the Democrats on the commission apparently gave up and accepted ridiculous maps drawn by a Republican from Pittsburgh that don't make sense for New Yorkers."

Republicans seemed more inclined to support the plan. Lee Zeldin, the party's candidate for governor in 2022, warned that Democrats in Albany would "find themselves right back in court" if they rejected it.

The agreement, if it holds, would immediately endanger Representative Brandon Williams, a first-term Republican who won a Democratic-leaning, Syracuse-area seat by less than one point in 2022. By adding the towns of Cortland and Auburn, the district, which voted for President Biden by seven percentage points in 2020, would become four points more Democratic.

But it would spell good news for four other endangered Republican incumbents who had been bracing for career-ending changes. Those first-term representatives — Mike Lawler in New York City's northern suburbs; Anthony D'Esposito and Nick LaLota on Long Island; and Marc Molinaro in the Hudson Valley — still face difficult re-elections in districts Mr. Biden won by between 0.2 and 14 percentage points in 2020, but shifting them left would have made the task all but impossible in some cases.

With his district intact, Mr. Lawler taunted his expected opponent, a former Democratic congressman. "Yikes," Mr. Lawler wrote on X. "There goes Mondaire Jones's campaign for Congress."
Mr. Molinaro would actually benefit under the new lines. By trading Democratic-leaning parts of Ulster County to Representative Pat Ryan, a Democrat, in exchange for Republican-leaning sections of Orange County, his district would become about four percentage points more Republican. Mr. Ryan's would become three percentage points more Democratic.

The Long Island swing district where Tom Suozzi, a Democrat, won a special election on Tuesday would not be changed.

All of the map machinations were playing out under the eye of the courts and the threat that Republicans would sue to block any solution deemed too partisan.

New Yorkers first voted to create the commission in 2014 as part of a suite of changes to the State Constitution designed to diminish partisan gerrymandering. But when the panel first assembled in 2022 to draw maps for the next decade, it deadlocked along party lines, failing to complete its work.

That failure began a cascade of connected actions that spelled disaster for Democrats.

The Democratic Legislature assumed control of the process and adopted a map that experts said would clearly favor the party's candidates. Republicans sued, and New York's highest court ultimately ruled the map an unconstitutional gerrymander.

The special master ultimately drafted a replacement map, and Republicans competing on it flipped four seats in that fall's midterms, almost single-handedly delivering their party's House majority.

Then, at Mr. Jeffries's urging, Democrats' House campaign arm filed a new lawsuit arguing that the process should be restarted ahead of the 2024 elections to give the commission — and ultimately the Legislature — another chance to complete its work.

In December, the state's highest court, transformed by the appointment of a new judge, sided with Democrats and ordered the commission back to work to put new maps in place for the June primaries.

Party leaders in New York and Washington had anticipated that the body's five Democrats and five Republicans would break down on partisan lines again. Instead, they found their way to a compromise.

The panel decided not to intervene in one of the most closely watched races, a bitter Democratic primary contest between Representative Jamaal Bowman, one of the House's most outspoken progressives, and George Latimer, the Westchester County executive. Mr. Jenkins is a close ally of Mr. Latimer's and could have greatly improved his chances with new lines, but both sides said they were happy to see them unchanged.
Other small changes were recommended in New York City and Western New York. They had no meaningful partisan effect, but some may result in territorial bragging rights.

Brooklyn's cultural gems, including the Brooklyn Museum, the Brooklyn Botanic Garden and the borough's main public library branch, would be moved from freshman Representative Daniel Goldman's district to Yvette Clarke's. And Citi Field, home to the Mets, would go from Representative Alexandria Ocasio-Cortez to Grace Meng.

Grace Ashford contributed reporting.

EXHIBIT F

Democrats Propose N.Y. Congressional Map With Slight Tilt in Their Favor

hbx.media.net/checksync.php

Nicholas Fandos February 27, 2024

A day after rejecting a congressional map proposed by a bipartisan redistricting commission, Democrats in New York unveiled new district lines on Tuesday designed to help the party retake the House majority this fall.

Yet their plan exhibits surprising restraint. Although a pair of swing districts would become more Democratic, lawmakers in Albany left the partisan makeup of 24 of the state's 26 districts largely intact.

The middle-ground approach reflected a desire to avoid another protracted court fight like the one in New York that helped swing control of the House to Republicans in 2022, while still better positioning Democrats in key districts.

The most salient changes would affect districts in Central New York and on Long Island. By shifting the districts three and four points leftward, the map would endanger Representative Brandon Williams, a Syracuse Republican, and clear an easy path to re-election for Tom Suozzi, a Democrat, after he flipped a seat in a special election this month.

The Democratic map would also unwind changes proposed by the bipartisan commission that would have made the Hudson Valley district represented by Representative Marc Molinaro, a Republican, more conservative. The new district would look more like his current one, where President Biden won 52 percent of the vote in 2020.

Lawmakers in Albany were expected to vote to finalize the lines as soon as Wednesday. If enacted, they would govern elections through 2030.

“At this point, clarity of the lines becomes more important than perfection,” said Steve Israel, a former New York congressman who once led Democrats’ House campaign operation. “The map may be imperfect for Democrats, but it does give them a decent foundation to win back the House.”

Overall, Democratic officials predicted the map would probably yield 18 safe Democratic seats, six Republican seats and two tossups. When Mr. Suozzi is sworn in on Wednesday, the state will have 16 Democratic representatives and 10 Republicans.

The potential gains in New York would help Democrats nationally as they try to erase Republicans’ paper-thin House majority. But they would most likely not be enough to offset Republican’s expected pickups from a more aggressive new gerrymander in North Carolina.

One prominent House elections analyst, Dave Wasserman, called the New York map a “mild/moderate gerrymander.”

Two redistricting experts disagreed. Nicholas Stephanopoulos, a Harvard law professor who studies the issue, called it “pretty much a model of neutrality.” Samuel Wang, the director of the Princeton Gerrymandering Project, said that the map seemed fair and that his group would likely grade it an “A” or “B.”

Privately, Democrats close to Representative Hakeem Jeffries, the House minority leader involved in its drawing, sold the map as a targeted partisan improvement that they believed could withstand the kind of legal challenge that felled a more aggressive Democratic gerrymander in 2022. Mr. Jeffries declined to comment.

But other Democrats in New York and Washington denounced the proposal as a stinging disappointment, particularly after the party spent nearly two years remaking the state’s top court and fighting before judges for the chance to let Democratic supermajorities in Albany redo the current court-drawn lines.

Trump Administration: Live Updates

- Trump finds a purpose for his overtures to Kim Jong-un.
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- South Korea’s president gives Trump a crown evoking ancient history.

"It's hard not to look at these proposed maps and think, what was the point of all this?" said Evan Roth Smith, a Democratic consultant who works on House races in New York.
He pointed to Republican-led states like North Carolina that have enacted aggressive gerrymanders with little regard for public opinion.

"When we find ourselves in the same position, we wuss out," Mr. Roth Smith said. "It's a shame."

Republicans seemed to confirm his assessment. A day after loudly warning that they would sue to stop any map that was too partisan, party leaders were largely muted on Tuesday. Though no final decisions had been made, two senior Republicans involved in the process indicated they would be unlikely to file suit after seeing the new lines.

"We are in a blue state, and I think these could actually be worse," said William Barclay, the Republican leader in the Assembly. He added that the Republican congressional delegation was "not upset."

The New York Constitution bans drawing district lines to help incumbents or a particular party.

Democrats argued that all the changes they proposed had either been approved by the bipartisan redistricting commission or could be explained by attempts to reunite counties or demographic groups that are currently split between existing districts.

"We are confident," said Speaker Carl E. Heastie.

Still, there was little doubt which party the map would benefit.

By proposing lines that would stretch the Syracuse district further south to pick up Cortland, a Democratic town, the Legislature's map would change the district from one Mr. Biden won by 7.6 percentage points to one he would have won by 11.6 percentage points. Mr. Williams, the first-term Republican who represents the district, won by less than one point in 2022.

After Democrats spent $15 million to elect Mr. Suozzi on Long Island, the new lines would require far less money and energy to re-elect him this fall. The district would lose Massapequa, a Republican stronghold in Nassau County, in exchange for more moderate North Shore communities in Suffolk County, changing Mr. Biden's eight-point advantage in the district into a nearly 11-point one.

Mr. Molinaro's district is unlikely to get much easier for Democrats, but the proposed contours keep a lane open for their candidate, Josh Riley. The commission's proposed lines were so much less favorable that Mr. Riley had been considering running for the Syracuse seat instead, according to Democrats familiar with his thinking.

Democrats left two other Republican-held swing districts, Anthony D'Esposito's Fourth District and Mike Lawler's 17th District, virtually untouched. Democratic challengers there were furious, but party leaders said they were confident about their chances to flip both seats, where voters sided

with Mr. Biden by double digits.

“Today, residents of the 17th District woke up to the only news that matters: They’re still being represented by an anti-choice enabler of MAGA extremism,” Mondaire Jones, Mr. Lawler’s Democratic challenger, said, adding that he was “confident” he would win in November. Democrats declined to improve the Hudson Valley district of Representative Pat Ryan, an endangered Democrat, or to take another shot at converting Representative Nicole Malliotakis’s conservative Staten Island seat into a Democratic pickup opportunity.

Justin Brannan, a member of the New York City Council who is said to be exploring a run for Ms. Malliotakis’s seat, did little to hide his feelings. “When Republicans have the pen, they stab us in the neck,” he wrote on X.

Elsewhere in New York City, the Democrats’ map would largely copy changes proposed by the commission that have little partisan effect, but appeared to be designed to benefit some incumbents.

In one prominent case, Mr. Jeffries’s condo would be drawn back into his Brooklyn district.

In another closely scrutinized change, Representative Jamaal Bowman, a Democrat who represents parts of the Bronx and Westchester, stands to pick up Co-Op City, a predominantly Black community in the Bronx that he lost when the new lines were drawn in 2022. Mr. Bowman and Mr. Jeffries had argued that the removal of Co-Op City had split a community of interest and degraded the Black vote in Mr. Bowman’s 16th District.

Allies of Mr. Bowman were ready to claim it as a victory on Tuesday as he faces a bitter primary fight against George Latimer, the Westchester County executive. But it was not immediately clear that the change would be enough to meaningfully tip the primary race in either direction, since Mr. Bowman would lose largely Black portions of Wakefield in the Bronx.

Grace Ashford contributed reporting.

EXHIBIT G

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

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'

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.

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

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

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.

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

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

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

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.

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.

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.

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,

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."

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

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

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

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

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

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.

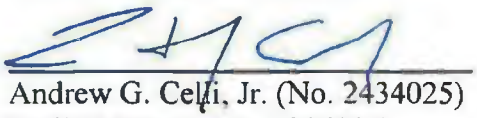
C. Issue a permanent injunction enjoining Defendants and their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in the 2024 Congressional Map, including an injunction barring Defendants from conducting any further congressional 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



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

ELIAS LAW GROUP LLP

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

**Pro hac vice application forthcoming*

EXHIBIT H

Exhibit B

John R. Alford
Expert Report

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

Michael Williams, et al. Petitioners, -against- Board of Elections of the State of New York, et al. Respondents.	Index No.: 164002/2025

EXPERT REPORT OF JOHN R. ALFORD, Ph.D.

December 8, 2025

Scope of Inquiry

I have been retained by counsel for Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, "Respondents"), as an expert to provide analysis related to the challenge to the 2024 version of the 11th Congressional District map for the State of New York. I have been asked by counsel to examine and respond primarily to the expert report provided by the petitioners' expert, Dr. Maxwell Palmer, and the associated data and materials provided in his disclosures. My rate of compensation in this matter is $800 per hour, and my compensation does not depend on the outcome of this lawsuit.

Qualifications

I am a tenured Full Professor of Political Science at Rice University. In my forty years at Rice University, I have taught courses on redistricting, elections, political representation, voting behavior, and statistical methods at both the undergraduate and graduate levels. I am the author of numerous scholarly works on political behavior. These works have appeared in academic journals such as the *American Journal of Political Science*, *Journal of Politics*, *Science*, *Annual Review of Political Science*, *Legislative Studies Quarterly*, *Annals of the American Academy of Political and Social Science*, *Political Psychology*, and *Political Research Quarterly*, and my research has been funded by granting institutions including The Nation Science Foundation.

Over the last thirty-five years, I have worked with numerous local governments on districting plans and on Voting Rights Act issues. I have previously provided expert reports and/or testified as an expert witness in voting rights and statistical issues in a variety of court cases in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Michigan, Mississippi, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. The details of my academic background, including all publications in the last ten years, and my work as an expert, including all cases in

which I have testified by deposition or at trial in the last four years, are covered in the attached CV (Appendix A).

Data and Sources

In preparing my report, I have reviewed the reports filed by the petitioners' experts Dr. Maxwell Palmer and Mr. William Cooper. In addition, I have relied on the various data and materials Dr. Palmer disclosed, and like Mr. Cooper have utilized Dave's Redistricting.

Methods

Dr. Palmer and I utilize the statistical technique of Ecological Inference (EI), developed originally by Professor Gary King.[1] EI is a more efficient technique intended specifically to improve on ecological regression (ER), the analysis technique previously used in VRA lawsuits to assess voter cohesion and polarization. In a nutshell, traditional ecological regression is a mathematical technique for estimating the single best-fitting straight line that could be drawn to describe the relationship between two variables in a scatter plot. Applied to voting rights cases, the logic of ecological regression analysis is to determine to what degree, if any, the vote for a candidate increases in a linear fashion as the concentration of voters of a given ethnicity in the precincts increases. In contrast, King's EI procedure utilizes a method of bounds analysis, combined with a more traditional statistical method, to improve on standard ecological regression. While the details are mathematically complex, the differences mostly center on utilizing deterministic bounds information contained in individual precinct results that would not be exploited in ecological regression. In addition, EI relaxes the linear constraint that a traditional ecological regression analysis would impose on the pattern across precincts. This combination in EI of relaxing some assumptions and utilizing more information typically yields a more efficient estimation of cohesion and polarization when compared to standard ecological regression,

[1] King, Gary. (1997). *A Solution to the Ecological Inference Problem*. Princeton Univ. Press.

although in many cases the results from EI are not substantively different than ER results for the same election data.

In its original form, King's EI could only be used to estimate voter support when there were two racial groups (e.g., White and Black) and two candidates; hence, the label "2 x 2 EI" often applied to the original form. Often there are more than two racial groups (e.g., White, Black, and Latino), or more than two possible vote choices. To accommodate these situations, one would have to run an independent 2 x 2 EI analysis for each race of interest and for each candidate of interest (and for the no voting category), an approach suggested by King and labeled the 'iterative' approach to "R x C" (Rows by Columns) estimation.

Shortly after suggesting the iterative method, King published a more advanced theoretical approach to R x C estimation using a Multinomial-Dirichlet Bayesian technique. A fully Bayesian implementation of this approach was viewed by King and his coauthors as computationally impractical, given that it could take as long as a week or more to run a single model on the computers available at that time, and they provided instead an implementation that relied on nonlinear least-squares.[2] Finally, in 2007 Lau and colleagues, taking advantage of advancements in computing technology, implemented the fully Bayesian estimation procedure outlined by King, et al., and provided a software module called "eiPack" that included the module 'ei.MD.bayes' that allowed for the estimation of the true Bayesian approach.[3] This is the implementation of EI R x C that I have relied on here.[4] Dr. Palmer relies on the same implementation of EI RxC that I used.

[2] *See* Rosen, Jiang, King, and Tanner., *Bayesian and Frequentist Inference for Ecological Inference: The* R x C *Case*, 55 STATISTICA NEERLANDICA 134 (2001).
[3] *See* Lau, Olivia, Ryan T. Moore, and Michael Kellermann. "eiPack: Ecological Inference and Higher-Dimension Data Management," R News, vol.7, no. 2 (October 2007).
[4] The EI analysis provided here was conducted by my Rice University colleague Prof. Randy Stevenson under my direction and control.

Introductory Discussion

My report will proceed with the assumption that the standard empirical analysis that I have presented in numerous voting rights cases over the last several decades relevant to the Gingles factors and the totality of the circumstances should also be useful here. Like many of the previous cases where I have provided an expert report and testimony, this case involves a challenge to a U.S. congressional district map, and my report here will prove analysis similar to that I provide previously in congressional casers. This ensures that the standard empirical analysis will be available for the Court to evaluate if the Court finds it applicable.

Background

The 11th New York Congressional District is an Anglo majority district being challenged by Black and Latino petitioners despite its relatively small minority population. Table 1 below reproduces the demographics for CD 11, and the adjacent CD 10, provided by Mr. Cooper in his report in this case. As the added 'Total' column makes clear, these are not entirely accurate numbers, as they should add to 100, but the substantive point is clear. The Black adult citizen population is below ten percent in both the existing 2024 district and the proposed illustrative district. Likewise, the Latino adult citizen population is only slightly over fifteen percent in both the existing 2024 district and the proposed illustrative district. Even combined the Black and Latino adult citizen population is less than a quarter of the district in either configuration. What is also apparent from Mr. Cooper's numbers is the fact that the illustrative district does not derive any asserted improvement in minority performance from an increase in minority population relative to the Anglo population. The increase in the combined Black and Latino population, at two percentage points, is very slight, and actually smaller than the increase in the Anglo share of the population.

Table 1: Existing and Illustrative CD 10 and 11 Comparison from Cooper

		CVAP From Cooper Figure 2 and 9					
	District	NH AP Black	Latino CVAP	NH AP Black + Latino	NH SR Asian	NH White	Total
2024	11	7.36%	15.35%	22.70%	16.38%	59.76%	98.85%
2024	10	7.65%	17.10%	24.76%	16.70%	56.75%	98.20%
Illustrative	11	8.42%	16.30%	24.71%	13.70%	62.31%	100.73%
Illustrative	10	6.39%	16.11%	22.50%	22.40%	53.30%	98.20%
Change in D11		1.06%	0.95%	2.01%	-2.68%	2.55%	

Dr. Palmer's Report

Dr. Palmer's report provides a Racial Polarized Voting (RPV) election analysis for CD 11 from 2017 to 2024 that includes 18 contested exogenous elections, as well as 2 CD 11 contests. Dr. Palmer also provides the results of his RPV analysis for the same 18 exogenous general elections in the geography of the illustrative 11th District. Dr. Palmer's Table 1 provides his EI estimates for the existing CD 11, and his Table 2 provides his EI estimates for the illustrative CD 11. Although Dr. Palmer does not provide any party labels, in every case in both tables, the preferred candidate of minority voters is the Democrat. Table 2 below reproduces the EI estimates from Dr. Palmer's Table 1 for the existing CD 11, and Table 3 below reproduces the EI estimates from Dr. Palmer's Table 2 for the illustrative CD 11. Comparing the two tables provides some insight into what the changes are between these two forms of CD 11.

Table 2: Existing CD 11 from Palmer Table 1

Year	Office	Black	White	Hispanic	Asian
2017	City Comptroller	91.1%	34.8%	87.1%	50.9%
2017	Mayor	89.1%	13.5%	79.8%	51.0%
2017	Public Advocate	88.8%	26.9%	83.0%	47.5%
2018	Attorney General	94.1%	35.9%	92.6%	79.2%
2018	Governor	93.5%	36.9%	92.0%	77.5%
2018	State Comptroller	94.7%	39.7%	93.6%	80.6%
2018	U.S. Senate	94.5%	39.7%	92.2%	74.8%
2019	Public Advocate	90.2%	18.7%	86.9%	65.1%
2020	President	93.1%	27.0%	90.0%	73.5%
2021	City Comptroller	86.5%	23.7%	77.8%	34.0%
2021	Mayor	87.3%	20.5%	82.1%	43.5%
2021	Public Advocate	88.2%	21.0%	81.9%	40.7%
2022	Attorney General	90.5%	22.8%	89.9%	60.4%
2022	Governor	89.8%	22.0%	89.3%	53.2%
2022	State Comptroller	89.5%	25.6%	90.4%	65.5%
2022	U.S. House	90.4%	24.1%	89.1%	57.5%
2022	U.S. Senate	91.0%	26.4%	92.9%	64.3%
2024	President	88.7%	22.2%	88.1%	49.0%
2024	U.S. House	88.7%	20.0%	87.7%	51.6%
2024	U.S. Senate	89.8%	25.4%	88.4%	58.8%
	Average	**90.5%**	**26.3%**	**87.7%**	**58.9%**

Table 3: Illustrative CD 11 from Palmer Table 2

Year	Office	Black	White	Hispanic	Asian
2017	City Comptroller	89.5%	44.3%	87.1%	80.8%
2017	Mayor	87.8%	24.5%	79.3%	68.5%
2017	Public Advocate	86.9%	37.9%	80.1%	74.2%
2018	Attorney General	93.5%	51.2%	90.5%	88.3%
2018	Governor	92.1%	51.2%	90.4%	87.0%
2018	State Comptroller	93.4%	53.6%	92.0%	88.2%
2018	U.S. Senate	93.5%	55.3%	88.8%	89.1%
2019	Public Advocate	89.5%	37.7%	83.5%	78.4%
2020	President	90.3%	43.5%	83.3%	86.2%
2021	City Comptroller	83.7%	35.5%	71.7%	69.4%
2021	Mayor	79.7%	32.4%	80.4%	72.1%
2021	Public Advocate	85.9%	32.8%	77.1%	71.3%
2022	Attorney General	86.3%	41.1%	83.1%	77.3%
2022	Governor	84.5%	39.6%	82.5%	81.1%
2022	State Comptroller	85.9%	43.1%	82.5%	80.4%
2022	U.S. Senate	87.3%	44.3%	87.3%	80.2%
2024	President	84.6%	41.2%	77.7%	73.8%
2024	U.S. Senate	88.3%	42.8%	78.6%	79.8%
	Average	**87.9%**	**41.8%**	**83.1%**	**79.2%**
	Average Existing CD 11 (without U.S. House)	**90.6%**	**26.8%**	**87.7%**	**59.4%**
	Difference Illustrative minus Existing	**-2.6%**	**15.0%**	**-4.6%**	**19.8%**

If we compute the average vote share for each of the racial/ethnic voter groups in the 18 areawide contests in his Table 1 we can see that Black voters in existing CD 11gave an average of 90.6% of their vote to their preferred candidate, compared to an average support among Black voters of 87.9% for the illustrative district in Table 2. Similarly, we can see that Hispanic voters in existing CD 11 gave an average of 87.7% of their vote to their preferred candidate, compared to an average support among Hispanic voters of 83.1% for the illustrative district in Table 2. In other words, the slight increase in the number of Black and Hispanic voters in the illustrative district is at least partially offset by the decline in cohesion among Black and Hispanic voters in the illustrative district. What then accounts for the improved performance for minority preferred candidates (Democrats) that Dr. Palmer reports in the illustrative district, especially as the proportion of White voters is actually higher in the illustrative district? Based on Dr. Palmer's Table 1, White voters in existing CD 11 gave an average of 23.8% of their vote to the Democratic candidate, compared to an average support among White voters of 41.8% for the Democratic candidates in the illustrative district in Table 2. In other words, the improved performance for minority preferred candidates that Dr. Palmer reports in the illustrative district comes largely from swapping White voters between District 11 and District 10 to net more Democratic leaning voters in the illustrative District 11, and to a lesser extent from making a similar swap of Asian voters.

Party Versus Race

Dr. Palmer describes his tables as reporting the estimated levels of support provided by racial and ethnic voter groups for the Black and Hispanic preferred candidate in each contest. While the tables do not indicate the party or the name of these candidates, in every one of his 20 contests the preferred candidate of Black and Hispanic votes is the Democratic candidate, by very wide margins. Similarly, the preferred candidate of White voters is typically the Republican candidate, although here, there is a substantial level of White crossover vote for the Democratic candidate.

I began my analysis with an attempt to replicate the results of the Ecological Inference (EI) RxC analysis provided by Dr. Palmer in this case using the materials Dr. Palmer provided in his disclosure. The replication results do not differ substantively from those reported by Dr. Palmer. To avoid confusion over whether my conclusions detailed below depend in any way on methodological or data differences, I am basing my comments below on Dr. Palmer's results.

Table 4 below reproduces Dr. Palmer's EI results from his Table 1 for CD 11, but groups the contests into the six contests where the Democratic candidate was Black and the 13 Contests where the Democratic candidate was a non-Hispanic White. In a single contest at the bottom of the table the Democratic candidate was Asian. Looking first at the estimated vote shares of Black voters, Black voter support of Black Democratic candidates, at 89.6%, is very similar to Black voter support of non-Hispanic White Democratic candidates at 90.9%. Turning to the estimated vote shares of Hispanic voters, Hispanic voter support of Black Democratic candidates, at 86.3%, is very similar to Hispanic voter support of non-Hispanic White Democratic candidates at 88.5%. Likewise, White voter support of Black Democratic candidates, at 24.9%, is very similar to White voter support of non-Hispanic White Democratic candidates at 27.6%. All three voter groups show very slightly higher support for White Democratic candidates than they do for Black Democratic candidates but given the credible intervals for these estimates are typically two or more percentage points, these differences are not of any substantive importance.

Table 4: Palmer's Table 1 EI Estimates Organized by Race of Candidate

			EI Estimate of Vote Share by Voter Race/Ethnicity				
Year	**Office**	**Race of Dem. Candidate**	**Black**	**White**	**Hispanic**	**Asian**	**Other**
2017	Public Advocate	Black	88.8%	26.9%	83.0%	47.5%	67.0%
2018	Attorney General	Black	94.1%	35.9%	92.6%	79.2%	75.3%
2021	Mayor	Black	87.3%	20.5%	82.1%	43.5%	54.6%
2021	Public Advocate	Black	88.2%	21.0%	81.9%	40.7%	48.2%
2022	Attorney General	Black	90.5%	22.8%	89.9%	60.4%	75.7%
2024	President	Black	88.7%	22.2%	88.1%	49.0%	65.3%
	Average for Black Democratic Candidates		**89.6%**	**24.9%**	**86.3%**	**53.4%**	**64.4%**
2017	City Comptroller	White	91.1%	34.8%	87.1%	50.9%	67.5%
2017	Mayor	White	89.1%	13.5%	79.8%	51.0%	61.0%
2018	Governor	White	93.5%	36.9%	92.0%	77.5%	73.3%
2018	State Comptroller	White	94.7%	39.7%	93.6%	80.6%	77.4%
2018	U.S. Senate	White	94.5%	39.7%	92.2%	74.8%	83.0%
2020	President	White	93.1%	27.0%	90.0%	73.5%	73.4%
2021	City Comptroller	White	86.5%	23.7%	77.8%	34.0%	49.2%
2022	Governor	White	89.8%	22.0%	89.3%	53.2%	77.5%
2022	State Comptroller	White	89.5%	25.6%	90.4%	65.5%	73.6%
2022	U.S. House	White	90.4%	24.1%	89.1%	57.5%	78.8%
2022	U.S. Senate	White	91.0%	26.4%	92.9%	64.3%	75.3%
2024	U.S. House	White	88.7%	20.0%	87.7%	51.6%	60.0%
2024	U.S. Senate	White	89.8%	25.4%	88.4%	58.8%	66.3%
	Average for White Democratic Candidates		**90.9%**	**27.6%**	**88.5%**	**61.0%**	**70.5%**
	Difference		**1.3%**	**2.7%**	**2.2%**	**7.6%**	**6.1%**
2019	Public Advocate	Asian	90.2%	18.7%	86.9%	65.1%	70.8%

In all of the contests, Black voters are highly supportive of the Democratic candidate and White voters are typically giving majority support to the Republican candidate. This is consistent with a polarized response to the party affiliation of the candidates as indicated on the ballot. In contrast to the strong impact of candidate party affiliation, the race of the candidates does not appear to have a polarizing impact on vote choice. With vote shares around 90% Black voters are indeed showing a very one-sided preference, but this preference is for Democratic candidates, not candidates of a particular race. Similarly, with vote shares in the high 80% range, Hispanic voters are indeed showing a very one-sided preference, but this preference is again for Democratic candidates, not candidates of a particular race. And again, with vote shares in the mid 70% range, White voters are indeed showing a clear preference, but this preference is for Republican candidates, not candidates of a particular race. Across these elections we see a pattern of polarized

voting with Blacks and Hispanic favoring Democratic candidates and White voters preferring their Republican opponents, but no indication of any significant difference in voter behavior based on the race of the Democratic candidate.

District Performance

Dr. Palmer comments on the performance of various adopted and demonstration districts. As noted above, all of the candidates preferred by Black and Hispanic voters are also the Democratic candidates in the general elections. As such, the assessment of the election performance of a district is simply the expected Democratic share of the general election vote in the district. As such, as Dr. Palmer's Table 3 indicates, in its current form CD 11 leans Republican, but in a good year for Democrats, like President Trump's midterm in 2018, Democrats can carry the district as they did in all four of the statewide contests. Illustrative CD 11 leans Democratic, but in a good year for Republicans, like 2021, Republicans can carry the district, as they did in all three districtwide contests.

The other impact of the fact that it is the party of the candidates, and not their race or ethnicity, that is associated with their levels of support, is that the number of minority candidates that are elected will not depend simply on the demographics of the voters. Instead, the number of minority candidates elected in a district will vary depending on the party affiliation of the minority candidates in interaction with the majority vote direction. Table 5 below illustrates this for existing CD 11 and illustrative CD 11 using the performance calculations from Dr. Palmer's Table 3.

Table 5: District Performance from Palmer's Table 3 with Candidate Race/Ethnicity

		Democratic Vote Share			
Year	**Office**	**Existing CD 11**		**Illustrative CD 11**	
2017	City Comptroller	45.70%	R-Black	55.80%	D-White
2017	Mayor	28.10%	R-Hisp	39.80%	R-Hisp
2017	Public Advocate	39.50%	R-Hisp	50.40%	D-Black
2018	Attorney General	52.50%	D-Black	64.50%	D-Black
2018	Governor	52.80%	D-White	64.20%	D-White
2018	State Comptroller	55.00%	D-White	66.00%	D-White
2018	U.S. Senator	55.40%	D-White	67.60%	D-White
2019	Public Advocate	38.50%	R-White	52.70%	D-Black
2020	President	46.10%	R-White	58.60%	D-White
2021	City Comptroller	34.10%	R-Hisp	46.10%	R-Hisp
2021	Mayor	31.50%	R-White	44.00%	R-White
2021	Public Advocate	32.50%	R-Asian	44.40%	R-Asian
2022	Attorney General	37.50%	R-White	51.90%	D-Black
2022	Congress	38.20%	R-Hisp	—	
2022	Governor	36.30%	R-White	51.20%	D-White
2022	State Comptroller	39.50%	R-Hisp	53.30%	D-White
2022	U.S. Senator	39.90%	R-Black	54.40%	D-White
2024	Congress	36.00%	R-Hisp	—	
2024	President	37.60%	R-White	52.70%	D-Black
2024	U.S. Senator	40.90%	R-White	54.40%	D-White
Number of winners by Race/Ethnicity		**Black**	**3**	**Black**	**5**
		Hisp	**6**	**Hisp**	**2**
		Asian	**1**	**Asian**	**1**

As Table 5 indicates, the result of the reconstructed election results that Dr. Palmer provides in his Table 3 in the existing CD 11 would be three Black and six Hispanic candidates elected. In illustrative CD 11, the result would be five Black and two Hispanic candidates elected. This in part reflects the fact that of the 17 minority major party candidates in these 20 election contests 10 have been Republicans (3 Black, 6 Hispanic, and 1 Asian), and 7 have been Democrats (7 Black).

Summary Conclusions

This is an unusual case. Petitioners do not claim that it is possible to create a combined Black and Hispanic majority district, or that the configuration of the 11th District divides any larger, even if sub-majority, natural community of Black and Hispanic voters. As discussed above the illustrative district does not alter the relative minority share of the district population, as the slight increase Black and Hispanic share of the district is actually smaller than the slight increase in the

Anglo population. Instead, the illustrative district shifts the political balance from leaning Republican to leaning Democrat by swapping out Republican voters for Democratic voters in the Anglo and Asian population.

This focus on party voting patterns is no accident. Black and Hispanic voters in the 11th District prefer Democratic candidates. Anglo voters in the 11th District prefer Republican candidates. The partisan nature of this polarization clarifies the context for the attempt in the illustrative district to alter the configuration of the district to achieve a Democratic majority despite actually increasing the Anglo CVAP share of the district population.

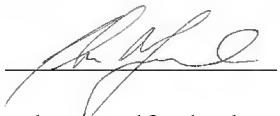
This case is also unusual in that the existing 11th district is a part of a statewide plan that appears to provide substantial minority representation both in the New York City area and in the state as a whole. The New York City area currently includes 17 congressional districts. The 13 congressional districts (the 3rd through the 10th and the 12th through 16th) at the center are mostly securely Democratic districts, all of which are currently represented by Democrats. At the edges are four majority Anglo districts that are currently represented by a Republican - the 1st and 2nd, at the east end of Long Island, the 11th to the south, anchored by Staten Island, and the 17th, to the north in the lower Hudson Valley, that leans Democratic but is currently represented by a Republican. Taken together, roughly 75% of these 17 congressional districts are represented by Democrats and the 17 districts have a citizen voting age population that is about 40% combined Black and Hispanic. Of the remaining 9 congressional districts in the state, 6 (67%) are represented by Democrats and have a total citizen age population that is below 15% combined Black and Hispanic. As such, the current configuration of congressional districts in the New York City area, and in the state as a whole, provides a more than proportional number of districts that can usually elect the preferred candidate of Black and Hispanic voters.

The case is also unusual in that the challenged district is not itself a non-compact gerrymander, nor does the statewide plan appear problematic. In fact, the Princeton Gerrymandering Project gives the map an 'A' overall, and a 'A' for partisan fairness and

geographic features including compactness and county splits.[5] The current 11th District is a compact district with a combined Black and Hispanic CVAP of less than 25% that leans Republican and currently is represented by a Hispanic Republican. The illustrative 11th District detailed in Mr. Cooper's report is a less compact district that would also have a combined Black and Hispanic CVAP of less than 25%, but that would lean Democratic because Anglo voters in the existing 11th voted roughly 75% Republican, compared to a less than 60% Republican vote share for Anglo voters in the illustrative 11th.

Note that the existing 11th is not unique, with no lower bound on the proportion of minority voters needed, any Republican leaning district with any minority population, which is effectively any Republican district, is subject to the same legal liability. For example, the Black or Hispanic voters in the 1st and 2nd districts could sue to compel both districts to be reconfigured to achieve a pro-Democratic lean by reaching further west into more Democratic voting areas, and the 17th could be forced to be reconfigured to reach down the Hudson River to incorporate more Democratic voters to the south.

December 8, 2025.



John R. Alford, Ph.D.

[5] Princeton Gerrymandering Project found at https://gerrymander.princeton.edu/

Appendix A

John R. Alford

Curriculum Vitae
December 2025

Dept. of Political Science
Rice University - MS-24
P.O. Box 1892
Houston, Texas 77251-1892
713-348-3364
jra@rice.edu

Employment:

Full Professor, Rice University, 2015 to present.
Associate Professor, Rice University, 1985-2015.
Assistant Professor, University of Georgia, 1981-1985.
Instructor, Oakland University, 1980-1981.
Teaching-Research Fellow, University of Iowa, 1977-1980.
Research Associate, Institute for Urban Studies, Houston, Texas, 1976-1977.

Education:

Ph.D., University of Iowa, Political Science, 1981.
M.A., University of Iowa, Political Science, 1980.
M.P.A., University of Houston, Public Administration, 1977.
B.S., University of Houston, Political Science, 1975.

Books:

Predisposed: Liberals, Conservatives, and the Biology of Political Differences. New York: Routledge, 2013. Co-authors, John R. Hibbing and Kevin B. Smith. 2nd Edition 2024.

Articles:

"Political Attitudes Vary with Detection of Androstenone." With Kevin Smith, Amanda Friesen, and Mike Gruszczynski. **Politics and the Life Sciences**. (Spring, 2020).

"Intuitive ethics and political orientations: Testing moral foundations as a theory of political ideology." with Kevin Smith, John Hibbing, Nicholas Martin, and Peter Hatemi. **American Journal of Political Science**. (April, 2017).

"The Genetic and Environmental Foundations of Political, Psychological, Social, and Economic Behaviors: A Panel Study of Twins and Families." with Peter Hatemi, Kevin Smith, and John Hibbing. **Twin Research and Human Genetics**. (May, 2015.)

"Liberals and conservatives: Non-convertible currencies." With John R. Hibbing and Kevin B. Smith. **Behavioral and Brain Sciences** (January, 2015).

"Non-Political Images Evoke Neural Predictors Of Political Ideology." with Woo-Young Ahn, Kenneth T. Kishida, Xiaosi Gu, Terry Lohrenz, Ann Harvey, Kevin Smith, Gideon Yaffe, John Hibbing, Peter Dayan, P. Read Montague. **Current Biology**. (November, 2014).

"Cortisol and Politics: Variance in Voting Behavior is Predicted by Baseline Cortisol Levels." with Jeffrey French, Kevin Smith, Adam Guck, Andrew Birnie, and John Hibbing. **Physiology & Behavior**. (June, 2014).

"Differences in Negativity Bias Underlie Variations in Political Ideology." with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

"Negativity bias and political preferences: A response to commentators Response." with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

"Genetic and Environmental Transmission of Political Orientations." with Carolyn L. Funk, Matthew Hibbing, Kevin B. Smith, Nicholas R. Eaton, Robert F. Krueger, Lindon J. Eaves, John R. Hibbing. **Political Psychology**, (December, 2013).

"Biology, Ideology, and Epistemology: How Do We Know Political Attitudes Are Inherited and Why Should We Care?" with Kevin Smith, Peter K. Hatemi, Lindon J. Eaves, Carolyn Funk, and John R. Hibbing. **American Journal of Political Science**. (January, 2012)

"Disgust Sensitivity and the Neurophysiology of Left-Right Political Orientations." with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **PlosONE**, (October, 2011).

"Linking Genetics and Political Attitudes: Re-Conceptualizing Political Ideology." with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **Political Psychology**, (June, 2011).

"The Politics of Mate Choice." with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Journal of Politics**, (March, 2011).

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" with Peter Hatemi, John Hibbing, Sarah Medland, Matthew Keller, Kevin Smith, Nicholas Martin, and Lindon Eaves, **American Journal of Political Science**, (July, 2010).

"The Ultimate Source of Political Opinions: Genes and the Environment" with John R. Hibbing in **Understanding Public Opinion**, 3rd Edition eds. Barbara Norrander and Clyde Wilcox, Washington D.C.: CQ Press, (2010).

"Is There a 'Party' in your Genes" with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Political Research Quarterly**, (September, 2009).

"Twin Studies, Molecular Genetics, Politics, and Tolerance: A Response to Beckwith and Morris" with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (December, 2008). This is a solicited response to a critique of our 2005 APSR article "Are Political Orientations Genetically Transmitted?"

"Political Attitudes Vary with Physiological Traits" with Douglas R. Oxley, Kevin B. Smith, Matthew V. Hibbing, Jennifer L. Miller, Mario Scalora, Peter K. Hatemi, and John R. Hibbing, **Science**, (September 19, 2008).

"The New Empirical Biopolitics" with John R. Hibbing, **Annual Review of Political Science**, (June, 2008).

"Beyond Liberals and Conservatives to Political Genotypes and Phenotypes" with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (June, 2008). This is a solicited response to a critique of our 2005 APSR article "Are Political Orientations Genetically Transmitted?"

"Personal, Interpersonal, and Political Temperaments" with John R. Hibbing, **Annals of the American Academy of Political and Social Science**, (November, 2007).

"Is Politics in our Genes?" with John R. Hibbing, **Tidsskriftet Politik**, (February, 2007).

"Biology and Rational Choice" with John R. Hibbing, **The Political Economist**, (Fall, 2005)

"Are Political Orientations Genetically Transmitted?" with John R. Hibbing and Carolyn Funk, **American Political Science Review**, (May, 2005). (The main findings table from this article has been reprinted in two college level text books - Psychology, 9th ed. and Invitation to Psychology 4th ed. both by Wade and Tavris, Prentice Hall, 2007).

"The Origin of Politics: An Evolutionary Theory of Political Behavior" with John R. Hibbing, **Perspectives on Politics**, (December, 2004).

"Accepting Authoritative Decisions: Humans as Wary Cooperators" with John R. Hibbing, **American Journal of Political Science**, (January, 2004).

"Electoral Convergence of the Two Houses of Congress" with John R. Hibbing, in **The Exceptional Senate**, ed. Bruce Oppenheimer, Columbus: Ohio State University Press, (2002).

"We're All in this Together: The Decline of Trust in Government, 1958-1996." in **What is it About Government that Americans Dislike?**, eds. John Hibbing and Beth Theiss-Morse, Cambridge: Cambridge University Press, (2001).

"The 2000 Census and the New Redistricting," **Texas State Bar Association School Law Section Newsletter**, (July, 2000).

"Overdraft: The Political Cost of Congressional Malfeasance" with Holly Teeters, Dan Ward, and Rick Wilson, **Journal of Politics** (August, 1994).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 5th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1993).

"The 1990 Congressional Election Results and the Fallacy that They Embodied an Anti-Incumbent Mood" with John R. Hibbing, **PS** 25 (June, 1992).

"Constituency Population and Representation in the United States Senate" with John R. Hibbing. **Legislative Studies Quarterly**, (November, 1990).

"Editors' Introduction: Electing the U.S. Senate" with Bruce I. Oppenheimer. **Legislative Studies Quarterly**, (November, 1990).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 4th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1988). Reprinted in The Congress of the United States, 1789-1989, ed. Joel Silby, Carlson Publishing Inc., (1991), and in The Quest for Office, eds. Wayne and Wilcox, St. Martins Press, (1991).

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge. **The Western Political Quarterly** (December, 1986).

"Partisanship and Voting" with James Campbell, Mary Munro, and Bruce Campbell, in **Research in Micropolitics. Volume 1 - Voting Behavior**. Samuel Long, ed. JAI Press, (1986).

"Economic Conditions and Individual Vote in the Federal Republic of Germany" with Jerome S. Legge. **Journal of Politics** (November, 1984).

"Television Markets and Congressional Elections" with James Campbell and Keith Henry. **Legislative Studies Quarterly** (November, 1984).

"Economic Conditions and the Forgotten Side of Congress: A Foray into U.S. Senate Elections" with John R. Hibbing, **British Journal of Political Science** (October, 1982).

"Increased Incumbency Advantage in the House" with John R. Hibbing, **Journal of Politics** (November, 1981). Reprinted in The Congress of the United States, 1789-1989, Carlson Publishing Inc., (1991).

"The Electoral Impact of Economic Conditions: Who is Held Responsible?" with John R. Hibbing, **American Journal of Political Science** (August, 1981).

"Comment on Increased Incumbency Advantage" with John R. Hibbing, Refereed communication: **American Political Science Review** (March, 1981).

"Can Government Regulate Safety? The Coal Mine Example" with Michael Lewis-Beck, **American Political Science Review** (September, 1980).

Awards and Honors:

CQ Press Award - 1988, honoring the outstanding paper in legislative politics presented at the 1987 Annual Meeting of the American Political Science Association. Awarded for "The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing.

Research Grants:

National Science Foundation, 2009-2011, "Identifying the Biological Influences on Political Temperaments", with John Hibbing, Kevin Smith, Kim Espy, Nicolas Martin and Read Montague. This is a collaborative project involving Rice, University of Nebraska, Baylor College of Medicine, and Queensland Institute for Medical Research.

National Science Foundation, 2007-2010, "Genes and Politics: Providing the Necessary Data", with John Hibbing, Kevin Smith, and Lindon Eaves. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2007-2010, "Investigating the Genetic Basis of Economic Behavior", with John Hibbing and Kevin Smith. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the Queensland Institute of Medical Research.

Rice University Faculty Initiatives Fund, 2007-2009, "The Biological Substrates of Political Behavior". This is in assistance of a collaborative project involving Rice, Baylor College of Medicine, Queensland Institute of Medical Research, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2004-2006, "Decision-Making on Behalf of Others", with John Hibbing. This is a collaborative project involving Rice and the University of Nebraska.

National Science Foundation, 2001-2002, dissertation grant for Kevin Arceneaux, "Doctoral Dissertation Research in Political Science: Voting Behavior in the Context of U.S. Federalism."

National Science Foundation, 2000-2001, dissertation grant for Stacy Ulbig, "Doctoral Dissertation Research in Political Science: Sub-national Contextual Influences on Political Trust."

National Science Foundation, 1999-2000, dissertation grant for Richard Engstrom, "Doctoral Dissertation Research in Political Science: Electoral District Structure and Political Behavior."

Rice University Research Grant, 1985, Recent Trends in British Parliamentary Elections.

Faculty Research Grants Program, University of Georgia, Summer, 1982. Impact of Media Structure on Congressional Elections, with James Campbell.

Papers Presented:

"The Physiological Basis of Political Temperaments" 6th European Consortium for Political Research General Conference, Reykjavik, Iceland (2011), with Kevin Smith, and John Hibbing.

"Identifying the Biological Influences on Political Temperaments" National Science Foundation Annual Human Social Dynamics Meeting (2010), with John Hibbing, Kimberly Espy, Nicholas Martin, Read Montague, and Kevin B. Smith.

"Political Orientations May Be Related to Detection of the Odor of Androstenone" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, Amanda Balzer, Michael Gruszczynski, Carly M. Jacobs, and John Hibbing.

"Toward a Modern View of Political Man: Genetic and Environmental Transmission of Political Orientations from Attitude Intensity to Political Participation" Annual meeting of the American Political Science Association, Washington, DC (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Genetic and Environmental Transmission of Political Involvement from Attitude Intensity to Political Participation" Annual meeting of the International Society for Political Psychology, San Francisco, CA (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Are Violations of the EEA Relevant to Political Attitudes and Behaviors?" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, and John Hibbing.

"The Neural Basis of Representation" Annual meeting of the American Political Science Association, Toronto, Canada (2009), with John Hibbing.

"Genetic and Environmental Transmission of Value Orientations" Annual meeting of the American Political Science Association, Toronto, Canada (2009), with Carolyn Funk, Kevin Smith, Matthew Hibbing, Pete Hatemi, Robert Krueger, Lindon Eaves, and John Hibbing.

"The Genetic Heritability of Political Orientations: A New Twin Study of Political Attitudes" Annual Meeting of the International Society for Political Psychology, Dublin, Ireland (2009), with John Hibbing, Cary Funk, Kevin Smith, and Peter K Hatemi.

"The Heritability of Value Orientations" Annual meeting of the Behavior Genetics Association, Minneapolis, MN (2009), with Kevin Smith, John Hibbing, Carolyn Funk, Robert Krueger, Peter Hatemi, and Lindon Eaves.

"The Ick Factor: Disgust Sensitivity as a Predictor of Political Attitudes" Annual meeting of the Midwest Political Science Association, Chicago, IL (2009), with Kevin Smith, Douglas Oxley Matthew Hibbing, and John Hibbing.

"The Ideological Animal: The Origins and Implications of Ideology" Annual meeting of the American Political Science Association, Boston, MA (2008), with Kevin Smith, Matthew Hibbing, Douglas Oxley, and John Hibbing.

"The Physiological Differences of Liberals and Conservatives" Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Kevin Smith, Douglas Oxley, and John Hibbing.

"Looking for Political Genes: The Influence of Serotonin on Political and Social Values" Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Peter Hatemi, Sarah Medland, John Hibbing, and Nicholas Martin.

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" Annual meeting of the American Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Matthew Keller, Nicholas Martin, Sarah Medland, and Lindon Eaves.

"Factorial Association: A generalization of the Fulker between-within model to the multivariate case" Annual meeting of the Behavior Genetics Association, Amsterdam, The Netherlands (2007), with Sarah Medland, Peter Hatemi, John Hibbing, William Coventry, Nicholas Martin, and Michael Neale.

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" Annual meeting of the Midwest Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Nicholas Martin, and Lindon Eaves.

"Getting from Genes to Politics: The Connecting Role of Emotion-Reading Capability" Annual Meeting of the International Society for Political Psychology, Portland, OR, (2007.), with John Hibbing.

"The Neurological Basis of Representative Democracy." Hendricks Conference on Political Behavior, Lincoln, NE (2006), with John Hibbing.

"The Neural Basis of Representative Democracy" Annual meeting of the American Political Science Association, Philadelphia, PA (2006), with John Hibbing.

"How are Political Orientations Genetically Transmitted? A Research Agenda" Annual meeting of the Midwest Political Science Association, Chicago Illinois (2006), with John Hibbing.

"The Politics of Mate Choice" Annual meeting of the Southern Political Science Association, Atlanta, GA (2006), with John Hibbing.

"The Challenge Evolutionary Biology Poses for Rational Choice" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing and Kevin Smith.

"Decision Making on Behalf of Others" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the Midwest Political Science Association, Chicago Illinois (2005), with John Hibbing and Carolyn Funk.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the American Political Science Association, Chicago Illinois (2004), with John Hibbing and Carolyn Funk.

"Accepting Authoritative Decisions: Humans as Wary Cooperators" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2002), with John Hibbing

"Can We Trust the NES Trust Measure?" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2001), with Stacy Ulbig.

"The Impact of Organizational Structure on the Production of Social Capital Among Group Members" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Allison Rinden.

"Isolating the Origins of Incumbency Advantage: An Analysis of House Primaries, 1956-1998" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Kevin Arceneaux.

"The Electorally Indistinct Senate," Norman Thomas Conference on Senate Exceptionalism, Vanderbilt University; Nashville, Tennessee; October (1999), with John R. Hibbing.

"Interest Group Participation and Social Capital" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (1999), with Allison Rinden.

"We're All in this Together: The Decline of Trust in Government, 1958-1996." The Hendricks Symposium, University of Nebraska, Lincoln. (1998)

"Constituency Population and Representation in the United States Senate," Electing the Senate; Houston, Texas; December (1989), with John R. Hibbing.

"The Disparate Electoral Security of House and Senate Incumbents," American Political Science Association Annual Meetings; Atlanta, Georgia; September (1989), with John R. Hibbing.

"Partisan and Incumbent Advantage in House Elections," Annual Meeting of the Southern Political Science Association (1987), with David W. Brady.

"Personal and Party Advantage in U.S. House Elections, 1846-1986" with David W. Brady, 1987 Social Science History Association Meetings.

"The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing, 1987 Annual Meeting of the American Political Science Association.

"A Comparative Analysis of Economic Voting" with Jerome Legge, 1985 Annual Meeting of the American Political Science Association.

"An Analysis of Economic Conditions and the Individual Vote in Great Britain, 1964-1979" with Jerome Legge, 1985 Annual Meeting of the Western Political Science Association.

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge, 1985 Annual Meeting of the Southwestern Social Science Association.

"Economic Conditions and the Individual Vote in the Federal Republic of Germany" with Jerome S. Legge, 1984 Annual Meeting of the Southern Political Science Association.

"The Conditions Required for Economic Issue Voting" with John R. Hibbing, 1984 Annual Meeting of the Midwest Political Science Association.

"Incumbency Advantage in Senate Elections," 1983 Annual Meeting of the Midwest Political Science Association.

"Television Markets and Congressional Elections: The Impact of Market/District Congruence" with James Campbell and Keith Henry, 1982 Annual Meeting of the Southern Political Science Association.

"Economic Conditions and Senate Elections" with John R. Hibbing, 1982 Annual Meeting of the Midwest Political Science Association. "Pocketbook Voting: Economic Conditions and Individual Level Voting," 1982 Annual Meeting of the American Political Science Association.

"Increased Incumbency Advantage in the House," with John R. Hibbing, 1981 Annual Meeting of the Midwest Political Science Association.

Other Conference Participation:

Roundtable Participant – Closing Round-table on Biopolitics; 2016 UC Merced Conference on Bio-Politics and Political Psychology, Merced, CA.

Roundtable Participant "Genes, Brains, and Core Political Orientations" 2008 Annual Meeting of the Southwestern Political Science Association, Las Vegas.

Roundtable Participant "Politics in the Laboratory" 2007 Annual Meeting of the Southern Political Science Association, New Orleans.

Short Course Lecturer, "What Neuroscience has to Offer Political Science" 2006 Annual Meeting of the American Political Science Association.

Panel chair and discussant, "Neuro-scientific Advances in the Study of Political Science" 2006 Annual Meeting of the American Political Science Association.

Presentation, "The Twin Study Approach to Assessing Genetic Influences on Political Behavior" Rice Conference on New Methods for Understanding Political Behavior, 2005.

Panel discussant, "The Political Consequences of Redistricting," 2002 Annual Meeting of the American Political Science Association.

Panel discussant, "Race and Redistricting," 1999 Annual Meeting of the Midwest Political Science Association.

Invited participant, "Roundtable on Public Dissatisfaction with American Political Institutions", 1998 Annual Meeting of the Southwestern Social Science Association.

Presentation, "Redistricting in the '90s," Texas Economic and Demographic Association, 1997.

Panel chair, "Congressional Elections," 1992 Annual Meeting of the Southern Political Science Association.

Panel discussant, "Incumbency and Congressional Elections," 1992 Annual Meeting of the American Political Science Association.

Panel chair, "Issues in Legislative Elections," 1991 Annual Meeting of the Midwest Political Science Association.

Panel chair, "Economic Attitudes and Public Policy in Europe," 1990 Annual Meeting of the Southern Political Science Association

Panel discussant, "Retrospective Voting in U.S. Elections," 1990 Annual Meeting of the Midwest Political Science Association.

Co-convener, with Bruce Oppenheimer, of Electing the Senate, a national conference on the NES 1988 Senate Election Study. Funded by the Rice Institute for Policy Analysis, the University of Houston Center for Public Policy, and the National Science Foundation, Houston, Texas, December, 1989.

Invited participant, Understanding Congress: A Bicentennial Research Conference, Washington, D.C., February, 1989.

Invited participant--Hendricks Symposium on the United States Senate, University of Nebraska, Lincoln, Nebraska, October, 1988

Invited participant--Conference on the History of Congress, Stanford University, Stanford, California, June, 1988.

Invited participant, "Roundtable on Partisan Realignment in the 1980's", 1987 Annual Meeting of the Southern Political Science Association.

Professional Activities:

Other Universities:

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2018.

Invited Speaker, Annual Allman Family Lecture, Dedman College Interdisciplinary Institute, Southern Methodist University, 2016.

Invited Speaker, Annual Lecture, Psi Sigma Alpha – Political Science Dept., Oklahoma State University, 2015.

Invited Lecturer, Department of Political Science, Vanderbilt University, 2014.

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2014.

Invited Speaker, Graduate Student Colloquium, Department of Political Science, University of New Mexico, 2013.

Invited Keynote Speaker, Political Science Alumni Evening, University of Houston, 2013.

Invited Lecturer, Biology and Politics Masters Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2010.

Invited Lecturer, Biology and Politics Senior Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2008.

Visiting Fellow, the Hoover Institution, Stanford University, 2007.

Invited Speaker, Joint Political Psychology Graduate Seminar, University of Minnesota, 2007.

Invited Speaker, Department of Political Science, Vanderbilt University, 2006.

Member:

Editorial Board, Politics and the Life Sciences, 2025.

Editorial Board, Journal of Politics, 2007-2008.

Planning Committee for the National Election Studies' Senate Election Study, 1990-92.

Nominations Committee, Social Science History Association, 1988

Reviewer for:

American Journal of Political Science
American Political Science Review
American Politics Research
American Politics Quarterly
American Psychologist
American Sociological Review
Canadian Journal of Political Science
Comparative Politics
Electoral Studies

Evolution and Human Behavior
International Studies Quarterly
Journal of Politics
Journal of Urban Affairs
Legislative Studies Quarterly
National Science Foundation
PLoS ONE
Policy Studies Review
Political Behavior
Political Communication
Political Psychology
Political Research Quarterly
Public Opinion Quarterly
Science
Security Studies
Social Forces
Social Science Quarterly
Western Political Quarterly

University Service:

Department - Interim Director of Undergraduate Studies 2025

Member, University Senate, 2021-2023.

Member, University Parking Committee, 2016-2023.

Member, University Benefits Committee, 2013-2016.

Internship Director for the Department of Political Science, 2004-2018.

Member, University Council, 2012-2013.

Invited Speaker, Rice Classroom Connect, 2016.

Invited Speaker, Glasscock School, 2016.

Invited Speaker, Rice Alumni Association, Austin, 2016.

Invited Speaker, Rice Alumni Association, New York City, 2016.

Invited Speaker, Rice TEDxRiceU , 2013.

Invited Speaker, Rice Alumni Association, Atlanta, 2011.

Lecturer, Advanced Topics in AP Psychology, Rice University AP Summer Institute, 2009.

Scientia Lecture Series: "Politics in Our Genes: The Biology of Ideology" 2008

Invited Speaker, Rice Alumni Association, Seattle, San Francisco and Los Angeles, 2008.

Invited Speaker, Rice Alumni Association, Austin, Chicago and Washington, DC, 2006.

Invited Speaker, Rice Alumni Association, Dallas and New York, 2005.

Director: Rice University Behavioral Research Lab and Social Science Computing Lab, 2005-2006.

University Official Representative to the Inter-university Consortium for Political and Social Research, 1989-2012.

Director: Rice University Social Science Computing Lab, 1989-2004.

Member, Rice University Information Technology Access and Security Committee, 2001-2002

Rice University Committee on Computers, Member, 1988-1992, 1995-1996; Chair, 1996-1998, Co-chair, 1999.

Acting Chairman, Rice Institute for Policy Analysis, 1991-1992.

Divisional Member of the John W. Gardner Dissertation Award Selection Committee, 1998

Social Science Representative to the Educational Sub-committee of the Computer Planning Committee, 1989-1990.

Director of Graduate Admissions, Department of Political Science, Rice University, 1986-1988.

Co-director, Mellon Workshop: Southern Politics, May, 1988.

Guest Lecturer, Mellon Workshop: The U.S. Congress in Historical Perspective, May, 1987 and 1988.

Faculty Associate, Hanszen College, Rice University, 1987-1990.

Director, Political Data Analysis Center, University of Georgia, 1982-1985.

External:

Expert Witness, Hazleton ISD, 2025.

Expert Witness, Angleton ISD, 2025.

Expert Witness, Humble ISD, 2024.

Expert Witness, City of Miami, 2023.

Expert Witness, State of North Carolina, 2023.

Expert Witness, State of Mississippi, 2023.

Expert Witness, State of Florida, 2023.

Expert Witness, LULAC et al v. City of Houston, racially polarized voting analysis, 2023.

Expert Witness, Shafer et al v. Pearland ISD, racially polarized voting analysis, 2023.

Expert Witness, Johnson v. Wisconsin Elections Commission, racially polarized voting analysis, 2023.

Expert Witness, Palmer v. Hobbs, State of Washington redistricting, racially polarized voting analysis, 2023.

Expert Witness, 10 consolidated cases challenging Texas redistricting, racially polarized voting analysis, 2023.

Expert Witness, Suttlar, et al v. State of Arkansas, racially polarized voting analysis, 2023.

Expert Witness, Elizondo v. Spring Branch ISD, racially polarized voting analysis, 2023.

Expert Witness, United States v. Galveston County, racially polarized voting analysis, 2023.

Expert Witness, Dixon v. Lewisville ISD, racially polarized voting analysis, 2023.

Expert Witness, Pendergrass v. State of Georgia, racially polarized voting analysis, 2023.

Expert Witness, Rivera, et al v. State of Kansas, racially polarized voting analysis, 2022.

Expert Witness, Robinson v. Ardoin, (Louisiana), racially polarized voting analysis, 2022.

Expert Witness, Christian Ministerial Alliance et al v. State of Arkansas, racially polarized voting analysis, 2021.

EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty,

Petitioners,

-against-

Board of Elections of the State of New York; Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board of Elections of the State of New York; Raymond J. Riley, III, in his official capacity as Co-Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Anthony J. Casale, in his official capacity as Commissioner of the Board of Elections of the State of New York; Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York; Kathy Hochul, in her official capacity as Governor of New York; Andrea Stewart-Cousins, in her official capacity as 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.
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Index No. 164002/2025

Memorandum of Law in Support of Petition

[Signature block on the following page]

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

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

Counsel for Petitioners

*Admitted *pro hac vice*

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PRELIMINARY STATEMENT

Although Black and Latino Staten Islanders constitute nearly 30 percent of the Borough's population, they have virtually no ability to influence the outcome of elections and elect a candidate of their choice in their home congressional district encompassing Staten Island, New York's Eleventh Congressional District ("CD-11"). Over the past 45 years, the combined Black and Latino population on Staten Island has climbed from approximately 11% in 1980 to nearly 30% of the Borough's population today. This increase in population, however, has not translated to a corresponding increase in Black and Latino residents' ability to influence the election of their congressional representative. Instead, the current configuration of CD-11 has remained virtually unchanged since it was redrawn after the 1980 Census, which has resulted in a district in which Black and Latino voters have less opportunity than other members of the electorate to elect candidates of their choice and influence elections, in violation of New York law.

In 2014, New York voters amended the New York Constitution to explicitly prohibit the dilution of minority voting strength (the "Redistricting Amendments"). These "historic reforms of the redistricting process," *Harkenrider v. Hochul*, 38 N.Y.3d 494, 501 (2022)—which first became effective following the 2020 Census—provide explicit protection against racial vote dilution, requiring that "districts shall not be drawn to have the purpose of, *nor shall they result in*, the denial or abridgement of" minority voting rights. N.Y. Const. art. III, § 4(c)(1) (emphasis added). Instead, Article III of the New York Constitution requires that districts "shall be drawn so that, based on the totality of the circumstances," racial minorities "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.*

Article III, Section 4 of the State Constitution (which governs congressional, State Assembly, and State Senate elections) works in tandem with the 2022 John R. Lewis New York

Voting Rights Act ("NY VRA") (which governs local elections) to comprehensively safeguard minority voting rights in all elections statewide. *See* N.Y. Elec. Law § 17-200. Although the NY VRA does not, by its terms, directly regulate congressional redistricting, the Legislature plainly intended through that enactment to extend Article III, Section 4's protections to elections at the local level. Like Article III, Section 4, the NY VRA provides that "[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 outcome of elections, as a result of vote dilution." *Id.* § 17-206(2)(a).

The NY VRA, which provides more expansive protection of minority voting rights than federal law, also offers a detailed analytical framework for evaluating a racial vote dilution claim. Because the NY VRA's vote dilution prohibition protects the same right as the vote dilution prohibition in Article III, Section 4, and given the similarities in language and scope of the two provisions, the best approach is for this Court to use the NY VRA's analytical framework to evaluate Petitioners' constitutional vote dilution claim. Failing to do so would create an inconsistent application of vote dilution protections across the state, with the absurd result that New York law would afford more robust protections *only* to voters in municipal and local elections, while lesser protections would apply to congressional, State Assembly, and State Senate elections.

Applying the proper framework, Black and Latino Staten Islanders' voting strength is unlawfully diluted if their preferred candidates are usually 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.* § 17-

206(2)(b)(iii)(A)–(B). In this case, both are true. In CD-11, there is significant racially polarized voting in which Black and Latino voters consistently prefer the same candidates, but the White majority voting bloc has just as consistently defeated those candidates, historically and in recent elections. Moreover, the totality of the circumstances factors strongly support a finding of unlawful racial vote dilution. Staten Island, which comprises the majority of CD-11, has a long and reprehensible history of discrimination against Black and Latino residents, including official policies resulting in extreme residential segregation, which has contributed to disadvantages for Black and Latino residents that have limited their ability to participate in the political process.

CD-11 does not have to be configured as it is in the 2024 map. Staten Island's population is too small to constitute its own congressional district, but prior to the 1980 Census, Staten Island was joined in a congressional district with several neighborhoods in Manhattan. That configuration also appears in the current State Assembly map, in which State Assembly District 61 joins Staten Island with the southern-most neighborhoods in Manhattan. As shown in Petitioners' Illustrative Map, *see* Cooper § IV, a congressional district configured in that manner today—joining southern Manhattan with Staten Island—would give Black and Latino Staten Islanders an equal opportunity to elect candidates of their choice in CD-11. The Redistricting Amendments required the Legislature to adopt a districting plan containing such a district, and its failure to do so violates Article III, section 4 of the New York Constitution.

Petitioners therefore respectfully ask this Court to invalidate the 2024 congressional map and order the Legislature to create a district in which Black and Latino Staten Islanders have an opportunity to influence elections and elect a representative of their choice in CD-11, as is demonstrated in Petitioners' Illustrative Map.

BACKGROUND

I. New York law protects minority voting rights through expansive prohibitions on racial vote dilution.

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

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

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

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

substantially exceed the protections for the right to vote provided by the constitution of the United States.”).

B. In 2022, the Legislature extended the Constitution’s protections to local elections through the New York Voting Rights Act and adopted detailed standards for proving racial vote dilution.

In 2022, the New York Legislature extended the protections against minority vote dilution in the Constitution to local elections in the NY VRA. *Id.* § 17-202. While the NY VRA, by its terms, does not directly regulate congressional redistricting, it provides an analytical framework for evaluating a racial vote dilution claim brought under the New York Constitution, as the two prohibitions protect the same right as applied to different elections. *See* N.Y. Elec. Law §§ 17-200, 17-206(2).

Like the vote dilution prohibition in 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.” *Id.* § 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 vote dilution provision of the NY VRA 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). Vote dilution can be proved one of two ways, 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.* § 17-206(2)(b)(i).

Under the first method, 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). The statute defines a protected class as "a class of individuals who are members of a race, color, or language-minority group," and therefore includes Black and Latino voters. *Id.* § 17-204(5).

Under the second method of demonstrating vote dilution, petitioners must show that the totality of the circumstances impair the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections. The totality of the circumstances factors include, but are not 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 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).

The NY VRA sweeps more broadly than federal law. To sustain a claim of racial vote dilution under the NY VRA, plaintiffs must show proof of *either* racially polarized voting *or* that the totality of the circumstances factors have been met. N.Y. Elec. Law § 17-206(2)(b)(ii). Petitioners under the NY VRA do not need to show that a district could be drawn in which the protected minority group would form a majority of the district's residents. Rather, "the NYVRA specifically allows for remedies that might allow for minorities to elect their candidates of choice or influence the outcome of elections without their constituting a majority in a single-member district." *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 38 (2d Dept. 2025). This is in contrast to the federal VRA, for which the U.S. Supreme Court has set forth the following three requirements (known as the *Gingles* factors), all of which must be met to state a claim for racial vote dilution: (1) the protected group "must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) it is "politically cohesive"; and (3) the "majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

The NY VRA also explicitly provides for claims on behalf of multiple minority groups: "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." N.Y. Elec. Law § 17-206(2)(c). Accordingly, under certain circumstances (like those present in this case), the NY VRA requires the creation of crossover and minority influence districts, or districts in which racial minorities can join with other racial minorities and White crossover voters to influence elections and elect their representatives of choice.

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

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

In the first redistricting cycle following the enactment of the Redistricting Amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. N.Y. Const. art. III, § 4(b); *see Harkenrider*, 38 N.Y.3d at 504–05. As a result, and following a legal challenge to the map eventually passed by the Legislature, the congressional map in place for the 2022 elections (the "2021 Congressional Map") was drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 38 N.Y.3d at 524. The special master admitted in his report that he did not actively avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided

simply because "the largest minority groups . . . are almost always highly geographically concentrated." Rep. of the Special Master at 11, *Harkenrider*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben County, May 21, 2022), NYSCEF Doc. No. 670.

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

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[1] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=congress_specialmastercorrected_20220604&propB=cong_nyirc_20240215&opacity=2&selected=74.12227663802202,40.583456106019945#%26map=10.46/40.6097/-74.0286 (last visited Nov. 17, 2025).

[2] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=cong_nyirc_20240215&propB=cong_legamend_20240226&opacity=0&selected=-74.12227663802202,40.583456106019945#%26map=7.48/41.322/-74.234 (last visited Nov. 17, 2025).

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

A. Staten Island has become increasingly diverse since the mid-twentieth century.

Staten Island spans 57.5 square miles but is the smallest borough by population.[3] When Staten Island was first annexed by New York City in 1898, it was "mostly rural area." Sugrue ¶ 9. In the twentieth century, however, its population began to grow, spurred in large part by transit links to other parts of New York City. The most important developments were the Staten Island Ferry, which connects Staten Island to Manhattan, and the Verrazano Narrows Bridge, which connects Staten Island to Brooklyn. *Id.* ¶ 10.

Prior to the 1980s, Staten Island was overwhelmingly White. *See id.* ¶ 12. The Island was home to only a small population of Black citizens, and they were confined to the North Shore, particularly the Stapleton area and Sandy Ground. *Id.* ¶ 9. Both neighborhoods carried deep historical significance for the African-American community. Stapleton is "home to Stapleton AME Church, the borough's oldest Black Church," and Sandy Ground is "the oldest free Black settlement on the East Coast, founded by former slaves from Maryland in 1828, the year after New York State abolished slavery." *Id.*

Staten Island's demography began to meaningfully change in the 1980s. *Id.* ¶ 12. New transportation options between Staten Island and mainland New York City, including the opening of the Verrazzano-Narrows Bridge in 1964, helped facilitate waves of immigration to the borough through the late twentieth and early twenty-first centuries. Between 1980 and 2020, Staten Island's population ballooned by approximately 40%. During this period, the White population on Staten Island dropped from 85% to 56%, while the combined Black and Latino population increased from

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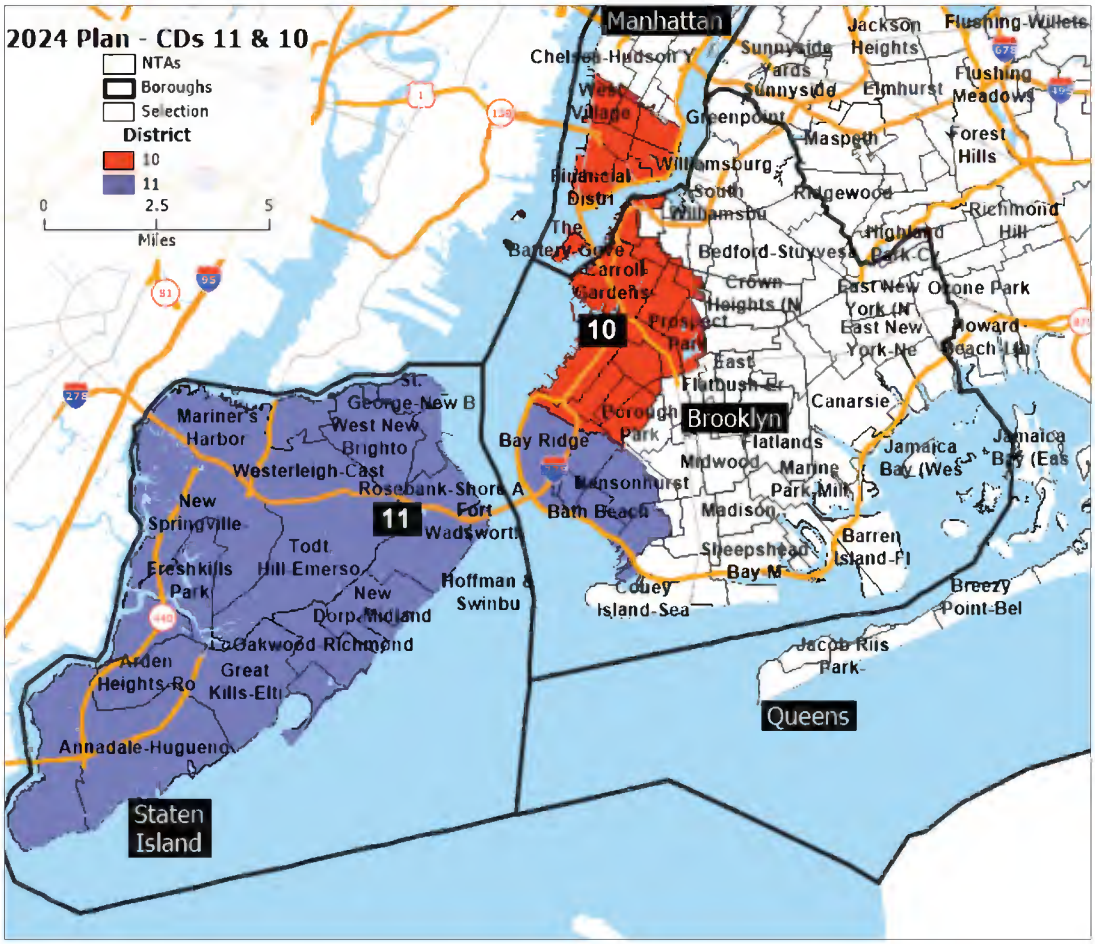
[3] U.S. Census Bureau, *Profile: Richmond County, New York*, https://perma.cc/K397-GT52.

approximately 11% to nearly 30%. *Id*. While the growth of the Black and Latino populations has been significant, it has been unevenly distributed across the Island. Most of Staten Island's Black and Latino residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton. *See id.* ¶ 16.

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

Even though Staten Island's population began to grow in the twentieth century, it has never had enough residents to comprise its own congressional district. Cooper ¶ 36. Thus, to equalize population, the Legislature has always joined Staten Island with neighboring sections of either Brooklyn or Manhattan. Under the 2024 Congressional Map, CD-11 encompasses all of Staten Island and the southwestern-most portion of Brooklyn across the Verrazzano-Narrows Bridge, including Fort Hamilton, Dyker Heights, New Utrecht, Bath Beach, and Bensonhurst:

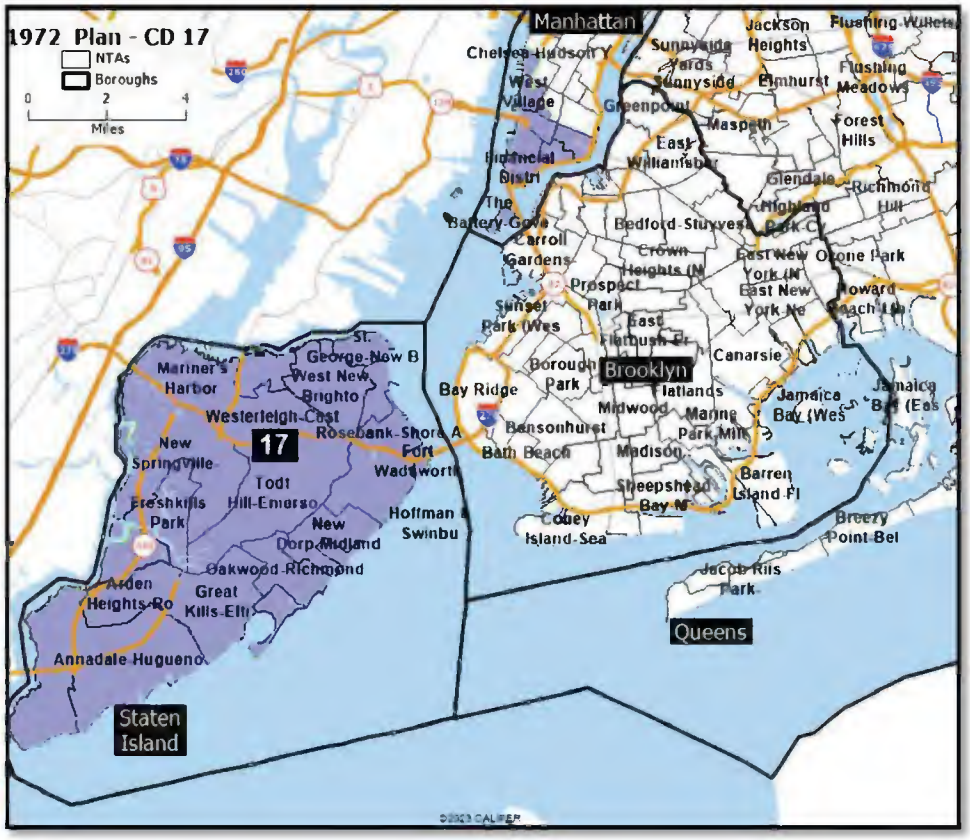


Cooper, Fig. 1 & Ex. F-1.

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

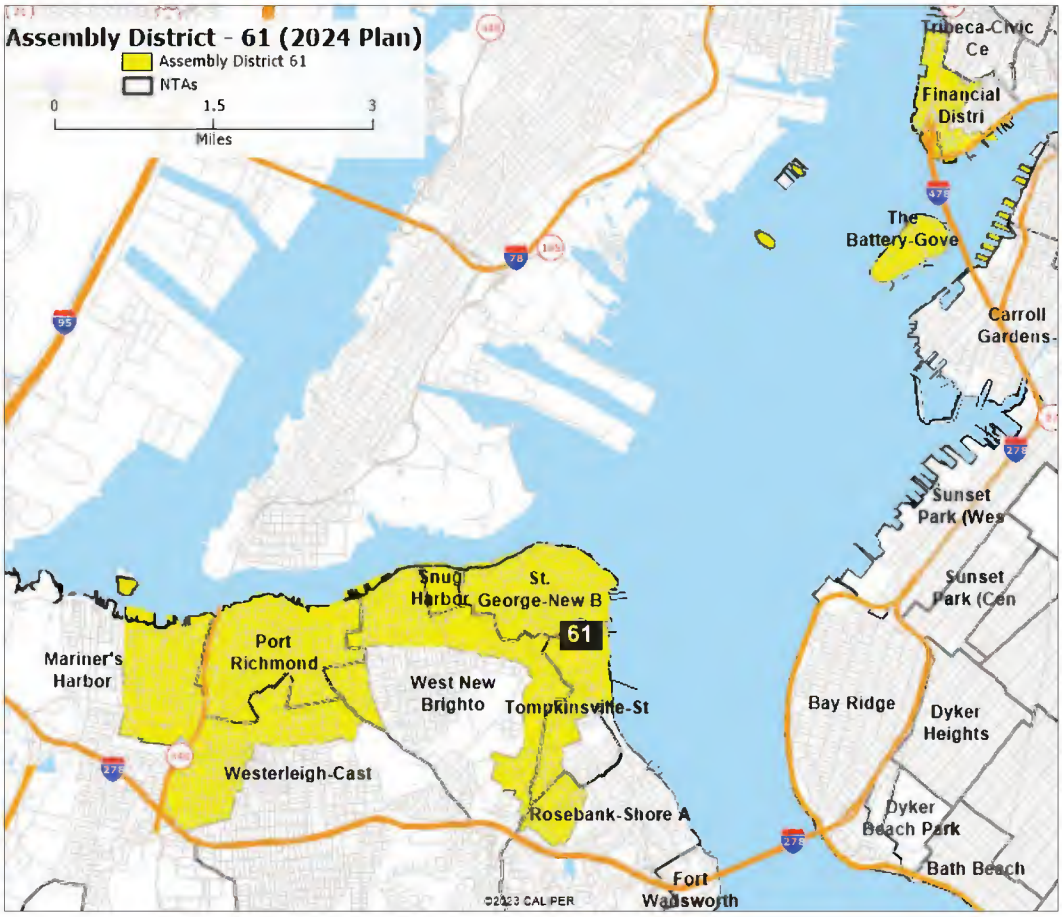
Joining Staten Island with Brooklyn is not the only historical configuration of the Staten Island-based congressional district. In 1972, following the 1970 census, the New York Legislature enacted a congressional map that joined Staten Island with southern Manhattan in what was CD-

17 at the time:



Cooper, Fig. 7. The district remained in this configuration until the contentious 1982 redistricting battle, following the state's loss of five House seats due to population changes. With the two houses of the Legislature controlled by opposite parties, the parties compromised to redraw the Staten Island-based congressional district to include the Bay Ridge section of Brooklyn instead of the southern tip of Manhattan. *See id.* The move was transparently partisan, securing Republican advantage on Staten Island for decades to come and effectively unseating the popular Democratic Representative Leo Zeferetti in Brooklyn. *Id.*

Joining Staten Island with Manhattan has a modern precedent, too. During the last redistricting cycle, the Legislature redrew Assembly District 61, which encompasses Staten Island's North Shore, to include the southernmost neighborhoods of Manhattan as well:



Cooper, Fig. 6.

The Legislature inexplicably failed to adopt a similar configuration for CD-11, which, as explained in detail below, would have afforded Staten Island's Black and Latino residents an equal opportunity to influence elections and elect their candidates of choice.

ARGUMENT

I. The NY VRA provides the appropriate framework for evaluating vote dilution under Article III, Section 4 of the New York Constitution.

This case raises questions of first impression for New York courts. No court has yet interpreted the legal standard applicable to a vote dilution claim brought under Article III, Section 4. However, given the similarities between the vote dilution protections in the Constitution and the NY VRA—including their language and scope, and the State's interest in applying a uniform

standard across all voting districts—this Court should apply the vote dilution framework in the NY VRA to Petitioners' constitutional claim.

First, the language of the NY VRA is similar to 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 abridgement of the right of members of a protected class to vote." *Id.* § 17-206(1)(a). The NY VRA's text lays plain the statute's relationship to the Redistricting Amendments. In the NY VRA's statement of purpose, the Legislature announced the "public policy of the State of New York" as "[e]nsur[ing] that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the [State's] political processes . . . and especially to exercise the elective franchise." N.Y. Elec. Law § 17-200. This policy "recogni[zes] . . . the *constitutional guarantees* . . . against the denial or abridgement of the voting rights of members of a race, color, or language-minority group." *Id.* (emphasis added). In this way, the NY VRA's protections against minority vote dilution, *id.* § 17-206(2)(a), implement the constitutional guarantee that minority voters shall not have "less opportunity" to elect candidates of choice, N.Y. Const. art. III, § 4(c)(1), and simply extend those protections to local elections.

Statutory interpretation principles confirm that the NY VRA and Redistricting Amendments should be read harmoniously. The Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to "[s]tate statutory or common law defining the scope of the individual right in question." *People v. Harris*, 77 N.Y.2d 434, 438 (1991) (interpreting Article 1, section 12 of the New York Constitution). Here, the NY VRA provides a

comprehensive framework defining vote dilution and establishing a rubric that courts may follow for evaluating vote dilution claims. *See* N.Y. Elec. Law § 17-206. Because Article III, Section 4 also protects minority voters' right to live in districts in which they have an equal opportunity to elect their candidates of choice, this Court may appropriately look to the framework set forth in the NY VRA to evaluate Petitioners' constitutional claim.

Second, New York courts have suggested that Article III and the NY VRA are similar in scope—specifically, that they each provide broader protections against racial vote dilution than federal law does. The primary federal protection against minority vote dilution is in Section 2 of the VRA, 52 U.S.C. § 10301, which implements the federal constitutional protections in the Fourteenth and Fifteenth Amendments, *see, e.g.*, S. Rep. 97-417, at 9–10 (1982) (the Federal Voting Rights Act is "necessary and appropriate legislation to ensure the full enforcement of the rights guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution"). To prove vote dilution under Section 2, plaintiffs are required, among other things, to demonstrate that the minority group is "sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district," and to show both that there is racially polarized voting in the jurisdiction and that the totality of the circumstances demonstrate that members of the minority group have less opportunity to elect candidates of their choice than other voters. *Clarke*, 237 A.D.3d at 317–18 (alteration in original) (quoting *Allen v. Milligan*, 599 U.S. 1, 18 (2023)).

The NY VRA loosens two of those requirements by requiring petitioners to show *either* racially polarized voting *or* the totality of the circumstances factors, and by allowing them to show that vote dilution could be cured through a crossover or "influence" district. A crossover or influence district is one in which the minority population makes up less than a majority of the voting age population of the district, but can elect its candidate of choice with help from voters

who are members of the majority who "crossover" to support the minority voters' preferred candidate. *See id.* at 25 ("[T]he major differences between the vote dilution provisions of the [Federal] VRA and the NYVRA are that the NYVRA . . . permits 'influence' claims, and does not require the first *Gingles* precondition, i.e., that the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district."); *Coads v. Nassau County*, 236 N.Y.S.3d 490, 511–12 (Sup. Ct., Nassau County 2024) (similar).

New York courts have similarly suggested that Article III is more protective of minority voting rights than federal law because it protects crossover districts. In *Harkenrider*, the court found that Article III's "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." 173 N.Y.S.3d 109, 112 (Sup. Ct., Steuben County 2022), *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022). And since the 2014 Redistricting Amendments, map-drawers have assumed that the New York Constitution protects districts in which the minority population does not constitute a majority in a district, just as the NY VRA does—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"). That Article III and the NY VRA have been found to have a similar scope provides further support for applying the same standard to vote dilution claims under both provisions.[4] *See also*, *e.g.*, *N.Y. C.L. Union & NAACP*

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[4] It also makes clear that interpreting the vote dilution ban in Article III in line with the narrower federal VRA, which does not provide for crossover districts, would be incorrect. Because Article III's protections "substantially exceed," N.Y. Elec. Law § 17-200, the federal Constitution's protections, which are implemented in Section 2 of the VRA, application of the narrower federal

Legal Def. Fund, Inc., *John R. Lewis Voting Rights Act of New York* 1 (2023), https://perma.cc/U53B-CYC5 (describing the NY VRA as a "strong statutory enforcement mechanism[]" for the new "unequivocal constitutional guarantees" in Article III).

Third, the "distinctive attitudes of the [New York] citizenry toward the definition, scope or protection of the" right to live in districts that do not unlawfully dilute the voting strength of racial minorities support interpreting the Article III in line with the NY VRA. *Harris*, 77 N.Y.2d at 438 (quoting *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 303 (1986)) (interpreting Article 1, section 12 of the New York Constitution). Courts generally are charged with interpreting constitutional rights in line with the will of the citizens of the state. *Id.* at 438–39. Differential treatment of Article III and the NY VRA here would create an inconsistent application of vote dilution protections across New York, with more robust protections afforded only to voters in municipal and local elections, and lesser protections applying to congressional and senate elections. Such an outcome would thoroughly undermine the will of New York voters who, through their democratically elected governor and Legislature, have made clear that providing especially robust protection against racial vote dilution is of particular importance to the citizenry of the state.

For example, the Governor's signing statement for the NY VRA declares that the law was enacted in light of "the federal government['s] fail[ure] to fulfill its duty to uphold voting rights across the nation," and to "ensure[] that the state continues to move toward being a national leader in voting rights." Governor's Approval Mem, Bill Jacket, L 2022, ch 226 at 5. And in the NY VRA's preamble, the Legislature emphasized that "all statutes, rules and regulations . . . shall be construed liberally in favor of . . . ensuring voters of race, color, and language-minority groups

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VRA standard here would deprive New York voters of the additional protections enshrined in the New York Constitution.

have equitable access to fully participate in the electoral process in registering to vote and voting," and that the voting rights protections of the New York Constitution "substantially exceed" those in the federal Constitution. N.Y. Elec. Law § 17-202; *id.* § 17-200. These statements emphasize the importance New York voters and their representatives place on ensuring strong protections against minority vote dilution in all aspects of the political process, including congressional redistricting. Applying the NY VRA's robust vote dilution standards to Petitioners' constitutional claim ensures that this Court interprets the provision in line with the will of the citizens of the state.

For all of these reasons, this Court should apply the standards set forth under the NY VRA to adjudicate Petitioners' constitutional vote dilution claim.[5]

II. Under the 2024 map, the votes of Black and Latino Staten Islanders are diluted in CD-11, in violation of Article III, Section 4 of the New York Constitution.

Applying the NY VRA framework, Petitioners can prove their constitutional claim by showing that candidates preferred by Black and Latino Staten Islanders are usually defeated and either (a) voting is racially polarized in the political subdivision, *or* (b) under the totality of the circumstances, the ability of Black and Latino voters, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. N.Y. Elec. Law § 17-206(2)(b)(ii). In this case, Petitioners can demonstrate unconstitutional vote dilution under both standards: voting in Staten Island is highly racially polarized, and the totality of the circumstances factors overwhelmingly demonstrate that Black and Latino voters' ability to elect candidates of their choice and influence the outcome of elections is impaired. The current configuration of CD-

[5] Even if the Court adopts a different constitutional standard than the one set forth in the NY VRA, Petitioners would readily satisfy it. By presenting evidence of both racially polarized voting in which Black and Latino voters' candidates are consistently defeated, alongside strong totality of the circumstances evidence, Petitioners satisfy any possible standard.

11 thus violates the vote dilution prohibition in Article III, Section 4, and the 2024 congressional map should be invalidated.

A. Voting on Staten Island is racially polarized because White citizens vote cohesively to defeat Black and Latino voters' preferred candidates.

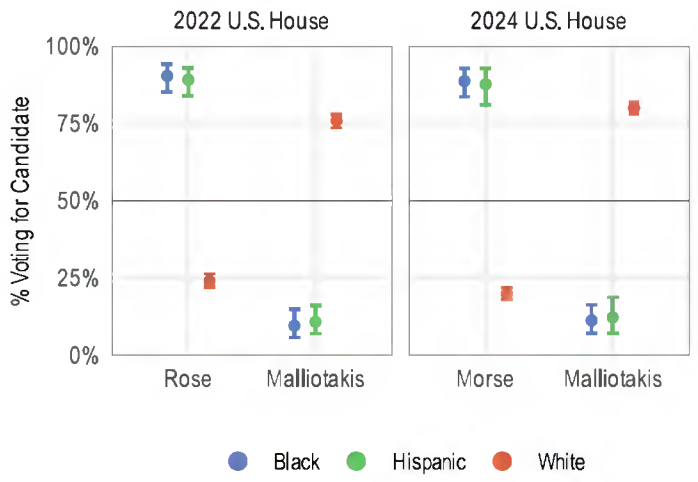
"Racially polarized voting" means "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." *Id.* § 17-204(6). Racially polarized voting is proven through evidence of "bloc voting." "Bloc voting by [minority voters] tends to prove that the [minority] community is politically cohesive, that is, it shows that [minorities] prefer certain candidates whom they" would elect if given the opportunity. *Gingles*, 478 U.S. at 69. At the same time, "the white majority [also] votes sufficiently as a bloc to enable it . . . usually to defeat the [minority groups'] preferred candidate." *Id.* at 51. Evidence offered in support of racially-polarized-voting analysis is "weighed and considered consistent with several well-defined princip[les]." *Serratto v. Town of Mount Pleasant*, 233 N.Y.S.3d 885, 890 (Sup. Ct., Westchester County 2025); *see* N.Y. Elec. Law § 17-206(2)(c). Courts weigh statistical evidence most heavily, and "evidence concerning election for members" of the challenged district is the most probative. *Id.* § 17-206(2)(c).

Voting in CD-11 is heavily racially polarized. Petitioners' expert Dr. Maxwell Palmer examined voting patterns in CD-11 using official election data and Census data, and employing "ecological inference analysis," he found that White voters have consistently voted as a bloc to defeat the Black and Latino–preferred candidate.[6] *See* Palmer ¶¶ 5-6; 9-11; *see also Ala. State Conf. of NAACP v. Alabama*, 612 F.Supp.3d 1232, 1275 n.27 (M.D. Ala. 2020) (recognizing

[6] Throughout this memorandum and Petitioners' expert reports, Petitioners use the terms "Latino" and "Hispanic" interchangeably.

ecological inference as the "gold standard" for racially polarized voting analysis (quoting *Wright v. Sumter Cnty. Bd. of Elections & Registration,* 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018))).

Dr. Palmer's analysis of CD-11 demonstrates that Black and Latino Staten Islanders have remained "extremely cohesive" over nearly a decade of elections. Palmer ¶ 15. In the two most recent congressional elections—2022 and 2024—Black voters had "a clear preferred candidate," and Latino voters shared that choice. *Id.* ¶ 15. Across these elections, this candidate (Democrat Max Rose in 2022 and Democrat Andrea Morse in 2024) averaged 89.55% of the Black vote and 88.4% of the Latino vote. *Id.* ¶ 15, fig. 1; *id.* at 10 (Table 1). White voters in CD-11, however, voted as a bloc to defeat the Black and Latino–preferred candidate in both elections. *Id.*



Palmer ¶ 15, fig. 1.

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

vote. *Id.*

The effect of this bloc voting is unmistakable: of the 20 elections Dr. Palmer analyzed, the Black and Latino–preferred candidate won only five times. *Id.* ¶ 20. And those few candidates who won prevailed by very narrow margins, averaging 53.9% of the vote. *See id.* at 12 (Table 3). These victories are also quite dated. No Black and Latino–preferred candidate has been elected on Staten Island since 2018, and voting on Staten Island has become *increasingly* racially polarized since then. *Id.* ¶ 20, fig. 3.

B. 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.

Petitioners can also show that "under the totality of the circumstances, the ability of [Black and Latino Staten Islanders] to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(i). Courts evaluating vote dilution claims analyze the totality of the circumstances through the non-exhaustive factors identified in N.Y. Elec. Law § 17-206(3). The applicable factors weigh in Petitioners' favor here. Staten Island has a long history of discrimination against Blacks and Latinos which has led to significant disadvantages that limit both groups' ability to participate in the political process. Very few Black and Latino candidates have been elected to office on Staten Island; political campaigns on Staten Island have featured racial appeals; and there is no compelling policy justification for CD-11's current district lines, which result in the dilution of Black and Latino voting strength.

i. The history of discrimination on Staten Island has led to significant socioeconomic disadvantages for Blacks and Latinos, limiting their ability to participate equally in the political process.

The NY VRA directs courts to consider, among other factors, the "history of discrimination" in or affecting the political subdivision, "the extent to which [Blacks and Latinos] are disadvantaged in areas including but not limited to education, employment, health, criminal

justice, housing, land use, or environmental protection," and the extent to which Blacks and Latinos participate in political campaigns and "vote at lower rates than other members of the electorate." *Id.* § 17-206(3). These factors all weigh heavily in Petitioners' favor.

As detailed in the report of Dr. Thomas J. Sugrue, Professor of History and Social and Cultural Analysis at New York University, "Staten Island has a long history of racial segregation, discrimination, and disparate treatment against Blacks and Latinos," which has resulted in significant disparities between these groups and White residents in "housing, education, socioeconomic status, and others—all of which are known to have a negative impact on political participation and the ability to influence elections." Sugrue ¶ 8.

Residential Segregation. Staten Island has long been one of most racially segregated areas of the United States and remains so, despite its increasing diversity. *Id*. at 8. This legacy of discrimination and segregation is longstanding and has contributed to socioeconomic disadvantages for Black and Latino residents of Staten Island today.

Beginning in the 1930s, pro-homeownership programs at federal government agencies, including the Federal Home Loan Bank Board, the Home Owner's Loan Corporation (HOLC), the Federal Housing Administration, and the Veterans Administration, all dramatically expanded White consumers' access to credit for the purchase and improvement of homes, which led to a great expansion in homeownership rates for Whites. Blacks and Latinos, however, were excluded from the benefits of these programs for more than a third of a century. *Id*. at 18. On Staten Island, these federal agencies engaged in redlining, a practice by which the agencies drew boundaries around neighborhoods based on residents' race and then denied access to loans, mortgages, and other financial services to areas that had significant populations of racial minorities. The HOLC, for example, gave every neighborhood on Staten Island with even a small Black population the

agency's lowest ranking—a "D." *Id*. at 22. That included historic Sandy Ground, Staten Island's oldest Black community, which in 1940, the HOLC described 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." *Id*. at 21–22.

White realtors on Staten Island followed the government's lead by also maintaining policies aimed at excluding Blacks and Latinos. For example, in 1963, the Staten Island Real Estate Board challenged the constitutionality of New York's anti-housing discrimination laws and lobbied for a "Property Owner's Bill of Rights" that would have permitted racial discrimination in housing. *Id*. at 25–26. After the passage of the Fair Housing Act in 1968, Staten Island realtors frequently flouted fair housing laws and developed tactics that reinforced residential segregation. *Id*. at 26. One such tactic was "steering," in which realtors directed White homebuyers or renters to all-white communities and non-whites to predominantly non-White or racially transitional neighborhoods. *Id*. at 27.

Courts evaluating the totality of the circumstances have held that the "history of discrimination . . . cannot be ignored in the discriminatory effect analysis, because even these seemingly remote instances of State-sponsored discrimination continue to produce . . . racial disparities." *Veasey v. Abbott*, 830 F.3d 216, 257 n.53 (5th Cir. 2016) (analyzing this factor under the federal VRA). And that is the case on Staten Island today. A "substantial body of scholarship by historians, sociologists, public health scholars, and economists" has demonstrated that redlining in the mid-twentieth century has had long-term impacts on nearly every aspect of community life for minorities in redlined neighborhoods. Sugrue ¶ 40. Among other things, residents of previously redlined neighborhoods are more likely to have lower incomes and access to lower quality housing, and to face a range of environmental hazards. *Id*. The previously redlined neighborhoods of Staten

Island that are currently home to minority populations, especially on the North Shore, are emblematic of the remnants of redlining. Sugrue ¶¶ 34–40.

Under the most commonly used measure of racial segregation, the dissimilarity index, which measures the evenness of a population's distribution across a geographic area, Blacks on Staten Island continue to experience a "high" degree of segregation while Latinos experience a "moderate" degree of segregation. *Id*. at 13.[7] Most Blacks and Latinos live in the northern third of the Island; most Whites live in the southern two-thirds. The North Shore, which centers around the Staten Island Ferry Terminal, has some of the borough's oldest housing stock, many apartment buildings, and most of the Island's public housing projects. *Id*. Neighborhoods to the south of the Staten Island Expressway—Mid-Island and South Shore—resemble postwar suburbia, dominated by post-World War II single-family homes. *Id*. The southern neighborhoods of Staten Island remain overwhelmingly White. Indeed, since at least the late 1980s, 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. Sugrue ¶ 22. Figures 2 and 3 below show the distribution of Black and Latino residents on Staten Island, with the Staten Island Expressway marked on the maps in black.

Figure 2: 2023 Black Population by Percentage on Staten Island

[7] The U.S. Department of Housing and Urban Development (HUD) considers a dissimilarity value of 40 or below to be a low level of racial segregation; a range from 40-55 indicates moderate segregation; and any value above 55 is considered a high degree of segregation. *Id*. ¶ 24. As of 2023, the Black/White dissimilarity value for Staten Island was 75, and the Latino/White dissimilarity value was 42. *Id*. ¶¶ 27–28.

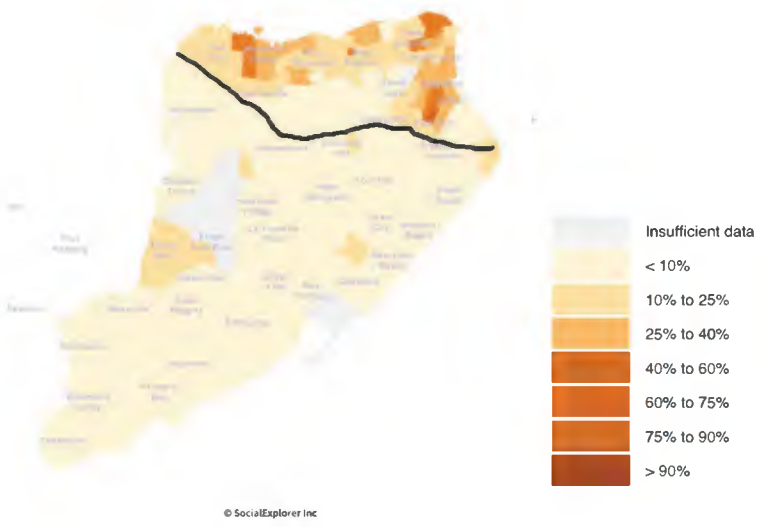
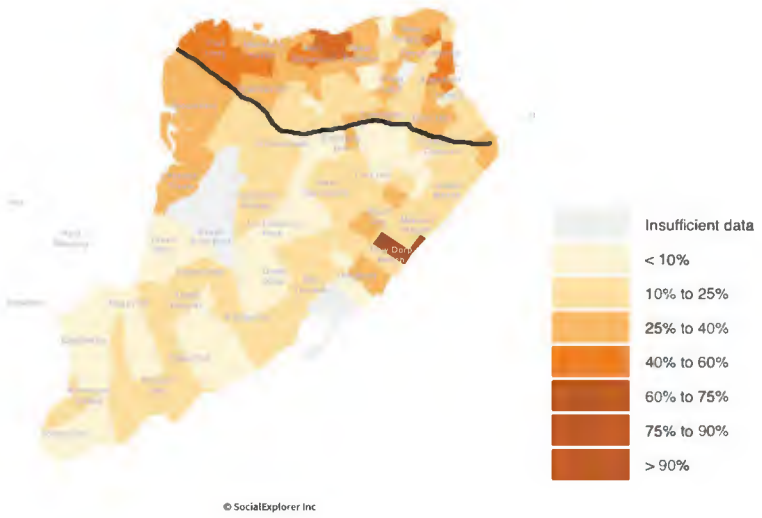


Figure 3: 2023 Latino Population by Percentage on Staten Island



Id. at 11–12.

Socioeconomic Disparities. In addition to severe residential segregation, the incomes of Black and Latino Staten Islanders lag significantly behind those of White Staten Islanders. Between 2019 and 2023, Latinos and Blacks earned only about 60 percent of the per capita income of their White counterparts. Sugrue ¶ 78. Additionally, the Black poverty rate was nearly four times that of the White poverty rate, and the Latino poverty rate was more than double the White

poverty rate. *Id*. Blacks and Latinos also face a substantial homeownership gap when compared with Whites. As a result of the significant levels of discrimination in housing, while more than three quarters of Whites on Staten Island are homeowners, less than half of Latinos and only approximately one third of Blacks own their homes. *Id*. at 79. Homeownership, like education and income, "is strongly correlated with political participation," with higher homeownership rates correlated with higher political participation. *Id*.

Educational Discrimination. Black and Latino Staten Island residents face substantial educational discrimination as well. For example, Black and Latino graduation rates from Staten Island public high schools lag far behind White graduation rates. 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. Racial disparities in education and socio-economic status, among other factors, are known to negatively affect minorities' political participation. Sugrue ¶ 8.

Political Participation and Voting. New York also has a long history of discrimination in voting which has contributed to the lower levels of political participation by Black and Latino voters on Staten Island today. For example, although by 1821, White New Yorkers' eligibility to vote was not dependent upon the voter being a property owner, Black men were required to own property to be eligible for the franchise. *Hayden v. Paterson*, 594 F.3d 150, 157–59 (2d Cir. 2010). Indeed, New Yorkers repeatedly defeated referenda that would have eliminated the property requirement for Black voters. *Id*. It took the passage of the Fifteenth Amendment to remove this discriminatory voting practice. *See id*. at 159. Later, in the early 1920s, the New York State Board of Regents administered stringent literacy tests in order to disenfranchise voters who did not speak English as their first language. Sugrue ¶ 88. These literacy tests continued to be in effect in New

York through the mid-twentieth century and were found to have disenfranchised Black and Latino voters. *Id.* ¶ 89.

The effects of these past discriminatory actions are still apparent in the differential voter turnout rates on Staten Island today. Over the 2020, 2022, and 2024 elections, Black and Latino voters on Staten Island turned out to vote at significantly lower rates than White voters. In the 2022 midterm elections, for example, Black and Latino voter turnout was 20% lower than White voter turnout: 34% as compared with 54%. Palmer ¶ 28.

ii. Few Black and Latino candidates have been elected to office on Staten Island.

Black and Latino candidates have had very limited success in being elected to public office on Staten Island. In 2009, Debi Rose was elected to the New York City Council, representing the 49th district and becoming the first Black Staten Islander to be elected to higher public office. *See* Sugrue ¶ 90. Since then, Black candidates have had some limited success in city council and state assembly elections—but *only* in districts in the North Shore where Black and Latino voters are concentrated. *See id.* In 2022, Kamillah Hanks succeeded Debi Rose to represent the 49th city council district.[8] 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.[9] There has never been a Black or Latino candidate elected to be Staten Island Borough President.

The congressional district encompassing Staten Island has also never elected a Black representative to the U.S. House of Representatives. Representative Malliotakis is the only Latina candidate to have ever been elected to that office; however, Representative Malliotakis is

[8] *See New York City Council—District 49*, https://council.nyc.gov/district-49/ (last visited Nov. 17, 2025).

[9] *See* New York Assembly, *Charles D. Fall*, https://nyassembly.gov/mem/Charles-D-Fall (last visited Nov. 17, 2025).

definitively not the candidate of choice for either Black or Latino voters.[10] In both 2022 and 2024, the vast majority of Black and Latino voters opposed Representative Malliotakis's candidacy: in 2022, more than 90% of Black voters and more than 89% of Latino voters voted against Malliotakis, and in 2024, nearly 89% of Black voters and nearly 88% of Latino voters voted against Malliotakis. Palmer Rep ¶ 15, fig. 1; *id.* at 10 (Table 1). The same was true in 2017 when Malliotakis ran for mayor of New York City: she was not the candidate of choice for Black and Latino voters. In that election, she was opposed by 89.1% of Black voters and 79.8% of Latino voters. Palmer at 10 (Table 1). At the same time, Representative Malliotakis has consistently been White voters' candidate of choice; she won more than 75% of the White vote in both U.S. House of Representatives elections in 2022 and 2024. Palmer ¶ 15, fig. 1.

iii. Political campaigns on Staten Island have featured racial appeals.

Campaigns for political office on Staten Island have featured racial appeals. When campaigns make "race an issue on the campaign trail . . . the possibility of inequality in electoral opportunities increases." *Soto Palmer v. Hobbs*, 686 F. Supp. 3d 1213, 1230 (W.D. Wash. 2023). Racial appeals featured prominently in White Staten Islanders' opposition to the influx of non-White residents to the Island during the middle of the 20th century. Sugrue ¶ 92–93. For example, in 1967, the Staten Island Advance published an article opposing the construction of temporary housing for families affected by urban renewal in other parts of New York city. The editorial warned that "[t]he effect [of the temporary housing] on Staten Island would be [] disastrous" because it would "put into our midst a homogeneous group that had no ties with the community." *Id.* ¶ 45. Along with the editorial, the paper published a cartoon, entitled "Unwelcome Import,"

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10 Courts have long understood that "a minority preferred candidate may be a non-minority," and "a candidate is not minority-preferred simply because the candidate is a member of the minority." *Ruiz v. City of Santa Maria*, 160 F.3d 543, 551 (9th Cir. 1998).

showing the New York City Mayor John Lindsay bringing "ghetto areas" to Staten Island. *Id.* ¶ 92, fig. 10.

Id.

Racial appeals on Staten Island have continued into the modern era. In 2017, for example, Richard Luthmann, a Republican political operative 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." *Id.* ¶ 99, fig. 11

iv. There is no "compelling policy justification" for the current district lines in CD-11.

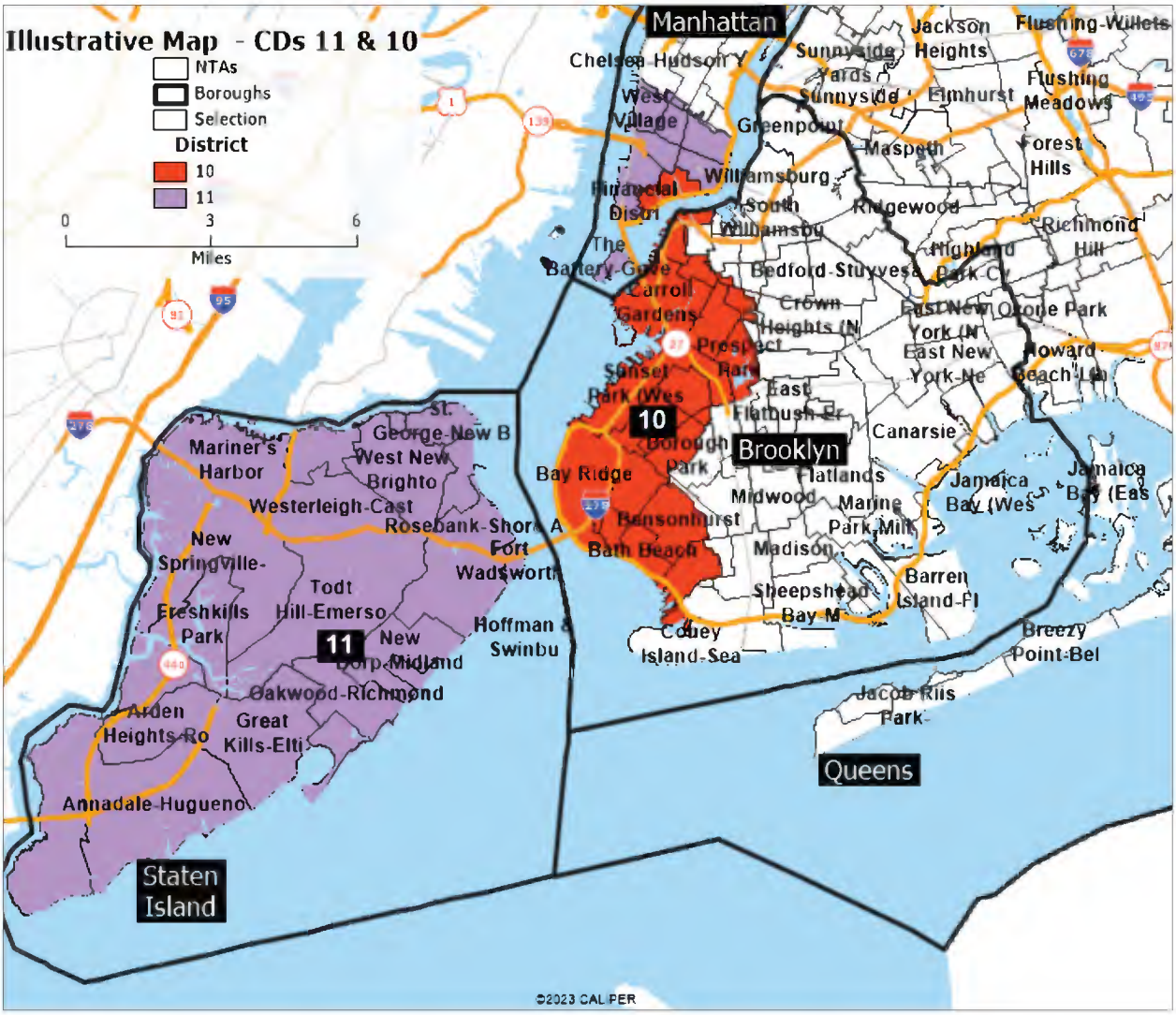
Finally, courts also examine whether there is a "compelling policy justification that is substantiated and supported by evidence for adopting or maintaining" the voting practice at issue. N.Y. Elec. Law § 17-206(3)(k). Here, there is no compelling policy justification to support the current congressional district lines in CD-11, which result in the dilution of the votes of Black and Latino Staten Islanders. Indeed, "[t]he Supreme Court has made clear that the policies underlying

a districting plan may be tenuous if they entrench racial vote dilution, even if those policies might be legitimate in another context." *Caster v. Allen*, No. 2:21-CV-1536-AMM, 2025 WL 1643532, at *169 (N.D. Ala. May 8, 2025) (citing *LULAC v. Perry*, 548 U.S. 399, 441 (2006) (interpreting the federal VRA)). As currently drawn, the district lines contravene substantial New York public policy interests as stated in Article III of the State Constitution and the NY VRA. *See* N.Y. Const. art. III, § 4(c)(1) (holding "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights); N.Y. Elec. Law § 17-200 (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.").

C. A new congressional district can be drawn that would remedy the racial vote dilution and comply with traditional districting criteria.

Petitioners have presented an alternative configuration of CD-11 that "would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Clarke*, 226 237 A.D.3d at 39 (quoting N.Y. Elec. Law § 17–206(5)(a)). Expert demographer William Cooper offers an illustrative map that would allow Black and Latino voters the opportunity to elect their candidates of choice and that otherwise complies with New York redistricting criteria. *See* Cooper § IV & Ex. H-1; *see also* Palmer ¶¶ 26. This district is merely illustrative, submitted for the purpose of showing that the racial vote dilution in CD-11 can be remedied. If this Court finds that the current configuration of CD-11 violates the Constitution, then the Legislature "shall have a full and reasonable opportunity to correct the law's legal infirmities." N.Y. Const. art. III, § 5.

The illustrative map presented by Petitioners—which, as depicted below, joins Staten Island with a compact portion of lower Manhattan and would only impact the current configurations of one other congressional district—CD-10:



In this district, the combined Black and Latino Citizen Voting Age Population is increased to 24.7%. Cooper ¶ 50 & Fig. 9. Dr. Palmer examined the illustrative district and found that it would allow Black and Latino voters an opportunity to combine with other voters to elect their candidate of choice. Specifically, although the voting of Black and Latino voters remains cohesive in the illustrative district, *see* Palmer ¶¶ 23–24, a higher percentage (41.8%) of White voters supported Black and Hispanic-preferred candidates. *Compare id.* ¶ 25 *with id.* ¶ 19; *id.* at 10 (Table 1). Because voting under this plan is significantly less racially polarized, Black and Latino voters would have the opportunity to form alliances with "cross-over" White voters to elect their

candidate of choice. This map unequivocally demonstrates that the Legislature can craft a district that remedies vote dilution in CD-11, ensuring that Black and Latino Staten Islanders "have equitable access to fully participate in the electoral process." *See id.* (quoting N.Y. Elec. Law § 17-206(5)(a)).

As outlined below, the Illustrative Map also comports with New York's other redistricting criteria. Indeed, the Illustrative Map fares *better* than the current configuration of CD-11 with regard to communities of interest in several respects.

1. Equal Population. The Illustrative Map ensures that CD-10 and CD-11 maintain equal populations. *See* N.Y. Const. art. III, § 4(c)(2) ("To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants."). *See* Cooper ¶ 26.

2. Contiguity. The New York Constitution also requires that districts be contiguous. N.Y. Const. art. III, § 4(c)(3). "A contiguous district requires that all parts of the district be connected," which "is usually measured by whether it is possible to travel to all parts of the district without ever leaving the district." *Harkenrider*, 173 N.Y.S. 3d at 119. A district may be contiguous even if sections are connected by water. *See id.* at 119–120; *cf.* N.Y. City Charter § 52(2) (requiring that districts at the city level "shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service").

As discussed, because Staten Island is not sufficiently populous to comprise its own congressional district, it must be joined with a neighboring borough. Cooper ¶¶ 36, 55. The Illustrative Map—or any other plan joining Staten Island and southern Manhattan—would be at least as contiguous as CD-11 as presently enacted. Whereas the Verrazzano Bridge connects Staten Island to Brooklyn, the Staten Island Ferry connects the same to Manhattan via Whitehall

Terminal. Cooper ¶¶ 22, 37, 54. The Staten Island Ferry has been a mainstay on the Island since its founding in 1817. Indeed, before the Verrazzano-Narrows Bridged opened in 1964, ferries were the *only* way to travel between Staten Island and the mainland.

3. Compactness. The Illustrative Map is also reasonably compact. "Compactness" means, "in scientific terms," "the extent to which a district's geography is dispersed around its center." *Harkenrider*, 173 N.Y.S.3d at 119. Here, the Illustrative Map is comprised of two significantly compact sub-parts—Staten Island and Lower Manhattan. Cooper ¶¶ 52–58. Staten Island, of course, remains equally compact in any district configuration, while the densely populated Lower Manhattan portion of the Illustrative Map registers strong compactness scores relative to the average for New York's other congressional districts. *Id*. While the Illustrative Map nominally has a lower compactness score than existing CD-11, that is largely attributable to the presence of Upper New York Bay between the sub-parts of the district, rather than any landmass with a population of voters. *Id*. The two sub-parts of CD-11 in the Illustrative Map are also connected by around-the-clock free ferry service offered by the City of New York. *Id.* ¶ 58.

4. Competitiveness. Dr. Palmer's analysis demonstrates that the illustrative district would be competitive. Again, Dr. Palmer reports that voting in the illustrative district is far less racially polarized, with, on average, 41.8% of White voters supporting the Black and Latino–preferred candidate. Palmer ¶ 25. Under the Illustrative Map, the Black and Latino–preferred candidate succeeds in many, but not all, elections. *See* Palmer ¶ 26, fig. 5. The electoral margins are generally quite narrow, and far more competitive than the same elections in the current CD-11—particularly since 2022. *See id.* at 11 (Table 3). Put another way, whereas the Black and Latino–preferred candidate is consistently defeated by large margins by a unified White majority within the current CD-11, the Illustrative Map would offer Black and Latino voters the same opportunity as others

"to pull, haul, and trade to find common political ground" with White voters to elect their candidates of choice. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994). In this way, crossover districts like the Illustrative Map "diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal." *Bartlett*, 556 U.S. at 23.

5. Preexisting district boundaries. The Illustrative Map also "maintain[s] . . . [the] cores of existing districts" and localities. N.Y. Const. art. III, § 4(c)(5). The plan includes all of Staten Island and simply pulls the additional population necessary to form a complete congressional district from lower Manhattan instead of Brooklyn.

A district of this configuration has both historical and contemporary precedent. As explained above, *supra* § III.B, Staten Island was joined with Manhattan in a congressional district throughout the 1970s—one that substantially resembles the Illustrative Map presented here. The Legislature changed this configuration following the 1980 census specifically to preserve Republican advantage on Staten Island—a consideration that is prohibited under the Redistricting Amendments. *See* N.Y. Const. art. III, § 4(c)(5). Joining Staten Island with lower Manhattan would also align the district with New York's existing Assembly District boundaries. Specifically, the 61st Assembly District links communities in Staten Island's North Shore with neighborhoods in lower Manhattan that would likewise be included in a new CD-11 under the Illustrative Map.

6. Communities of interest. The Constitution also requires map-drawers to consider the maintenance of "communities of interest." *Id.* § 4(c)(5). Generally, "[c]ourts will find the existence of a community of interest where residents share substantial cultural, economic, political and social ties." *Diaz v. Silver*, 978 F. Supp. 96, 123 (E.D.N.Y. 1997). The Illustrative Map would help unify communities of interest that the existing congressional map divides. Under the Illustrative Map, CD-10 would include Chinatown (Manhattan), Sunset Park (Brooklyn), and Bensonhurst and Bath

Beach (Brooklyn), all of which are home to significant Chinese American populations that form a community of interest. *See* Letter re: Proposed Congressional Map at 4–5, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben County), NYSCEF Doc. No. 313 (explaining that the 2021 enacted map configured CD-10 to unite Chinese-American communities of interest in Chinatown, Sunset Par, Bath Beach, and Bensonhurst).

Advocates for the Asian-American communities in New York City have urged the IRC and the Legislature to consider that several Brooklyn communities, including Sunset Park, Bensonhurst, Dyker Heights, and Bath Beach have "an interconnection bounded by common culture, language and socioeconomic factors," and should be "together in one Congressional district . . . [to] ensur[e] communities of interest are not ignored or neglected." *Harkenrider*, 38 N.Y.3d at 542 (Wilson, J., dissenting) (quoting OCA-NY letter). For example, Dr. Wah Lee of OCA-NY (formerly Organization for Chinese Americans) testified that "[c]urrent Sunset Park residents commute daily to Manhattan Chinatown via the N train"; and on 86th Street—which separates Bensonhurst and Bath Beach—"there are Asian businesses including more than a dozen supermarkets, pharmacies, doctor's offices, restaurants, bakeries, bubble tea houses, salons, and 99 cent stores."[11] Dr. Lee also explained that "86th Street is . . . a major, essential transportation corridor via the D train for commuters from Bath Beach/Bensonhurst, connecting this Brooklyn region to Manhattan."[12] Kay Wong of Homecrest Community Services likewise testified that "many Asian immigrants are migrating down south to Bensonhurst and Homecrest . . . [a]s Sunset

[11] Statement of OCA-NY by Dr. Wah Lee at 29, Comment Letter to the New York Independent Redistricting Commission (July 29, 2021), https://perma.cc/MKC7-KTBA ("Lee Testimony").

[12] *Id.*

Park becomes increasingly overcrowded."[13] And "[m]any articles and newspapers describe Bensonhurst as the satellite Chinatown."[14] One federal court has found that similar evidence supports finding a community of interest in these neighborhoods. *See Diaz*, 978 F. Supp. at 124 (accepting evidence that "Asian communities of Sunset Park and Chinatown" are "mostly of Chinese background" and "regularly work together, attend the same health clinics, and shop in the same stores" to assume a community of interest).

Meanwhile, these same advocates "urged the IRC that, with regard to District 11 . . . 'Bensonhurst and Bath Beach should NOT be with Staten Island,'" because "'Staten Island does not share a similar concentration of Asians, nor the culture of Asian businesses as Bath Beach/Bensonhurst, nor do residents in Bath Beach/Bensonhurst travel on a regular basis to Staten Island and vice versa.'" *Harkenrider*, 38 N.Y.3d at 542 (Wilson, J., dissenting) (quoting Lee Testimony). Indeed, Ms. Wong testified to her personal knowledge of "candidates and elected officials representing [Congressional] District 11 completely ignor[ing] the Chinese community or not support[ing] issues important to an immigrant base like comprehensive immigration reform." Wong Testimony at 61.

In light of this testimony, the map the Legislature first enacted following the 2020 Census united, to the greatest extent possible, united Chinatown and the neighborhoods in Brooklyn with prominent Chinese-American communities—a decision Chief Judge Wilson discussed at length in

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[13] Statement of Homecrest Community Services by Kay Wong at 60, Comment Letter to the New York Independent Redistricting Commission (July 28, 2021), https://perma.cc/MKC7-KTBA ("Wong Testimony").

[14] *Id.*

his *Harkenrider* dissent. *Harkenrider*, 38 N.Y.3d at 532 (Wilson, J., dissenting).[15] *See* NYSCEF Doc. No. 8, A. 9187, in *Harkenrider v. Hochul*, Sup. Ct., Steuben County, index No. E2022-0116CV. After the *Harkenrider* court invalidated the Legislature's map, including CD-10, Senate leadership and the Asian American Legal Defense and Education Fund urged the special master to ensure the new map continued to respect the Chinese-American communities of interest in Manhattan and Brooklyn. *See* NYSCEF Doc. 310, Senate Majority Leader's Letter to Special Master, in *Harkenrider*; NYSCEF, Doc. 313, Senate Majority Leader's Letter re: Proposed Congressional Map, in *Harkenrider*; NYSCEF, Doc. 384, Asian Am. Legal Def. Fund Letter to Special Master. The legislative defendants even specifically proposed maintaining the boundaries of CD-10 and -11 that the Legislature first enacted for this reason. *See* NYSCEF Doc. No. 8, A. 9187, in *Harkenrider*. But the special master failed to do so. These communities were divided in the map the special master proposed, and in the one the Legislature ultimately adopted.[16] Under the current map, the Chinese-American communities in Chinatown and Sunset Park are united in CD-10, while Bensonhurst and Bath Beach are paired with Staten Island in CD-11, despite unequivocal testimony of community advocates that they lack any community or cultural ties to Staten Islanders and elected officials disregard their interests.

Petitioners' Illustrative Map corrects this division by uniting the Chinese-American communities in Chinatown, Sunset Park, Bath Beach, and Bensonhurst in CD-10. Thus, in addition

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[15] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=congress_latfor_20220202&propB=cong_nyirc_20240215&opacity=0&selected=-73.96190954213697,40.64313413631294#%26map=11.94/40.70665/-73.983.

[16] The special master divided the community at issue across three districts, with Sunset Park in the proposed D-11, Chinatown in CD-10, and Bensonhurst and Bath Beach in CD-9. The 2024 map at least minimizes that divide, with Chinatown, Sunset Park, and Bay Ridge in CD-10, and Bensonhurst and Bath Beach in CD-11.

to remedying the unlawful dilution of Black and Latino Staten Islanders' voting strength on Staten Island, the Illustrative Map provides the additional benefit of uniting communities of interest that advocates had implored the IRC, Legislature, and special master to keep together in the first place.

CONCLUSION

For the reasons provided herein, this Court should find that the 2024 congressional plan unconstitutionally dilutes Black and Latino Staten Islanders' voting strength in CD-11 in violation of Article III, Section 4(c)(1) of the New York Constitution. It should therefore permanently enjoin Respondents from using the 2024 Congressional Map in any future elections, and order the Legislature to create a minority influence district that provides Black and Latino Staten Islanders with an opportunity to elect a representative of their choice in CD-11, as demonstrated by Petitioners' Illustrative Map.

Dated: November 19, 2025

Respectfully submitted,

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

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

ELIAS LAW GROUP LLP

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

**Admitted pro hac vice*

CERTIFICATIONS

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in the Parties' stipulation for 11,000 words for Petitioners' memorandum of law in support of the Petition. This memorandum of law contains 10,765 words, excluding parts of the document exempted by Rule 202.8-b(b).

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

/s/ Aria C. Branch

EXHIBIT J

Office of the New York State Attorney General

Letitia James Attorney General

MOTION SEQUENCE 001

December 8, 2025

By NYSCEF
Hon. Jeffrey H. Pearlman
Supreme Court of the State of New York
New York County
New York, NY 10007

Re: *Williams v. Board of Elections of the State of New York, et al.*, Index No. 164002/2025

Dear Justice Pearlman:

This Office represents 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") in the above-referenced proceeding (the "Proceeding"). State Respondents respectfully submit this letter as their response to the Petition ("Petition," NYSCEF No. 1). Petitioners Michael Williams, Jose Ramirez Garofalo, Aixa Torres, and Melissa Carty ("Petitioners") bring a claim of vote dilution pursuant to the New York State Constitution, asserting that "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')." Pet. ¶ 1. As discussed below, the State Respondents take no position on the specific claims raised by Petitioners but submit this letter brief to set forth the State Respondents' position with respect to various legal principles at issue in this case.

At the outset, the Proceeding involves congressional apportionment, which is governed by, *inter alia*, the State Constitution, and in particular Article III, § 4(c)(1) ("Section 4(c)(1)"). Enacted in 2014, Section 4(c)(1) provides:

> (c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

> (1) 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.

1. Congressional Reapportionment is Governed by the New York Constitution[1]

Petitioners argue (*see, inter alia*, Petition at ¶¶ 48-50 and Petitioners' Supporting Memorandum of Law ("Pet. Mem."), NYSCEF No. 63 at 14-19) that the provisions of Section 4(c)(1) should be read to effectively *incorporate* the separate and distinct provisions of the New York Voting Rights Act, N.Y. Elec. Law §§ 17-200, *et seq.* (the "NYVRA"), and, more specifically, the express vote-dilution provisions of the NYVRA, *id.* § 17-206(2). By their own terms, however, the NYVRA's vote-dilution provisions apply only to "boards of elections" and "political subdivisions" of the State, *id.* §§ 17-204(4), 17-206, and **not** to the State itself, meaning that the State's apportionments of State Assembly, Senate, and Congressional districts are outside the scope of the statute. *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) (dismissing NYVRA vote-dilution claim against the State for failure to state a claim); 13 NYCRR § 501.3(e). Notably, the NYVRA was enacted in 2022 with its application clearly limited to political subdivisions, whereas Section 4(c)(1)'s standards for Congressional and State Legislative districts had already been part of constitutional amendments regarding redistricting adopted in 2014. *See* N.Y. Const., Art. III, § 4(b) (applying the redistricting amendments specifically to New York's State Assembly, Senate, and Congressional districts). Thus, the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or State Legislative Districts.

2. Petitioners' Vote-Dilution Claims Are Governed by the State Constitution

Section 4(c)(1) expressly 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." The full scope and standards set forth in current Section 4(c)(1), as ratified by the voters in 2014, has not been previously litigated. Accordingly, the specific substantive standard applicable under Section (4)(c)(1) remains an open question. State Respondents do not take a position here as to the particular standard under which a given petitioner can establish a claim of vote dilution under the State Constitution.[2]

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[1] Although the federal Constitution and certain federal statutes apply to Congressional reapportionment, Petitioners assert no claims under federal law.

[2] The legislative history of the constitutional amendment that added Section 4(c)(1) is silent on the substantive standard(s) that may be used to demonstrate a violation of the State Constitution with regard to the criteria governing apportionment of Congressional and State Legislative

State Respondents, however, urge the Court, when considering what standard to apply, to take into account the fact that New York amended its constitution in 2014, including Section 4(c)(1), 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 S2107, A2086. Thus, State Respondents respectfully submit that the State Constitution *may* require the adoption of districts to provide a racial minority greater influence over elections under certain circumstances.

3. The Federal Voting Rights Act is Not Controlling Here

State Respondents anticipate that Intervenors-Respondents Representative Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, "Intervenors") will argue that Petitioners cannot establish a vote-dilution claim under Section 2 of the federal Voting Rights Act, codified at 42 U.S.C. § 1973 (the "Federal VRA"), pursuant to the test set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), because Black and Latino voters are not sufficiently numerous in Staten Island and lower Manhattan to comprise a majority of a redrawn CD-11. *See Bartlett v. Strickland,* 556 U.S. 1, 13-15 (2009).

While Petitioners' claims might fail if the Federal VRA were the only applicable standard for vote-dilution claims, State Respondents respectfully submit that the relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law. *See e.g. 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"). If the 2014 amendments to the State Constitution were strictly construed in line with the Federal VRA then they would be a redundancy and the will of New York voters in voting for them would be read out of the State Constitution. *See* McKinney's Cons. Laws of NY, Book 1, Statutes § 144 ("Statutes will not be construed as to render them

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Districts. *See* Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086. Furthermore, at the time the current Congressional District maps, including CD-11, were enacted, State Respondents did not have the evidence now submitted by Petitioners' experts, nor have they had an adequate opportunity to assess fully how they – let alone all the members of the State Senate and State Assembly – would have responded had such evidence been provided prior to the time of enactment. The legislative history – limited only to the debate transcripts from both houses' passage of the current Congressional District maps – speaks only to the Legislature's attempt to revise maps submitted by New York's Independent Redistricting Commission ("IRC") to better balance the criteria laid out in the State Constitution, within the confines of the (essentially) equal population requirement for Congressional Districts. *See generally* Tr. of Assembly debate on A9310-A, dated February 28, 2024; Tr. of Senate debate on S8653-A, dated February 28, 2024. Accordingly, State Respondents take no position as to whether Petitioners' evidence makes out a violation of Section (4)(c)(1), based on whatever standard applies, nor whether the current configuration of CD-11 is constitutional and whether it should be redrawn.

ineffective"); *cf. 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"); *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")

Furthermore, there are textual distinctions between Section 4(c)(1) and the Federal VRA that counsel further caution before applying precisely the same standard as would apply under the federal statutory provision. *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.").

When considering so-called "crossover" districts under the Federal VRA, federal courts have examined the specific language of section 2 of the VRA. That language refers to a "'class' in the singular," that class's "members," and (again in the singular) "any citizen's" right to vote. *See Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (*en banc*). The *Nixon* court explained that such singular language suggested that section 2 did not require crossover districts. *Id.* at 1387. The *Nixon* Court then went on to describe language Congress would have used had it intended such a result: "the statute would read 'participation by members of *the classes* of citizens protected by subsection (a)'" and to whether "*their* members have less opportunity . . . ." *Id.* at 1386-87.[3] Section 4(c)(1) uses such plural language, undermining any claim that it should be construed to precisely mirror federal standards. *Compare* Section 4(c)(1) (referring to ensuring that "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") *with* 52 U.S.C. § 10301(b) (referring to "*a class* of citizens" and "*its* members").[4]

It is well-established, moreover, 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); *cf.* N.Y. Elec. Law § 17-200 (recognizing that "the 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"). Indeed, the plurality in *Bartlett* made clear that States could decide to use "crossover" or

[3] Whether section 2 of the Federal VRA permits aggregation of minority groups remains an open question, and the references here to *Nixon* are meant only to highlight the textual distinctions between Section 4(c)(1) and Section 2 of the Federal VRA. *See, e.g.*, *Pope v. County of Albany*, 687 F.3d 565, 573 n.5 (2d Cir. 2012).

[4] Unlike section 2 of the Federal VRA, Section 4(c)(1) also does not focus on any particular individual or citizen in the singular. *Compare* Section 4(c)(1) (referring to "denial or abridgment of" "racial or language minority voting rights") *with* 52 U.S.C. § 10301(a) (referring to "the right of any citizen of the United States to vote").

"influence" districts should they so desire, even though such districts are not required by the Federal VRA.[5] *Bartlett,* 556 U.S. at. 23-24 (plurality opinion of Kennedy, J.).

State Respondents take no position as to whether, under the specific circumstances here, Petitioners have successfully set forth a vote-dilution claim or whether the Court is required to mandate the creation of an alternative influence district for CD-11. But they do respectfully assert that, upon a sufficient record, the Court may find grounds to do so under Section 4(c)(1), independently of the Federal VRA.

4. The Federal Equal Protection Clause Would Not Bar Relief Here

Assuming, *arguendo,* that the Court determines that Petitioners have successfully made out a vote-dilution claim with respect to CD-11 under the State Constitution *and* are entitled to the remedy of a redrawn district that provides greater influence to Black and Latino voters in the current CD-11, State Respondents assert that such a remedy is not categorically foreclosed by the federal Equal Protection Clause. Indeed, under well-established doctrine, so long as a map is drawn in a manner where race is not the predominant factor, *i.e.*, where traditional redistricting principles such as compactness and contiguity are not subordinated to race, it is presumptively valid and not subject to heighted scrutiny under the Equal Protection Clause. *See Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (noting that, for map to be subject to heightened scrutiny under Equal Protection Clause, "a plaintiff must prove that the State subordinated race-neutral districting criteria such as compactness, contiguity, and core preservation to racial considerations" (citation modified)); *see also Allen v. Milligan*, 599 U.S. 1, 30 (2023) ("[w]hen it comes to considering race in the context of districting, we have made clear that there is a difference 'between being aware of racial considerations and being motivated by them'" with "[t]he former [being] permissible . . . ."); *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 34 (2d Dep't 2025) (ruling that a municipality lacked capacity to bring facial equal protection challenge against statute providing for redistricting as potential remedy for vote dilution, and noting that redistricting maps may not subordinate traditional redistricting principles to racial considerations); *see also Bush v. Vera Inst. For Justice,* 517 U.S. 925, 958 (1996) (plurality op. of O'Connor, J.) ("Strict scrutiny does not apply merely because redistricting is performed with consciousness of race."). The Supreme Court's plurality in *Bartlett* likewise stressed that the "option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more." 556 U.S. at 23. Accordingly, it cannot be said that a district in compliance with the State Constitution's requirements in Section 4(c)(1) would necessarily even require a strict scrutiny analysis, much less violate the Equal Protection Clause.

[5] The Petition seeks to create what is often referred to as an "influence district." Pet. ¶ 52. In such a district, while "minority voters may not be able to elect a candidate of choice," they nevertheless "can play a substantial, if not decisive, role in the electoral process." *See Georgia v. Ashcroft*, 539 U.S. 461, 463–64 (2003); *see also Barnett v. City of Chicago*, 969 F. Supp. 1359, 1406–07 (N.D. Ill. 1997), *aff'd in part, vacated in part*, 141 F.3d 699 (7th Cir. 1998) (citing cases).

5. The Remedy of Specific Remand to the Legislature Is Improper

Certain aspects of the remedies sought by Petitioners are improper. Specifically, in their "Wherefore" clauses, at paragraph (B), Petitioners ask that the Court "[p]ursuant 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." (emphasis added).

A judicial order to the Legislature, which as a body is not – nor could properly be – a party to this Proceeding, requiring it to convene and pass a specific law is impermissible as a matter of separation of powers. "The Court could compel the State to perform a legal duty, but not direct how it should perform that duty, since '[t]he activity that the courts must be careful to avoid is the fashioning of orders or judgments that go beyond any mandatory directives of existing statutes and regulations [and constitutional provisions] and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches.'" *Campaign for Fiscal Equity v. State*, 20 A.D.3d 175, 186 (1st Dep't), *aff'd as modified* 8 N.Y.3d 14 (2006). The relief sought in paragraph (B) would violate the separation of powers doctrine by mandating over half of the members, independently elected, to each house of the Legislature to vote in support of (and the Governor to sign) specific legislation of the Petitioners' devising. While State Respondents do not dispute that the Court *could* potentially invalidate the current composition of CD-11 under the State Constitution, it cannot order the Legislature to pass (and the Governor to sign) specific legislation. Depending on the circumstances, the appropriate remedy could range from a remand directive to the Legislature, to the IRC, *see Hoffmann v. NYS Independ. Redistricting Comm'n*, 41 N.Y.3d 341 (2023), or to a judicially appointed special master. Likewise, Petitioners' overbroad request for a permanent injunction enjoining all Defendants and their agents and successors in office from giving any effect to the entirety of the State's existing Congressional map, Pet. at Wherefore Clause, Para. (C) (emphasis added), is improper. To the extent required, State Respondents respectfully request an opportunity to provide additional briefing at a remedy stage of this case, and reserve their right to do so, should the Court determine that the CD-11 map is unlawful or unconstitutional.

The undersigned certifies that no generative artificial intelligence program was used in the creation of this document.

State Respondents thank Your Honor for the Court's consideration of this matter.

Respectfully submitted,

/s/ *Seth J. Farber*
Seth J. Farber
Special Litigation Counsel
OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL
Seth.Farber@ag.ny.gov
(212) 416-8029
Attorneys for State Respondents

EXHIBIT K

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
----------X
Michal 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-

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

Intervenors-Respondents.
----------X

Index No. 164002/2025

Hon. Jeffrey H. Pearlman

Motion Seq.001, ____

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-RESPONDENTS' MOTION TO DISMISS AND IN OPPOSITION TO PETITIONERS' MOTION FOR JUDGMENT

(*Counsel for Intervenor-Respondents listed on the following page*)

TROUTMAN PEPPER LOCKE LLP

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

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

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

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PRELIMINARY STATEMENT

For the last 30 years, the boundaries of New York's 11th Congressional District have been largely stable, encompassing the geographically isolated borough of Staten Island. Congresswoman Nicole Malliotakis has won election to Congress from the 11th Congressional District in each of the past three elections, making her the only Republican representing a portion of New York City in Congress. Congresswoman Malliotakis' story is quintessentially American: she is the daughter of immigrants, with her father immigrating to the United States from Greece and her mother fleeing to our Nation from Cuba to escape the Castro dictatorship.

Petitioners brought this lawsuit to redraw the 11th Congressional District's historical boundaries and convert it into a so-called "influence" district for Black and Latino voters. Petitioners ask this Court to read into the New York Constitution an "influence" district requirement not found in the constitutional text, and then order a racial gerrymander that clearly violates the Fourteenth Amendment's Equal Protection Clause under U.S. Supreme Court precedent. In all, the Petition suffers from numerous, independently fatal flaws, each of which requires the Court to dismiss the Petition and/or enter judgment in favor of Intervenor-Respondents.

First, Petitioners' sole claim rests on their meritless assertion that Article III, Section 4 of the New York Constitution mandates the drawing of so-called "influence" districts. But Article III, Section 4 does not use the term "influence" and is, instead, modeled on Section 2 of the federal Voting Rights Act ("VRA"), using language materially indistinguishable from Section 2. Interpreting that shared language, the U.S. Supreme Court in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) ("*LULAC*"), held that Section 2 does *not* mandate the creation of minority influence districts, *id.* at 446 (plurality op.). The U.S. Supreme Court decided

LULAC well before New York enacted Article III, Section 4 as part of the 2014 Amendments to the State's Constitution. Thus, under bedrock principles of constitutional interpretation, that reading of Article III, Section 4's language controls, and courts have no authority to write a different version of Article III, Section 4 into the New York Constitution.

Petitioners recognize that the text of Article III, Section 4 does not support their claim, and so remarkably ask this Court to read the statutory standards of the later-enacted New York Voting Rights Act ("NYVRA") into that constitutional provision. The NYVRA can require the creation of "influence" districts for local governments upon a showing, *inter alia*, that the candidates preferred by members of a minority group in a jurisdiction are "usually [ ] defeated" under the current map and that there is either "racially polarized" voting in the jurisdiction or that the minority group's ability "to elect candidates of their choice or influence the outcome of elections is impaired" "under the totality of the circumstances." N.Y. Elec. Law § 17-206(2)(b)(ii). Petitioners point to no authority that would allow this Court to amend retroactively a constitutional provision that the People adopted in 2014 to govern congressional redistricting to include standards and language from a statute that the Legislature adopted in 2022 to govern local redistricting.

Second, even if this Court were to accept Petitioners' invitation to judicially amend Article III, Section 4 to incorporate the NYVRA's standards, Petitioners' claim would fail on the merits. Most obviously, Petitioners have not made the NYVRA's threshold showing that Black and Latino voters' candidates of choice—Democrats—are "usually defeated" in New York. Minority-preferred candidates are not "usually defeated" throughout most congressional districts in New York—in fact, Democrats routinely win every seat wholly within New York City except for the 11th Congressional District and have a substantial chance to win that District as well. Petitioners' attempted showing on the remaining portions of the NYVRA's vote-dilution

analysis—either the racially-polarized-voting or the totality-of-the-circumstances inquiries—also fails, as demonstrated by Intervenor-Respondents' experts.

Finally, the U.S. Constitution bars Petitioners' requested relief for two separate reasons. To begin, redrawing the 11th Congressional District in the manner that Petitioners seek would violate the Fourteenth Amendment's Equal Protection Clause, as interpreted by the U.S. Supreme Court. The U.S. Supreme Court has made clear that when a mapdrawer moves voters within or without a particular district predominately based on racial consideration, this triggers strict-scrutiny review, meaning the action must be necessary to further a compelling state interest. As applied here, redrawing the 11th Congressional District for racial reasons clearly triggers strict scrutiny because it constitutes drawing a district to achieve a particular racial goal. Yet, Petitioners' request to redraw the 11th Congressional District cannot satisfy strict scrutiny's daunting two-step review. Petitioners have no evidence that such a redraw would further the compelling government interest of remediating specific instances of past discrimination—the only arguably compelling interest here. And redrawing the 11th Congressional District on a racial basis is not narrowly tailored because it is not necessary to remedy any identified racial discrimination that the State has engaged in. Additionally, Petitioners' requested remedy also violates the U.S. Constitution's Elections Clause. Were this Court to agree with Petitioners, it would have to judicially amend Article III, Section 4 to add the NYVRA's influence-district mandate to order the redrawing of a legislatively adopted congressional map. That approach exceeds the ordinary bounds of judicial review within which this Court must stay, according to the U.S. Supreme Court's recent Elections Clause decision in *Moore v. Harper*, 600 U.S. 1 (2023).

For any one of these reasons, and the additional reasons below, this Court should dismiss the Petition or, alternatively, reject Petitioners' claim on the merits.

BACKGROUND

A. The 2024 Legislature's Map Keeps The 11th Congressional District In Line With Its Historical Boundaries

Following the release of the 2020 federal census, New York "lost a congressional seat and other [of its] districts were malapportioned" due to "shifts in New York's population," making the State's "2012 congressional apportionment" "unconstitutional and necessitating the drawing of new district lines." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022) (citation omitted). The resulting process to redraw the State's congressional map was New York's "first opportunity" to have its "district lines [ ] be drawn under the new [Independent Redistricting Commission ('IRC')] procedures established by the 2014 constitutional amendments" to the New York Constitution, *id.*, which prohibit partisan gerrymandering through a provision mirroring Section 2 of the VRA, *compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). The IRC's map-drawing process broke down, however, resulting in the Legislature adopting its own congressional map without receiving the mandatory IRC submission. *Harkenrider*, 38 N.Y.3d at 504–05. The Court of Appeals held that the Legislature's map was both "procedurally" and "substantively unconstitutional." *Id.* at 521. The Court then instructed the Steuben County Supreme Court to "adopt constitutional maps" itself, *id.* at 524, which led to the adoption of the *Harkenrider* Map on May 20, 2022, *see Harkenrider* No.670 at 1–2, 4–11; *see also Harkenrider* No.696 at 1 (adopting modified map correcting certain technical violations).[1] Notably, the map that the Court of Appeals struck down as being "drawn with an unconstitutional partisan intent," *Harkenrider*, 38 N.Y.3d at 502, before the adoption of the *Harkenrider* Map was designed by Democrats to further their "political ambitions to capture the 11th District," Affirmation of Bennet J. Moskowitz

[1] Cites e-filings in *Harkenrider v. Hochul*, Index No.E2022-0116CV (Sup. Ct. Steuben Cnty.), may be found at https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=kmywkTvfcaoSsQ66zseQsg==&display=all (all webpages last accessed Dec. 8, 2025), and are cited as "*Harkenrider* No.__."

("Moskowitz Aff."), Ex.A, by making similar changes to the district's boundaries as those that Petitioners have requested here, *see* NYSCEF Doc. No.1 ("Pet.") ¶¶ 101–02, that would render the district "significantly more liberal," Moskowitz Aff., Ex.B.

The *Harkenrider* Map placed the boundaries of New York's 11th Congressional District largely in-line with the boundaries that had defined this district in every congressional map for decades (before the failed gerrymander), Moskowitz Aff., Ex.M ("Trende.Rebut") at 18–23; *compare Harkenrider* No.670 at 30, *with* Moskowitz Aff., Ex.C, Moskowitz Aff., Ex.D (2002 New York City Congressional District Map, numbering the general area covered by the current 11th Congressional District as the 13th Congressional District), *and* Moskowitz Aff., Ex.E (1997 New York City Congressional District Map, adopting same numbering), which District comprises all of Staten Island and parts of Southern Brooklyn, *see* N.Y. State Law § 111. The 11th Congressional District's boundaries date back to the 1980s—45 years ago. *See* Moskowitz Aff., Ex.F (1983 New York City Congressional District Map, numbering the general area covered by the current 11th Congressional District as the 14th Congressional District); *see also* Pet. ¶¶ 53, 94 (stating that the 11th "district's boundaries have remained static since 1980" and that "the district took its current form" in "the 1980s").

Thereafter, certain petitioners initiated a special proceeding to replace the *Harkenrider* Map. *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 355 (2023). The Court of Appeals ultimately required the IRC to submit a "congressional redistricting plan and implementing legislation" to the Legislature, as required by the 2014 Amendments, so that a new map would govern New York's 2024 congressional elections and beyond. *See id.* The IRC complied, approving the proposal in a 9-1 vote. *See* 2024 NY Senate Bill S8639; 2024 NY Assembly Bill A9304; *see also* Moskowitz Aff., Ex.G. The IRC's proposal only slightly modified

the *Harkenrider* Map and did not alter the 11th Congressional District. *See* Moskowitz Aff., Ex.G; Pet. ¶ 57. After receiving the IRC's proposed map, the Legislature made only modest changes, and then sent this proposal to the Governor. *See* 2023 NY Senate Bill S8653A; 2023 NY Assembly Bill A9310. The Legislature's map also did not alter the 11th Congressional District. Large, bipartisan majorities of the Senate (45-17) and the Assembly (118-30) voted in favor of the proposed congressional map. *See* 2023 NY Senate Bill S8653A (providing Senate floor vote details); 2023 NY Assembly Bill A9310 (same, as to Assembly). On February 28, 2024, Governor Hochul signed the 2024 Congressional Map drawn into law. N.Y. State Law §§ 110–12.

B. Congresswoman Malliotakis—The Daughter Of A Cuban Refugee And A Greek Immigrant—Represents The 11th Congressional District

Congresswoman Malliotakis is the incumbent Representative to the U.S. House of Representatives for New York's 11th Congressional District. *See* NYSCEF Doc. No.23 ("Malliotakis Aff."). She is the daughter of immigrants: her father immigrated to the United States from Greece and her mother came to America as a Cuban refugee fleeing the Castro dictatorship. Malliotakis Aff. ¶ 3. Congresswoman Malliotakis first ran for, and won, election to represent the 11th Congressional District in 2020. *Id.* ¶¶ 2–3. She garnered broad support in her first election, receiving over 155,000 votes and 53% of the total votes. *See* Moskowitz Aff., Ex.H. Congresswoman Malliotakis' election made her the first Hispanic and minority to represent the citizens of Staten Island in the House of Representatives, *see* Malliotakis Aff. ¶ 3, and the only elected Republican member of Congress representing a part of New York City, *see* N.Y. State GIS Clearinghouse, *GIS Data, NYS Congressional Districts* (Oct. 7, 2025).[2]

Congresswoman Malliotakis then successfully ran for reelection in the 11th Congressional District in 2022 and 2024. Malliotakis Aff. ¶ 2. In 2022, under the *Harkenrider* Map, Republican

[2] Available at https://data.gis.ny.gov/datasets/nys-congressional-districts/about.

representatives won 11 of New York's 26 congressional districts. *See* Moskowitz Aff., Ex.I; Moskowitz Aff., Ex.J. Congresswoman Malliotakis was the only Republican representative to win in New York City, earning 62% of the votes in the 11th Congressional District, totaling 115,992 votes. *See* Moskowitz Aff., Ex.J. In 2024, now under the 2024 Congressional Map, Republican representatives won only 7 of New York's 26 districts. *See* Moskowitz Aff., Ex.K; Moskowitz Aff., Ex.L. Congresswoman Malliotakis again decisively won reelection in the 11th Congressional District with 167,099 votes and 64% of the vote and, again, was the only Republican representative to win in New York City. *See* Moskowitz Aff., Ex.L. Congresswoman Malliotakis intends to run for reelection again in 2026 to continue representing the 11th Congressional District and is actively campaigning to win that election. *See* Malliotakis Aff. ¶¶ 5–7.

C. Petitioners Belatedly Challenge The 11th Congressional District

On October 27, 2025, Petitioners initiated this special proceeding, naming as Respondents the Board of Elections of the State of New York (the "Board") and certain state officials in their official capacities. Pet.1. Petitioners allege that they are registered voters residing in either the 10th or 11th Congressional Districts, *id.* ¶¶ 14–18, and claim that the 2024 Congressional Map's 11th Congressional District dilutes the votes of Black and Latino voters in that District in violation of Article III, Section 4(c)(1) of the New York Constitution, *id.* ¶¶ 96–102. Petitioners do not claim that Black or Latino voters in the 11th Congressional District could, either separately or even added together, form a majority in any reasonably configured district. Petitioners' sole claim is that the 11th Congressional District, as drawn in the 2024 Congressional Map, reduces the "*influence*" that Black and Latino voters "could" have in that district's elections. *Id.* ¶¶ 100–02 (emphasis added); *see also, e.g.*, *id.* ¶¶ 1, 4, 65–68; *id.* ¶¶ 12–13. Petitioners ask this Court to "order the Legislature to adopt" a new map that "pair[s]" Staten Island with certain "voters in

lower Manhattan"—similar to the map the Court of Appeals invalidated in *Harkenrider*—in order "to create a minority influence district in CD-11" for Black and Latino voters. *Id.* at 28.

STANDARD OF REVIEW

CPLR 3211(a)(7) allows dismissal when a petition "fails to state a cause of action." CPLR 3211(a)(7). The Court accepts the allegations in the petition as true, but disregards "allegations consisting of bare legal conclusions," to determine "whether the facts as alleged fit within any cognizable legal theory," and it should dismiss the petition "if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 141–42 (2017) (citation omitted). Under CPLR 3212, summary judgment is proper where the moving party "demonstrate[s] that 'the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment' in the moving party's favor." *Jacobsen v. N.Y.C. Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014) (citing CPLR 3212(b)). The movant must first "make a prima facie showing of entitlement to judgment as a matter of law" by "tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Id.* (citation omitted). This requires a "tender of evidentiary proof in admissible form"—"mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). If the moving party meets its initial burden, the burden shifts "to the non-moving party to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" by "produc[ing] evidentiary proof in admissible form" or by "demonstrat[ing] acceptable excuse for his failure to meet the requirement of tender in admissible form." *Id.* at 560–62 (citations omitted).

ARGUMENT

I. Petitioners' Claim Fails Under The New York Constitution

A. The New York Constitution's Vote-Dilution Provision Does Not Include An "Influence" District Mandate, Which Should Be The End Of This Case

This Court construes the New York Constitution in the same way that it "[c]onstru[es] the language of a statute"—by giving "the language used its ordinary meaning" and applying well-settled principles of construction. *In re Sherill*, 188 N.Y. 185, 207 (1907); *see Harkenrider*, 38 N.Y.3d at 509. Effect must "be given to the entire [provision] and every part and word thereof," *Lynch v. City of New York*, 40 N.Y.3d 7, 13 (2023) (citation omitted), "avoiding a construction that treats a word or phrase as superfluous," *Columbia Memorial Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022). The Court must not "amend" a provision "by adding words that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). It is a "fundamental rule of construction" for the Court to "presume[ ]" that the Legislature "does not act in a vacuum" and was "aware of the law existing at th[e] time" it enacted the provision. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep't 1983). So, when a state-law provision is either "modeled after a federal statute," *Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (Sup Ct. Yates Cnty. 1938), or is "substantively and textually similar to [its] federal counterpart[ ]," the Court generally construes it "consistently with federal precedent" interpreting the federal law, "striv[ing] to resolve federal and state" claims in the same way, *Zakrewska v. New School*, 14 N.Y.3d 469, 479 (2010) (citation modified); *see also Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25–26 (2002). That is especially so when "state and local provisions overlap with federal" provisions that involve "civil rights," because "these statutes serve the same remedial purpose . . . to combat discrimination." *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429 (2004). Further, if a law is open to two interpretations, "one of which would obey and the other violate the Constitution, the universal rule

of courts is to select the former." *People ex rel. Bridgeport Sav. Bank v. Feitner*, 191 N.Y. 88, 97–98 (1908).

Here, Petitioners bring only one claim: that New York's 2024 Congressional Map violates Article III, Section 4 of the New York Constitution by "dilut[ing]" the ability of Black and Latino voters in the 11th Congressional District "to influence the outcome of elections" under the standards articulated in the New York Voting Rights Act. Pet. ¶¶ 97–102. Because the New York Constitution does not recognize such a theory, *infra* Part I.A.1, this Court should dismiss the Petition and/or enter judgment in Intervenor-Respondents' favor and against Petitioners.

1. New York Modeled Article III, Section 4 On Section 2 Of The VRA, And So Article III, Section 4 Does Not Require Influence Districts

To address a history of "partisan and racial gerrymandering," *Harkenrider*, 38 N.Y.3d at 503, the People in 2014 amended the New York Constitution. As most relevant here, Article III, Section 4 provides that, "[s]ubject to the requirements of the federal constitution and statutes," the "following principles shall be used in the creation" of congressional districts: "Districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgment of" "racial or language minority voting rights," but instead "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). Article III, Section 4 says nothing about drawing districts to further a minority group's ability to "influence" the outcome of elections. *See generally id.*

New York "modeled" Article III, Section 4 "after" Section 2 of the federal VRA, *Bicknell*, 6 N.Y.S.2d at 453–54, and it is "substantively and textually similar" to Section 2, *Zakrewska*, 14 N.Y.3d at 479. Congress enacted the VRA in 1965 to create "stringent new remedies for voting discrimination, attempting to forever banish the blight of racial discrimination in voting." *Allen v.*

Milligan, 599 U.S. 1, 10 (2023) (citations omitted). As originally enacted, Section 2 provided that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973 (1970 ed.). After the U.S. Supreme Court interpreted that language in 1980 "not [to] prohibit laws that are discriminatory only in effect," Congress amended Section 2 in 1982 to its current form. *Allen*, 599 U.S. at 11–14. Section 2's text now provides that no "standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which *results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or" "because he is a member of a language minority group." 52 U.S.C. §§ 10301(a) (emphasis added), 10303(f)(2). A violation of Section 2 occurs when, "based on the totality of circumstances," racial or language minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301.

Section 2 of the VRA prohibits "vote dilution" through the "dispersal of a group's members into districts in which they constitute an ineffective minority of voters." *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (citation modified). Under the so-called *Gingles* factors, there are "three threshold conditions for proving a [Section 2] vote-dilution claim: (1) "a 'minority group' must be 'sufficiently large and geographically compact to constitute a *majority*' in some reasonably configured legislative district," (2) "the minority group must be 'politically cohesive,'" and (3) "a district's white majority must 'vote sufficiently as a block' to usually 'defeat the minority's preferred candidate.'" *Id.* at 287 (emphasis added) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)). The U.S. Supreme Court has not wavered from these requirements, repeatedly holding that Section 2 does not require particular action if the minority group at issue cannot

constitute a majority in a reasonably configured district. **Most relevant here, in *LULAC*, the U.S. Supreme Court concluded that Section 2's text does not require the "creat[ion of] an influence district," 548 U.S. at 446 (plurality op.)—that is, a district where minority groups can "play a substantial, if not decisive, role in the electoral process," *id.* at 479 n.15 (Stevens, J., concurring in part) (citation omitted)**. The Court explained that because Section 2 guarantees only the "opportunity" to "elect representatives of their choice," a claim under Section 2 "requires more than the ability to influence the outcome." *Id.* at 445–46 (plurality op.). Were it otherwise and Section 2 "were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *Id.*; *see also infra* Parts I.B, II.A. The Court has warned that "disregarding the majority-minority rule . . . would involve the law and courts in a perilous enterprise," "invit[ing] divisive constitutional questions that are both unnecessary and contrary to the purpose of" the VRA. *Bartlett v. Strickland*, 556 U.S. 1, 21–23 (2009) (plurality op.) (concluding that Section 2 does not require "crossover districts").

In 2014, after the 1982 amendments to Section 2 and after the U.S. Supreme Court decided *LULAC*, the People adopted Article III, Section 4, modeling it on Section 2 and using substantially similar language. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). These provisions address the same interests: both combat discrimination by prohibiting voting districts that "result[ ]" in the "denial or abridgement" of voting rights based on race or "language minority" status. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). And both are violated when, "based on the totality of the circumstances," racial groups "have less opportunity to participate in the political process and elect representatives of their choice." *Compare* 52 U.S.C. §§ 10301(b), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

Given that New York specifically modeled Article III, Section 4 on Section 2 of the VRA, Article III, Section 4 also does not mandate any redrawing of district lines to increase the influence of a minority group where that group is not a majority in a reasonably configured district. Article III, Section 4 uses substantively and textually similar language, *Bicknell*, 6 N.Y.S.2d at 453–54; *Zakrewska*, 14 N.Y.3d at 479, as Section 2. To begin, Article III, Section 4 provides that "districts shall not be drawn to have the purpose of, *nor shall they result in the denial or abridgment of*" "*racial or language minority voting rights*." N.Y. Const. art. III, § 4(c)(1) (emphases added). This first provision mirrors Section 2, which provides that no "standard, practice, or procedure"—including the drawing of district lines—"shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or*" "*because he is a member of a language minority group*." 52 U.S.C. §§ 10301(a), 10303(f)(2) (emphases added); *see Cooper*, 581 U.S. at 292. Then, Article III, Section 4 states that districts "shall be drawn so that, *based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice*." N.Y. Const. art. III, § 4(c)(1) (emphasis added). This second provision tracks Section 2 as well, which likewise states that a violation occurs when, "*based on the totality of circumstances*," racial or language minorities "*have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice*." 52 U.S.C. § 10301 (emphases added). Again, the U.S. Supreme Court has determined that Section 2 does not require the creation of minority influence districts, *LULAC*, 548 U.S. at 446 (plurality op.); *Bartlett*, 556 U.S. at 21–23 (plurality op.), and this Court should likewise construe the analogous Article III, Section 4 not to require the creation of minority

influence districts. So, to succeed on their Article III, Section 4 claim, Petitioners would need to show that either the Black population or the Latino population is "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." *Cooper*, 581 U.S. at 287 (citation omitted).[3]

Notably, courts in other States have used similar reasoning to define their own State's redistricting provisions by reference to similarly worded provisions in the VRA, in even less obvious situations. Most notably, in *In re Colorado Independent Congressional Redistricting Commission*, 497 P.3d 493 (Colo. 2021), the Supreme Court of Colorado determined a state constitutional amendment's meaning by reference to the federal VRA. *Id.* at 512. There, the constitutional amendment prohibited a redistricting plan that denied or abridged a citizen's right to vote because of "race or membership in a language minority group, including diluting the impact of [a] racial minority's group's electoral influence." *Id.* at 505 (citation omitted). Despite that additional language, the court concluded that Colorado's amendment was "coextensive with the VRA provisions as they existed in 2018 and create[d] no further [redistricting] requirements" to "create additional protections for [minority] voters in the form of influence, crossover, or collation districts." *Id.* at 512. The court reasoned, in relevant part, that the Colorado General Assembly had failed to define separately the terms "dilution" or "electoral influence," "which [was] curious if [that] language was intended to establish new protections beyond those existing in federal law." *Id.* at 510; *see also Asian Ams. Advancing Just.-L.A. v. Padilla*, 41 Cal. App. 5th 850, 872 (2019) (concluding that the phrase "single language minority" in a California elections statute must be

[3] There currently exists a circuit split over whether Section 2 authorizes coalition claims—where a plaintiff *combines* two racial or ethnic minority groups to obtain a majority within a district for purposes bringing a Section 2 claim. *Compare Petteway v. Galveston Cnty.*, 111 F.4th 596 (5th Cir. 2024) (*en banc*) (holding that Section 2 does not permit such claims), *with Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990). Although Intervenor-Respondents believe that Section 2 does not authorize coalition claims, this Court need not weigh in on that question here, given that Petitioners have not argued that the Black population or the Latino population can form a majority in a reasonably configured district whether added together or not.

interpreted as defined in the federal VRA because the legislature "undoubtedly would have, said so" if it intended the phrase "to have a different meaning under state law"). This reasoning applies with even greater force here given how closely Article III, Section 4's language mirrors the language of Section 2. *Supra* pp.13–14.

Finally, constitutional-avoidance principles mandate interpreting Article III, Section 4 as not requiring the creation of influence districts. *Bridgeport*, 191 N.Y. at 97–98. As Intervenor-Defendants show below, *infra* Part II.A, Petitioners' requested relief—redrawing the 11th Congressional District with the goal of giving Black and Latino voters more electoral influence, Pet.28—both triggers and fails strict-scrutiny review under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Infra* Part II.A. That is because redrawing the 11th Congressional District in this way constitutes the taking of government action based upon race that does not further any compelling government interest in the least-restrictive (*i.e.*, necessary) means. *Infra* Part II.A. This conclusion would apply to the creation of an influence district drawn under any influence-district mandate read into Article III, Section 4, meaning that the constitutional-avoidance canon compels the rejection of such an interpretation of Article III, Section 4. Notably, the U.S. Supreme Court cited constitutional avoidance as a reason for interpreting Section 2 of the VRA as not requiring the creation of minority influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.), and the Court has only grown more skeptical in its recent precedent of government action based on race, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) ("*SFFA*").

2. Petitioners' Effort To Read The NYVRA Retrocatively Into Article III, Section 4 Is Utterly Meritless

As noted, Petitioners here bring only one claim: that the 2024 Congressional Map violates Article III, Section 4 by "dilut[ing]" Black and Latino voters' ability to "influence elections" in

the 11th Congressional District under the NYVRA's vote-dilution standard and that "[a] minority influence district" should be drawn in the 11th Congressional District to remedy that violation. Pet. ¶¶ 96–102. Petitioners admit that the Black and Latino population is only 30% of Staten Island, *id.* ¶ 52, and offer no "reasonably configured legislative district," *Cooper*, 581 U.S. at 287, in which the Black and Latino populations—whether considered independently, or even combined—would constitute a majority, *see generally* Pet. Petitioners' lawsuit thus fails because nothing in Article III, Section 4 even mentions the creation of influence districts, and New York's modeling of Article III, Section 4 on Section 2 of the VRA means that there is no influence-district mandate in this constitutional provision. *Supra* pp.12–14. Petitioners, of course, understand that nothing in Article III, Section 4's text supports their theory, so they ask this Court to impose the NYVRA's statutory standards—enacted in 2022, eight years after the People adopted Article III, Section 4—retroactively into Article III, Section 4. Pet. ¶¶ 97–98. This outlandish argument is flawed in multiple respects. While it should go without saying, *Sgaglione v. Levitt*, 37 N.Y.2d 507, 514 (1975), courts cannot retroactively amend the New York Constitution's language adopted in 2014 dealing with congressional districts to add statutory language enacted eight years later for other jurisdictions.

In 2022, the Legislature enacted the NYVRA to establish greater voting rights protections applicable to local New York "board[s] of elections" and "political subdivisions." N.Y. Elec. Law § 17-206(2)(a). The NYVRA expressly departs from multiple aspects of the federal VRA and the U.S. Supreme Court's interpretation of that statute. *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 22 (2d Dep't 2025) (citation omitted). As relevant here, the NYVRA includes a "[p]rohibition against vote dilution," which bans localities from "us[ing] 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." N.Y. Elec. Law § 17-206(2) (emphasis added). Unlike Article III, Section 4, the NYVRA allows plaintiffs challenging local maps to pursue claims based on minority groups that can only "influence the outcome of elections," *id.* § 17-206(2)(b)(ii)(B), as well as claims relying on a "combin[ation]" of multiple minority groups into a coalition, *id.* § 17-206(2)(c)(iv). To prevail on a claim against a district-specific system, a plaintiff must show that the "candidates or electoral choices preferred by members of the protected class would usually be defeated." *Id.* § 17-206(2)(b)(ii); *infra* Part I.B.1. If this threshold requirement is met, the NYVRA provides two pathways for a plaintiff to establish a violation: the plaintiff can "either" show (a) that the "voting patterns of members of the protected class within the political subdivision are racially polarized," or (b) that "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)(b)(ii) (emphasis added); *infra* Part I.B.2.

Petitioners argue that the NYVRA provides the framework for claims under Article III, Section 4 of the New York Constitution because the "language" of the NYVRA and Article III is "similar," but this is egregiously false and legally meritless. Pet. ¶¶ 7, 10–11; NYSCEF Doc. No.63 ("Mem.") at 15. ***Unlike the NYVRA, Article III, Section 4 says absolutely nothing about a minority group's ability to "influence the outcome of elections." Contrast* N.Y. Elec. Law § 17-206(2), *with* N.Y. Const. art. III, § 4(c). Article III, Section 4 makes no mention of "influence" and instead focuses solely on ensuring an equal "opportunity to participate," N.Y. Const. art. III, § 4(c), using the same language as Section 2 of the VRA, which does not recognize influence districts, *supra* pp.13–14.**

Rather than point to any language from Article III, Section 4's text that supports their argument that this constitutional provision somehow imports the NYVRA's distinct, later-enacted "framework for evaluating vote dilution," Petitioners instead look to the NYVRA's "statement of purpose," adopted in 2022. Mem.14–15. That 2022 statement of purpose provides New York's policy "to participate in the [State's] political processes . . . and especially to exercise the elective franchise" and recognizes "the constitutional guarantees . . . against the denial or abridgment" of voting rights. Mem.15 (citation omitted). Beyond failing to provide any support for the suggestion that the policy of a later enacted statute should inform the Court's interpretation of a constitutional provision adopted eight years prior, *see generally* Mem.15–16, the language that Petitioners rely on does nothing to support their argument. Interpreting Article III, Section 4 to be consistent with Section 2—without a minority-influence-district guarantee—expressly ensures the right to "participate" in New York's political process and in no way denies or abridges voting rights, *see LULAC*, 548 U.S. at 445–46 (plurality op.).

According to Petitioners, "[s]tatutory interpretation principles" allow this Court to graft the NYVRA's vote-dilution framework retroactively onto Article III, Section 4 because courts may look to state law when interpreting a constitutional provision. Mem.15. But Petitioners point to no case even suggesting that a court should look to law enacted years *after* the provision being construed. The case that Petitioners cite provides that courts will consider "*preexisting* State or statutory common law" when interpreting constitutional provisions, *People v. Harris*, 77 N.Y.2d 434, 438 (1991) (citation omitted) (emphasis added), and not law that was enacted years later.

Petitioners claim that *Harkenrider* supports their position because it "suggested" that Article III, Section 4, like the NYVRA, provides broader protection against vote dilution than the VRA. Mem.17. But *Harkenrider* stated only that the 2014 Amendments' "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." Mem.17 (citing *Harkenrider*, 173 N.Y.S.3d at 112). That some "experts" believe that the 2014 Amendments may provide greater protection than Section 2 of the VRA in some unspecified manner, Mem.17, is no justification for this Court to disregard Article III, Section 4's plain text, *Lynch*, 40 N.Y.3d at 13, and blue pencil the NYVRA's 2022 provisions into the 2014 Amendments. If some other party presents and adequately develops some theory as to how Article III, Section 4 is broader than Section 2 in some respect, courts can consider that theory in that case. But here, Petitioners only developed their Article-III-Section-2-equals-NYVRA theory, which is plainly wrong, and this alone dooms their lawsuit.[4]

Petitioners then point to the allegedly "distinctive attitudes of the [New York] citizenry," Mem.18, but that argument gets them nowhere as well. Petitioners cite no case that suggests that courts can amend constitutional text based on assertions that New York's citizens seek to "ensur[e] strong protections against minority vote dilution in all aspects of the political process." Mem.19. Petitioners claim that interpreting Article III, Section 4 according to its plain language may "create an inconsistent application of vote dilution protections across New York" because the NYVRA's "more robust protections" will apply only to "municipal and local elections," while Article III, Section 4's "lesser protections [will] apply[ ] to congressional and senate elections." Mem.18. But the Legislature did not adopt a law imposing NYVRA's requirements on congressional

[4] Petitioners claim in a footnote that if the Court does not adopt their theory that the New York Constitution incorporates the vote-dilution standard "set forth in the NY VRA," that the Court could still rule for Petitioners under "a different constitutional standard." Mem.19 n.5. But Petitioners brought the lone claim in their Petition under that theory, *see* Pet. ¶¶ 96–102, so if the Court rejects that theory, it must dismiss the Petition. Petitioners cannot rely upon the Court to invent a new, unpleaded theory for them. *See Quintal v. Kellner*, 264 N.Y. 32, 39 (1934) ("We cannot create a cause of action which is not alleged."). In any event, Petitioners' request comes in a conclusory footnote and is thus waived. *See OFSI Fund II, LLC v. Canadian Imperial Bank of Com.*, 82 A.D.3d 537, 538 (1st Dep't 2011).

redistricting, limiting that statute instead to "board[s] of elections" and local "political subdivisions" of New York. N.Y. Elec. Law § 17-206(2)(a).

B. Even If This Court Somehow Concludes That The New York Constitution's 2014 Amendments Time Traveled To Adopt The NYVRA 2022 Standards For Congressional Districts, Petitioners Still Cannot Prevail

1. Petitioners Have Not Satisfied The NYVRA's Threshold "Usually Defeated" Mandate

If this Court nevertheless adopts Petitioners' theory that Article III, Section 4 somehow incorporates the NYVRA's later-enacted vote-dilution standards, this Court should still grant judgment to Intervenor-Respondents and deny judgment to Petitioners because Petitioners have put forth insufficient evidence to satisfy the NYVRA's threshold "usually be defeated" inquiry. *Id.* § 17-206(2)(b)(ii).

a. The NYVRA is a newly enacted statute, and no court has determined what it means for a candidate to "usually be defeated," which is a threshold requirement for a district-specific vote dilution claim under the NYVRA. *Id.* To adjudicate Petitioners' only merits theory, therefore, this Court would be the first to determine how that provision works, and to do so in the context of congressional redistricting that the NYVRA does not even cover. In conducting that inquiry, this Court would need to apply the same interpretative principles discussed above, *supra* pp.9–10, including taking care to avoid adopting any interpretation that leads to absurd results, *see People ex rel. McCurdy v. Warden*, 36 N.Y.3d 251, 263 (2020) (leading to absurd results, is "in itself, sufficient reason to reject" an interpretation).

If this Court accepts Petitioners' Article-III-Section-4-Equals-NYVRA theory, this Court should interpret Subsection 17-206(2)(b)(ii)'s "usually be defeated" language as requiring an NYVRA vote-dilution plaintiff to demonstrate that minority-preferred candidates are routinely defeated in elections across the entire jurisdiction. While the NYVRA does not define "usually,"

see N.Y. Elec. Law § 17-204, the plain meaning of the word "usually" shows that the Legislature intended this to be a robust requirement. "Usually" is commonly understood to refer to something that occurs "ordinarily" or "as a rule." *Usually*, Oxford English Dictionary ("OED") (2024)[5]; *see Usually*, MerriamWebster.com Dictionary, Merriam-Webster (2024) (defining usually as "most often" or "as a rule").[6] Thus, "usually be defeated" means one will routinely or "as a rule" be defeated, implying a standard that is far more robust than "more likely than not" or 50% plus one. In other words, one could not reasonably conclude that racial group's preferred candidates are defeated "ordinarily" or "as a rule" in a political subdivision where they win—for example—49% of races in the relevant jurisdiction. *See Usually*, OED, *supra*. Evaluating NYVRA vote-dilution claims on a jurisdiction-wide basis—here, across New York's entire 2024 Congressional Map or at least the 11th Congressional District's surrounding region—is also the best reading of the statutory text because the NYVRA's vote-dilution analysis is not district specific by its statutory text. The NYVRA provides that "evidence concerning whether members of a protected class are geographically compact or concentrated," N.Y. Elec. Law § 17-206(2)(c)(viii), such that they could form a voting "majority in a reasonably configured district," *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022), "shall *not* be considered [for liability]," N.Y. Elec. Law § 17-206(2)(c)(viii) (emphasis added). The NYVRA also allows vote-dilution plaintiffs to reach all over the relevant jurisdiction, "combin[ing]" members of multiple minority groups to bring a vote-dilution "[c]oalition claim[ ]," N.Y. Elec. Law § 17-206(8), regardless of what district those members live in within the jurisdiction. Further, if a violation is found, the NYVRA provides for a host of remedies that affect the entire "political subdivision" and do not alter the boundaries of any particular district. *See id.* § 17-206(5). Thus, unlike with Section 2 of the VRA, there is no

[5] Available at https://www.oed.com/ dictionary/usually_adv?tab=meaning_and_use#16029712.
[6] Available at https://www.merriam-webster.com/dictionary/usually.

requirement for a court evaluating an NYVRA claim to "carefully evaluat[e] evidence at the district level," or evaluate "the design of [a new] district." *Wis. Legislature*, 595 U.S. at 401, 404.

Any other approach to Petitioners' Article-III-Section-4-Equals-NYVRA theory would "lead to absurd results." *McCurdy*, 36 N.Y.3d at 262. Interpreting "usually be defeated," N.Y. Elec. Law § 17-206(2)(b)(ii), to mean anything less than a minority group's preferred candidates losing elections "ordinarily" or "as a rule," *see Usually*, Oxford English Dictionary, *supra*, across the jurisdiction would often render compliance with the NYVRA impossible, as at least *some* racial groups' candidates of choice are bound to be defeated more than 50% of the time in any given jurisdiction at any given time that has racial polarized voting as between any racial group, absent some unusual and mathematically improbable (or impossible) circumstance, *see* Trende.Rebut.9–15. This is because "[r]edistricting is always a zero-sum game" where "[m]oves that benefit one side hurt another side," *id.* at 15, such that by redrawing districts to ensure that one racial group's preferred candidates will not be defeated over 50% of the time in one individual district, the jurisdiction would inevitably "hurt" another racial group's ability to elect its preferred candidates in at least one other district, *see id.* at 9–15. After all, at least some racial group's candidates of choice will be defeated over 50% of the time in any hand-picked district or districts given the zero-sum nature of elections where there is racially-polarized voting, *see id.*, and the New York Legislature could not be assumed to have enacted an absurd statute, which makes compliance with the law impossible in any political subdivision that happens to have racially-polarized voting, *see McCurdy*, 36 N.Y.3d at 262. This is especially true given that the NYVRA has been interpreted "as allowing members of *all* racial groups, including white voters, to bring vote dilution claims," *Clarke*, 237 A.D.3d at 33 (emphasis added), making it almost certain that either Whites or at least one non-White racial group would be able to bring a vote-dilution claim at any given time there is

racially-polarized voting. That "absurd result[ ]," *McCurdy*, 36 N.Y.3d at 262, would become even more ridiculous under Petitioners' influence district theory because any racial group (or groups)—including Whites—whose preferred candidates are defeated more often than not in a jurisdiction could claim that they lack "an equal opportunity to influence elections," Mem.14, as other racial groups and demand that jurisdiction's maps be redrawn to create a new "minority influence district" for them, Mem.39.

Nor is this "a purely hypothetical concern" in New York: there is "racially polarized voting in the area covered by district[s] 5, 8, and 9," and, under Petitioners' interpretation of the NYVRA, "it would appear that White voters would have viable claims all over New York's congressional map"; and "changing districts so that minority-favored candidates of choice win more would then mean the same district would need to be changed back so that White voters' candidates of choice are not usually defeated." *Id.* at 10. For example, District 8, where Whites constitute "a minority" and non-White racial groups' preferred Democratic candidates routinely defeat White-preferred Republican candidates, *id.*, could be redrawn to create a district "where Republican candidates win more often than not," *id.* at 12, while keeping the remaining districts "heavily Democratic," *id.* at 10, but then "the minorities in District 8 . . . [would] have a claim" because they would no longer be able to "elect their candidate of choice" more often than not and "[t]here is still racially polarized voting in District 8," *id.* at 14. Thus, "[c]onducting the analysis only on the basis of the district in question—especially without a stringent requirement that the racial group's candidate of choice be 'usually defeated'" routinely in elections across the jurisdiction—would lead to a never-ending cycle of jurisdictions being forced to draw new districts to benefit different racial groups, *id.* at 10—a manifestly "absurd result[ ]" that this Court should avoid, *McCurdy*, 36 N.Y.3d at 262.

Notably, this never-ending-violation issue is not a problem under Section 2 of the VRA. *See Wis. Legislature*, 595 U.S. at 401–04. This is because a Section 2 plaintiff must satisfy the stringent two-step framework for evaluating vote-dilution claims that the U.S. Supreme Court established in *Thornburg v. Gingles*, 478 U.S. 30 (1986). A given jurisdiction only violates Section 2's vote-dilution provisions if a plaintiff can first satisfy all three *Gingles* preconditions as to each new majority-minority district that the plaintiff seeks to force the jurisdiction to create. *Gingles*, 478 U.S. at 50; *Wis. Legislature*, 595 U.S. at 402. The first precondition requires that "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district." *Wis. Legislature*, 595 U.S. at 402. This precondition is not satisfied by showing that it is possible to create an "influence district[ ]." *LULAC*, 548 U.S. at 446 (plurality op.). The second precondition requires that "the minority group must be politically cohesive." *Wis. Legislature*, 595 U.S. at 402. And under the third precondition, "a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate." *Id.* If those preconditions are met, the plaintiff would then need to satisfy the required, separate second-step of *Gingles*' vote-dilution analysis—the totality-of-the-circumstances inquiry—by showing that "the political process is [not] equally open to minority voters" in the jurisdiction. *Id.* (citations omitted). These carefully crafted safeguards—which are absent from the NYVRA—cabin Section 2's application, such that jurisdictions can comply with its requirements and that creating a new district to remedy a violation under Section 2 will not generally give rise to another Section 2 claim in another jurisdiction.

b. Petitioners do not satisfy the NYVRA's "usually be defeated" showing. Black and Latino voters' candidates of choice—Democrats—are not "usually defeated" across the State of New York, within the region surrounding the 11th Congressional District, or even within the 11th

Congressional District itself. Trende.Rebut.6–9. Statewide across New York's 26 congressional districts, Democrats comprise 73% of New York's congressional delegation, leaving Republicans with the remaining 27%—only seven seats. *Id.* at 8. The below table summarizes Democratic candidates' performance in statewide races in New York's congressional districts:

District	Gov 18	AG 18	Sen 18	Comp 18	Pres 20	Comp 22	Sen 22	Gov 22	AG 22	Sen 24	Pres 24	# D Wins	% D Wins
1	50.9%	50.7%	53.1%	55.5%	49.1%	46.0%	44.3%	41.9%	42.7%	47.1%	44.9%	4	36.4%
2	52.6%	52.3%	54.6%	56.8%	48.8%	43.2%	41.8%	39.0%	40.1%	45.2%	43.0%	4	36.4%
3	58.9%	57.7%	60.0%	62.2%	55.7%	50.8%	49.8%	45.8%	46.7%	50.1%	47.8%	7	63.6%
4	60.8%	59.6%	61.6%	63.3%	57.3%	51.5%	50.6%	47.1%	48.1%	52.8%	50.6%	9	81.8%
5	88.2%	88.3%	88.3%	88.6%	81.4%	75.5%	76.6%	73.3%	74.8%	74.1%	71.3%	11	100.0%
6	74.7%	74.6%	75.0%	75.2%	64.8%	58.3%	59.8%	53.7%	55.7%	58.1%	53.3%	11	100.0%
7	90.1%	90.5%	90.5%	90.2%	80.5%	77.9%	80.3%	74.0%	77.7%	77.4%	73.6%	11	100.0%
8	86.0%	86.2%	86.1%	86.0%	77.9%	73.9%	74.7%	71.7%	73.3%	75.2%	72.5%	11	100.0%
9	85.9%	86.9%	85.5%	86.2%	76.2%	74.1%	75.1%	68.7%	72.8%	75.2%	70.6%	11	100.0%
10	89.5%	89.5%	90.1%	89.3%	85.7%	82.7%	85.1%	80.6%	82.3%	82.8%	81.0%	11	100.0%
11	54.0%	53.5%	55.4%	55.7%	46.1%	39.4%	40.1%	36.3%	37.4%	41.2%	37.6%	4	36.4%
12	86.2%	84.7%	86.6%	85.3%	86.0%	80.9%	83.5%	80.1%	79.9%	81.9%	82.4%	11	100.0%
13	95.3%	95.3%	95.2%	95.0%	88.8%	86.5%	89.1%	86.4%	87.7%	83.5%	80.1%	11	100.0%
14	86.4%	86.7%	86.7%	86.8%	77.8%	70.6%	73.1%	69.1%	70.7%	70.0%	66.2%	11	100.0%
15	93.1%	93.0%	92.9%	93.1%	85.5%	81.0%	83.5%	80.3%	81.9%	78.1%	74.4%	11	100.0%
16	74.2%	74.5%	75.6%	76.0%	72.5%	65.6%	66.2%	63.3%	64.0%	68.6%	66.6%	11	100.0%
17	55.6%	58.4%	60.0%	61.8%	55.1%	52.4%	52.3%	48.3%	50.4%	55.1%	50.3%	10	90.9%
18	49.8%	55.8%	59.3%	59.3%	54.6%	53.3%	52.2%	49.1%	51.0%	56.9%	51.7%	9	81.8%
19	46.8%	52.6%	57.6%	59.1%	52.3%	52.2%	50.3%	46.5%	48.5%	54.4%	50.9%	8	72.7%
20	49.4%	57.0%	62.1%	66.7%	59.8%	60.4%	56.6%	52.9%	54.8%	60.1%	57.2%	10	90.9%
21	35.0%	42.2%	50.9%	52.4%	42.0%	43.1%	40.0%	34.4%	37.6%	44.3%	39.6%	2	18.2%
22	49.5%	54.4%	59.5%	62.5%	55.8%	54.3%	54.1%	48.9%	50.1%	56.2%	53.8%	9	81.8%
23	36.4%	37.5%	46.8%	48.4%	40.7%	40.3%	38.9%	35.5%	36.4%	41.9%	39.4%	0	0.0%
24	33.1%	37.7%	45.5%	47.0%	39.6%	38.1%	37.2%	32.7%	34.1%	41.0%	38.4%	0	0.0%
25	54.3%	57.0%	62.2%	63.2%	60.5%	57.4%	57.0%	53.8%	54.0%	60.0%	59.3%	11	100.0%
26	59.8%	58.5%	66.9%	69.0%	62.8%	62.1%	61.6%	58.4%	58.8%	62.6%	59.8%	11	100.0%

Id. at 6.

As the above table shows, Democratic statewide candidates have won in *every* New York congressional district except for two districts, the 23rd and 24th Districts in upstate New York. *Id.* at 8–9. Outside of Districts 1 and 2 on Long Island—where Democrats have still won four elections—Democrats have won a majority of the statewide elections in every remaining district throughout the State. *Id.* In all, Democratic statewide candidates have won an outright majority of the statewide races that Petitioners' expert, Dr. Palmer, analyzed in all but six of New York's 26 districts—a staggering 77%. *Id.* Conversely, this means that Republicans have won a majority of the statewide elections in only six of New York's 26 congressional districts. *Id.* Under this Democratic dominance, Republicans have not carried New York in a Presidential Election since

1984, a gubernatorial election since 2002, a U.S. senate election since 1992, an attorney general election since 1994, or a comptroller election since 1990. *Id.* at 5–6.

These lopsided results in favor of minority-preferred Democratic candidates become even more stark when focusing on elections within the region surrounding the 11th Congressional District—New York City. *Id.* at 6–7. With the exception of the 11th Congressional District, Democrats have *never* lost a statewide election in any of the 11 districts wholly within New York City. *Id.* at 6. Moreover, Democrats usually win those elections "by wide margins," such that there is only one district wholly within New York City "where a Democratic candidate has ever dropped below 60%." *Id.* at 7. Even including the two districts that are partly within New York City, Districts 3 and 16, does not change this conclusion because Democrats still routinely win or are at least competitive in statewide elections in those districts as well. *See id.* at 5–7. So, far from being usually defeated, minority-preferred candidates "routinely win[ ] elections in congressional districts across New York City." *Id.* at 6.

Nor does zooming in solely on the 11th Congressional District itself change the conclusion that minority-preferred candidates are not usually defeated. *See id.* at 5–6. As shown in the above chart, the minority candidate of choice is plainly still "capable of winning elections in District 11." *Id.* at 6. Indeed, Democrats "have won four of eleven [statewide] elections" there since 2018 and "Joe Biden carried 46% of the vote in 2020." *Id.*

Petitioners therefore cannot satisfy the NYVRA's threshold requirement as the minority candidate of choice is not "usually defeated" anywhere in New York—statewide, in the New York city region, or in the 11th Congressional District itself.

2. Petitioners Also Have Not Satisfied Either The NYVRA's Racially-Polarized-Voting Test Or The Totality-Of-The-Circumstances Test

If this Court concludes that Petitioners could satisfy the "usually defeated" showing—which, as explained above, is the legally required, threshold inquiry for NYVRA liability, *see* N.Y. Elec. Law § 17-206(2)(b)(ii); *supra* Part I.B—Petitioners have not submitted sufficient facts to establish that the 11th Congressional District violates the NYVRA under the statute's racially-polarized-voting showing or totality-of-the-circumstances inquiry. As discussed above, *supra* pp.16–18, the NYVRA provides that a political subdivision with a district-based system has engaged in "vote dilution" when minority-preferred candidates "would usually be defeated" and either of two showings are made: (A) there is "racially polarized" voting in the jurisdiction, "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." N.Y. Elec. Law § 17-206(2)(b)(ii). Petitioners fail to make either showing.

1. The NYVRA defines "racially polarized voting" as the "divergence in the . . . choice[s] of members in a protected class from the . . . choice[s] of the rest of the electorate." *Id.* § 17-204(6). The U.S. Supreme Court has observed that "racially polarized voting" is the "discernible, non-random relationship[ ] between race and voting." *Cooper*, 581 U.S. at 304 n.5. Thus, to establish the existence of racially polarized voting, an NYVRA plaintiff must present evidence showing that there is a "discernible, non-random relationship[ ] between race and voting" choices among the plaintiff's identified minority group, *id.*, and that those electoral choices "diverge[ ]" from the "electoral choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), on a statewide (or at least region-wide) basis—which, as explained *supra* pp.20–25, is the proper way to conduct the NYVRA's vote-dilution analysis.

Here, Petitioners have failed to submit evidence showing that the electoral choices of Black and Latino voters diverge from the choices of the rest of the electorate under the 2024 Congressional Map either on a statewide or regional basis, *see* Moskowitz Aff., Ex.N ("Voss.Rebut.") at 4–6, and thus fail to state a vote-dilution claim under the NYVRA's racially polarized voting prong, *see* N.Y. Elec. Law § 17-206(2)(b)(ii)(A). As discussed above, the NYVRA requires evaluating vote-dilution claims on a statewide basis or, at minimum, a regional basis. *Supra* pp.20–25. The only evidence Petitioners, who carry the burden here, provide is one "unreliable," Voss.Rebut. at App'x B.9, expert opinion on the existence of a "discernible, non-random relationship [ ]" between Black and Latino residents of the 11th Congressional District's "race" and their "voting" for Democrat candidates, *Cooper*, 581 U.S. at 304 n.5, and evidence showing that those "choice[s]" "diverge[ ]" from the "choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), in the 11th Congressional District who tend to favor Republicans, *see* NYSCEF Doc. No.60 ("Palmer Rep.") at 2–5. But Petitioners have presented *no* evidence showing that Black and Latino voters' choices diverge from the rest of the New York electorate on a statewide or regional basis, *see* Voss.Rebut.4–6; *id.* at App'x B.18–20, as the NYVRA's vote-dilution prohibition requires, *supra* pp.20–25.

Rather, Petitioners' expert Dr. Palmer "restrict[ed] his analysis to a single congressional district's precincts—either only the precincts in the current [11th Congressional District] or only the illustrative district's precincts"—rendering his "unreliable." Voss.Rebut.5. "[A]n analysis of group cohesion and of racially polarized voting [ ] needs to extend beyond a single legislative district," *id.*, as an analyst conducting a racially polarized voting analysis should "[i]deally" identify "meaningful subdivisions within a state—such as regions with a shared history or that share known economic or cultural commonalities—and conduct[ ] the ecological inferences within

those regions, combining them into statewide results if desired," *id.* at App'x B.19. The "substantive[ ] problem" with Dr. Palmer's narrow focus on a "single district" to "conduct[ ] ecological inferences" is that the "same voters can be made to look polarized, or not polarized, depending on how one draws the lines." *Id.* at App'x B.20. In other words, "[f]ocusing on a single district . . . renders a vote-dilution analysis practically worthless, because mapmakers can manipulate the level of racial/ethnic voting cohesion—by separating or merging like-minded members of a demographic group." Voss.Rebut.5. For example, "[a] cohesive White and Asian population in Staten Island"—currently in the 11th Congressional District and whom tend to "prefer Republican representation"—"can be brought into relief, or hidden, depending on the other precincts tossed into the district" from the current 10th Congressional District. *Id.* at App'x B.20. Similarly, "[f]airly cohesive Republican communicates in Brooklyn can be made to look less cohesive by merging them into [the 10th Congressional District]." *Id.* Petitioners' single district focus thus "give[s] a misleading picture of how cohesive a racial or ethnic group actually is in the area where mapmakers [a]re working"—here, the entire 2024 Congressional Map or at least the New York City metropolitan region surrounding 11th Congressional District—and provides "a distorted view of the level of racial polarization." Voss.Rebut.5; *see id.* at App'x B.10. "Widen[ing] the scope of [the] analysis" to conduct ecological inferences for at least "a broader metro area" as the NYVRA requires, *id.* at App'x B.19–20, shows that "New York City's congressional districts as a whole do not exhibit racially polarized voting," because "White voting is not cohesive, and neither Whites nor Asians consistently vote against the candidates preferred by African-American and Hispanic citizens," Voss.Rebut.6. Further, that same "conclusion extends to the entire state of New York as well," should the Court conclude "that is the proper scope of analysis." Voss.Rebut.6. In sum, none of Petitioners experts opined on racially polarized

voting on a statewide or regional basis as required by the NYVRA and their flawed analyses of voting limited only to the 11th Congressional District—"that are in no way tailored to the time period, the political context, or the possibility that racial/ethnic groups differ across a diverse metropolitan area," *id.* at App'x B.15–16—fail to reliably establish racially polarized voting in any event. Accordingly, Petitioners have failed to state a claim for vote-dilution under the NYVRA's racially polarized voting prong.

2. Regarding the totality-of-the-circumstances inquiry, the NYVRA provides a non-exhaustive list of 11 factors that courts may consider, including factors such as "the history of discrimination" in the jurisdiction, the use of voting or election practices that have had "dilutive effects" on the identified minority group's voting strength, the use of "racial appeals" in campaigns, the extent to which members of the minority group have participated in the electoral and political processes and been elected to office, and whether those members "are disadvantaged" in other socioeconomic areas such as "education" and "employment." N.Y. Elec. Law § 17-206(3). Looking at these factors, an NYVRA plaintiff must show that "the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), in order to "establish[ ] that [ ] a violation" of the NYVRA's vote-dilution prohibition "has occurred," *id.* § 17-206(3).

Here, while Petitioners have attempted to submit facts on the NYVRA's all-things-considered inquiry, their evidence is insufficient to establish that "the ability of" Black and Latino voters in the 11th Congressional District "to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), under a proper application of the NYVRA's vote-dilution prohibition. As Intervenor-Respondents' expert, Joseph Borelli, explains, the history of racism on Staten Island provided by Petitioners' expert, Dr. Segrue, is one-sided and

omits the significant progress that Staten Island has made to counter any disparate treatment of minorities. Moskowitz Aff., Ex.O ("Borelli.Rebut") at 18–26.

Borrelli also explains that, in recent years, Staten Island has made significant progress. Purported hate crimes in Staten Island—which mainly consist of graffiti and literature—decreased by 66% from 2018 to 2019, while New York City simultaneously saw a 67% increase. *Id.* at 48. Although Dr. Sugrue points to disparities in education, homeownership, and household income, he ignores the significant progress that has been made in these areas. *Id.* at 37–44. Both Black and Hispanic Staten Islanders' educational attainment and household income have increased over the past decade. *Id.* And Dr. Sugrue omits that Staten Island has a homeownership rate more than two times greater than New York City's average and significantly higher than the statewide average. *Id.* at 41–42. Staten Island also has "extensive minority resources" meant to serve Staten Island's minority communities, providing resources, ensuring voting rights, and assisting with integration. *Id.* at 45–48. Additionally, Latino voter eligibility, registration, and turnout has increased regionally and across the country, with Latinos "shattering previous voting turnout records," in New York City's 2025 municipal primaries. *Id.* at 33 (citation omitted). Black voter turnout is even higher and is comparable to White voter turnout. *Id.* at 35. More than just showing up for elections, Blacks and Latinos have had success in being elected to political office in Staten Island. Currently, a Black woman represents the North Shore of Staten Island in the New York City Council, a Black man represents the same in the New York Assembly, and Congresswoman Malliotakis—the daughter of immigrants—represents the 11th Congressional District in Congress. *Id.* at 29–30. That Dr. Segrue failed to demonstrate vote dilution in the 11th Congressional District is made clear by Borelli's extensive, sixty-two-page report. *Id.* at 1–62.

II. The U.S. Constitution Bars Petitioners' Requested Remedy And Core Theory

A. Petitioners' Racial Gerrymander Violates The Equal Protection Clause

Petitioners' requested relief—the redrawing of the 11th Congressional District to create an "influence" district for Black and Latino voters—would trigger, *infra* Part II.A.1, and fail, *infra* Part II.A.2, strict-scrutiny review under the Equal Protection Clause.

1. Petitioners' Request To Redraw The 11th Congressional District For Racial Reason Triggers Strict-Scrutiny Review

Petitioners' request that this Court order the redrawing of the 11th Congressional District to create an "influence" district for Black and Latino voters triggers strict-scrutiny review, as this would mandate the placement of voters either within or without the 11th Congressional District predominantly (and, indeed, solely) to give voters lumped together by race the benefit of a greater chance of electing their preferred candidates (and, given the zero-sum nature of elections, give citizens grouped together by other races a lesser chance to elect their preferred candidates).

a. A mapdrawer has separated "citizens into different voting districts on the basis of race"—triggering strict-scrutiny review—when "race was the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district." *Cooper*, 581 U.S. at 291 (citation omitted); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995). These principles ensure that redistricting does not reinforce "impermissible racial stereotypes," *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw I*"), or result in a district "being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group," *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (citation omitted). And they apply whether the mapdrawer is a legislature, *Cooper*, 581 U.S. at 291, or a court, *Wis. Legislature*, 595 U.S. at 401.

When a mapdrawer draws a districted based on race, that establishes that "race furnished the predominant rationale for that district's redesign," triggering strict-scrutiny review. *Cooper*, 581 U.S. at 299–301. A mapdrawer can only achieve such a racial goal by moving voters "within or without a particular district" based on race until the goal is met—the definition of racial predominance. *Id.* at 291, 299–300. That conclusion holds even if the district at issue "respects traditional [redistricting] principles" if race was nevertheless the one "criterion that, in the [mapdrawers' view], could not be compromised. *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citations omitted; alterations omitted). The U.S. Supreme Court has repeatedly reaffirmed these principles, concluding over and over again that a mapdrawer drawing district lines with race as the "predominant motive for the design of the district as a whole"—that is, redistricting with a specific racial goal—triggers strict scrutiny. *See, e.g.*, *id.* at 192–93; *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03.

b. Here, Petitioners' requested remedy triggers strict-scrutiny review because it mandates placement of voters in a district based not just predominantly, *Cooper*, 581 U.S. at 299–301; *Bethune-Hill*, 580 U.S. at 192–193, but entirely upon racial considerations: creating a new district with the express goal of giving Black and Latino voters the benefit of increased electoral "influence" than under the prior map, Pet.27–28. That is plain from the Petition, which asks this Court to order the redrawing of the district so that "Staten Island is paired with voters in lower Manhattan to create a minority influence district." Pet.28. Thus, the "predominant motive for the design of the district as a whole" that Petitioners present is race-based, *Bethune-Hill*, 580 U.S. at 192–93; *see also Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03, as mapdrawers must move voters either in or out of the district until Black and Latino voters have enough "influence" to satisfy Petitioners' demands, *see* Pet.28. That inflicts the harms that the

Equal Protection Clause forbids: the use of racial stereotypes, the presumption that individuals of the same race or ethnicity share political preferences, and the signaling that the district exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

Petitioners' request for an "influence" district here triggers strict scrutiny even if the adopted map "complie[d] with traditional redistricting criteria," Pet.28, which Petitioners' map plainly does not. Moving enough voters either in or out of the 11th Congressional District with the goal of giving Black and Latino voters the benefit of more electoral influence—as Petitioners' requested remedy requires—makes race the "predominant motive" for redrawing the district. *See Bethune-Hill*, 580 U.S. at 192. In other words, a minority influence district necessarily uses race or ethnicity as the principle for "the design of the district as a whole." *Id.* So, even if other traditional redistricting criteria were considered, race would be the "predominant [motivating] factor" in the redraw. *E.g.*, *Cooper*, 581 U.S. at 291. All that said, as Intervenor-Defendants' experts show, the proposed redraw of the 11th Congressional District that Petitioners seek would disregard traditional redistricting principles. Specifically, Petitioners' proposal for the 11th Congressional District disregards communities of interest because Manhattan's largely White population does not have much in common with Staten Island's diverse community. Borelli.Rebut.15–16. Further, it makes little practical sense to combine Southern Manhattan's city dwellers--who, for example, have the lowest rate of car ownership-- with Staten Island's more suburban community, who have the highest rate of car ownership of all the boroughs. *Id.* at 17–18. It also disregards compactness given the physical separation between those two boroughs. *Id.* at 17–19. So, for all these reasons, strict scrutiny necessarily applies. *Wis. Legislature*, 595 U.S. at 402–03.

2. Redrawing The 11th Congressional District For Racial Reasons Is Not Narrowly Tailored To Further Any Compelling State Interest

a. A law that allocates benefits or burdens based on race violates the Equal Protection Clause unless it can pass strict scrutiny by demonstrating that it is "narrowly tailored to achieving a compelling state interest." *Id.* at 401. Only two relevant compelling interests could possibly justify race-based government action.[7] First, the State has a compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *SFFA*, 600 U.S. at 207; *see Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). "[G]eneralized assertion[s] of past discrimination" are insufficient to constitute a compelling interest. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*"). Second, the Court has "long assumed" that, in the redistricting context, attempted compliance with Section 2 of the VRA is another "compelling interest" that could justify drawing district lines with predominately racial motives. *Cooper*, 581 U.S. at 292; *see also Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02. That is because Section 2 is the rare race-based law that satisfies strict scrutiny due to its "exacting requirements" and safeguards that narrowly tailor its application. *Allen*, 599 U.S. at 30.[8] A law is "narrowly tailored" when its use of race is "*necessary*" to "achieving [the law's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted; emphasis added). To satisfy that requirement, "the means chosen to accomplish the government's asserted purpose must be *specifically and narrowly framed* to accomplish that purpose"—an exceedingly high standard. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013) (citations omitted; emphasis added). For example, if the State has a compelling interest in remediating a specific instance of

[7] "[A]voiding imminent and serious risks to human safety in prisons, such as a race riot" is also a compelling interest. *SFFA*, 600 U.S. at 207.

[8] As explained below, the Court may soon retreat from this holding, given the reargument in *Louisiana v. Callais*, 606 U.S. ___, 2025 WL 1773632 (June 27, 2025) (reargued Oct. 15, 2025). *Infra* p.37.

past intentional discrimination, its chosen remedy must be "necessary to cure [the] effects" of that particular discrimination. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 510 (1989) (plurality op.); *accord SFFA*, 600 U.S. at 249 (Thomas, J., concurring).

b. Adopting Petitioners' position and requiring the creation of a minority influence district would not further a compelling state interest and is not narrowly tailored to achieving such interest.

i. *No Compelling State Interest*. Petitioners do not articulate any "strong" evidentiary basis to conclude that race-based action is "necessary" to remediate "*identified* discrimination." *Shaw II*, 517 U.S. at 909–10 (emphasis added; citation omitted). They point only to isolated and "generalized," *id.*, instances of past discrimination against Black and Latino populations in Staten Island generally, having nothing to do with *voting*, *see* Pet. ¶¶ 67–95. For example, Petitioners allege that "remnants" of redlining and discriminatory housing practices still exist in Staten Island, *see* Pet. ¶¶ 76–77, without explaining how the ability to influence an election will remedy that alleged discrimination. That is not a compelling interest—and certainly not New York's proclaimed interest—that satisfies strict scrutiny. *SFFA*, 600 U.S. at 207. Moreover, the States lack Congress' constitutional entitlement to use voting-rights laws to remedy societal discrimination, further demonstrating that mandating influence districts advances no compelling *state* interest. The Fourteenth Amendment prohibits the *States* from using "race as a criterion for legislative action"—including "benign racial classifications," *City of Richmond*, 488 U.S. at 490–91, 495 (citation omitted)—so States cannot undertake the "odious" exercise of "pick[ing] winners and losers based on the color of their skin," *SFFA*, 600 U.S. at 208, 229 (citation omitted). Although "Congress may identify and redress the effects of society-wide discrimination[, this] does not mean that, *a fortiori*, the States and their political subdivisions are free to decide that such

remedies are appropriate." *City of Richmond*, 488 U.S. at 490; *accord Trump v. Anderson*, 601 U.S. 100, 112 (2024).

Although the U.S. Supreme Court has in the past assumed that ensuring compliance with the federal VRA is a compelling interest, *see Cooper*, 581 U.S. at 292, that interest is not available here because the federal VRA does not require influence districts (nor have Petitioners even brought a claim under the federal VRA). The U.S. Supreme Court "has long assumed that one compelling interest" under the Equal Protection Clause "is complying with the operative provisions of the [federal VRA]," including Section 2, *id.*, in "an effort to harmonize the[ ] conflicting demands" of the Equal Protection Clause and Section 2, *Abbott*, 585 U.S. at 587. That said, the Court appears poised to cut back (at least to some extent) on this assumption in *Louisiana v. Callais*, where the Court ordered and heard reargument on the question of whether a State's drawing of a minority majority district pursuant to Section 2 does satisfy the Equal Protection Clause, *see* 606 U.S. ____, 2025 WL 1773632 (June 27, 2025). Nevertheless, because Section 2 does not require the "creat[ion of] an influence district," *LULAC*, 548 U.S. at 446 (plurality op.), and because Petitioners do not allege a Section 2 claim here, VRA compliance cannot serve as a compelling interest in this case.

ii. <u>*No Narrow Tailoring*</u>. Even if the creation of minority influence districts served a compelling interest in "remediating specific, identified instances of past discrimination," Petitioners' remedy would still be unconstitutional because it is not "narrowly tailored—meaning *necessary*—to" alleviate demonstrated past discrimination by the political subdivision. *SFFA*, 600 U.S. at 206–07 (citation omitted; emphasis added); *see Fisher*, 570 U.S. at 311.

Petitioners' theory lacks *any* tailoring to the remediation of any past instances of racial discrimination in the 11th Congressional District. Petitioners make no attempt to tie Article III,

Section 4's supposed mandate to redraw the 11th Congressional District into an influence district to any showing that the State engaged in racially discriminatory conduct in the past or that there are ongoing consequences of such discrimination either generally or with respect to the 11th Congressional District, in particular. *Supra* Part I.A.2. Instead, in Petitioners' view, all that they must show to mandate the race-based redrawing of the 11th Congressional District into a minority influence district is that the preferred candidates of Black and/or Latino voters will "usually [be] defeated" and that there is either (a) "racially polarized" voting in the district or (b) an impairment of Black and/or Latino voters' ability to influence an election under the NYVRA's all-things-considered, totality-of-the-circumstances inquiry. Mem.19–39. But whether the preferred candidate of a minority group is "usually defeated" does not itself show discrimination. *Supra* Part I.B.1. Further, racially polarized voting is a common occurrence, which also does not show discrimination. *See Cooper*, 581 U.S. at 304 n.5. And the NYVRA's totality-of-the-circumstances inquiry is readily satisfied without any showing of specific instances of past discrimination. *Supra* p.30. Thus, Petitioners' position would require the race-based redrawing of the 11th Congressional District into an influence district independent of any showing that this was necessary to remedy specific instances of racial discrimination in the district itself.

The remedies offered in the NYVRA further highlight Petitioners' failure to show that the race-based redrawing of the 11th Congressional District into an influence district is "necessary." *SFFA*, 600 U.S. at 206–07. The NYVRA offers multiple remedies to "ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process." N.Y. Elec. Law § 17-206(5). For instance, a jurisdiction could mandate "additional voting hours or days," or "additional polling locations." *Id.* § 17-206(5)(viii), (ix). A jurisdiction could also "requir[e] expanded opportunities for voter registration," or "requir[e] additional voter

education." *Id.* § 17-206(xii), (xiii). Notably, the Appellate Division expressly stated that these other "possible remedies under the NYVRA" are not "race-based" and "do not sort voters based on race"—unlike "race-based [re]districting." *Clarke*, 237 A.D.3d at 36; *see Clarke v. Town of Newburgh*, __ N.E.3d ___, 2025 WL 3235042, at *4 (N.Y. Nov. 20, 2025) (noting that "several of the potential remedies mentioned by the NYVRA," such as "longer polling hours or enhanced voter education," do not require "alterations of an [existing] election system"). Petitioners have made no effort to show that these alternative, non-race-based remedies would fail to provide Black and Latino voters in the 11th Congressional District a greater opportunity to "influence" the outcome of elections there—remedies that could further Petitioners' asserted interest without requiring a redrawing of the 11th Congressional District based on race. Accordingly, for this reason as well, Petitioners have failed to show that it is "necessary" to redraw the 11th Congressional District into an influence district.

B. Judicially Adopting Petitioners' Rewrite Of Article III, Section 4 Would Violate The Elections Clause Of The U.S. Constitution

Granting Petitioners any remedy in this case would require this Court to adopt Petitioners' theory that Article III, Section 4 incorporates the NYVRA's standards, *supra* Part I.A.2, making this Court the first to read language identical to Section 2 of the federal VRA as including an influence-district mandate: or indeed, read later-enacted statutory language into any provision of the New York Constitution. Doing so would impermissibly "add[ ] words" to the New York Constitution, *Am. Transit Ins. Co.*, 3 N.Y.3d at 76, by judicially creating an atextual requirement to redraw a legislatively adopted congressional map. Such an interpretation would clearly exceed "the ordinary bounds of judicial review" and violate the Elections Clause of the U.S. Constitution. *Moore*, 600 U.S. at 36–37.

1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*." U.S. Const. art. I, § 4 (emphasis added). Thus, "the Elections Clause expressly vests power to carry out its provisions in '*the Legislature*' of each State," which is "a deliberate choice that [courts] must respect." *Moore*, 600 U.S. at 34 (citation omitted; emphasis added). Accordingly, when "state court[s] interpret [ ] [ ] state law in cases implicating the Elections Clause"—such as cases adjudicating state law challenges to congressional maps—they must take care to "not transgress the ordinary bounds of judicial review," thereby "arrogat[ing] to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

The U.S. Supreme Court recently provided guidance on the proper role of state courts in adjudicating state-law challenges to congressional redistricting maps in *Moore*. There, North Carolina voters and voting-rights organizations challenged North Carolina's congressional map as an unlawful partisan gerrymander under that State's constitution. *Id.* at 11. The legislative defendants in the case claimed that the Elections Clause "insulates state legislatures [drawing congressional maps] from review by state courts for compliance with state law," *id.* at 19, while other parties argued that state courts have plenary authority to review congressional maps and "free rein" to say what state law is, *id.* at 34. Accordingly, the parties presented the Court with two extreme theories: one that would undermine state courts' authority to ensure that redistricting maps comply with state law, and another that would essentially nullify the Elections Clause's protections for state Legislatures' constitutional role in redistricting. *See id.* at 34–37.

Moore carved out a middle path, warning state courts not to use novel or strained interpretations of state law to exert too much authority over the congressional-redistricting process. *See id.* While "the Elections Clause does not exempt state legislatures from the ordinary

constraints imposed by state law," it also does not mean that "state courts . . . have free rein" when determining whether a congressional map satisfies state law. *Id.* at 34. Specifically, state courts must "ensure that [their] interpretations of [state] law do not evade federal law," *id.*, by "read[ing] state law in such a manner as to circumvent federal constitutional provisions," *id.* at 34–35. Otherwise, state courts would "transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36. Should a state court "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution," the U.S. Supreme Court stands ready "to exercise judicial review." *Id.* at 37.

Justice Kavanaugh's concurrence in *Moore* directly addressed the question of the appropriate "standard a federal court should employ to review a state court's interpretation of state law in a case implicating the Elections Clause" in order to determine whether such an interpretation exceeds the bounds of "ordinary state court review." *Id.* at 38 (Kavanaugh, J., concurring). He considered three possible standards, which all "convey[ed] essentially the same point: Federal court review of a state court's interpretation of state law in a federal election case should be deferential, but deference is not abdication." *Id.* at 38 & n.1. Justice Kavanaugh ultimately urged the Court to "adopt Chief Justice Rehnquist's straightforward standard" from *Bush v. Gore*. *Id.* at 39–40. Under this standard, state courts must not "'impermissibly distort[ ]' state law 'beyond what a fair reading required.'" *Id.* at 38 (citation omitted). As Chief Justice Rehnquist explained, this standard "does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*," because giving "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually

departed from the statutory meaning, would be to abdicate [the Court's] responsibility to enforce the explicit requirements of [the federal Constitution]." *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring). Justice Kavanaugh made clear that this standard "should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions," and that, in reviewing state-court interpretations of state law, courts "necessarily must examine the law of the State as it existed prior to the action of the state court." *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted). Applying this "straightforward standard," *id.* at 39, will "ensure that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op.).

2. Here, this Court adopting Petitioners' Article-III-Section 4-Equals-NYVRA theory (or, indeed, any theory that inserts an influence-district mandate into Article III, Section 4) to invalidate and require the redrawing of a legislatively adopted congressional map mid-decade is precisely the kind of "impermissibl[e] distort[ion]" of state law "in a federal election case," *id.* at 38 & n.1 (Kavanaugh, J., concurring), that would "[dis]respect [ ] the constitutionally prescribed role of state *legislatures*," *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring), and violate the Elections Clause under *Moore*.

Petitioners ask this Court to discard a legislatively adopted congressional map based on a radical departure from New York's principles of constitutional interpretation. *Supra* Part I.A. Judicially inserting a "minority influence district" requirement into Article III, Section 4 is an "[un]fair reading," *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted), of state law that would impermissibly allow New York state courts "to arrogate to themselves the power vested *in state legislatures* to regulate federal elections," *id.* at 36 (majority op.) (emphasis added). Unlike the NYVRA, nothing in Article III, Section 4 references the right to "influence" elections.

Supra pp.13–14, 17. Rather, accepting Petitioners' theory would require this Court to read the later-enacted NYVRA's text into the New York Constitution, an unprecedented bit of judicial redrafting with no analogue in any prior New York case. Petitioners' theory thus requires the Court to "transgress the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, and "'impermissibly distort[ ]' state law 'beyond what a fair reading required,'" *id.* at 38 (Kavanaugh, J., concurring) (citation omitted). So distorting New York law would "unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution" and undoubtedly violate the Elections Clause. *Id.* at 36–37 (majority op.).

III. Laches Bars The Petition

Laches requires dismissal where a petitioner has engaged in a "lengthy neglect or omission to assert a right" that results in "prejudice to an adverse party." *Saratoga Cnty. Chamber of Com, Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003); *see* CPLR 103(a); *Sheerin v. N.Y. Fire Dep't Articles 1 & 1B Pension Funds*, 46 N.Y.2d 488, 496–97 (1979). Applying laches is appropriate where the delay was "entirely avoidable and undertaken without any reasonable explanation," especially in "time sensitive" "elections matters." *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1228–30 (3d Dep't 2022); *see Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't 2022). New York courts routinely dismiss elections-related claims as untimely for relatively short delays. *See, e.g.*, *MacDonald v. County of Monroe*, 191 N.Y.S.3d 578,591–92 (Sup Ct. Monroe Cnty. 2023) (two-month delay); *Nichols v. Hochul*, 76 Misc.3d 379, 384–85 (Sup Ct. N.Y. Cnty. 2022), *aff'd as modified*, 206 A.D.3d 463 (three-and-a-half-month delay); *League of Women Voters*, 206 A.D.3d at 1228 (same); *Amedure v. State*, 210 A.D.3d 1134, 1138–39 (3d Dep't 2022) (nine-month delay). Here, laches bars the Petition because Petitioners waited until late October 2025 to challenge the 11th Congressional District's boundaries, which boundaries "have remained static since 1980," Pet.15, under a theory that purportedly existed the moment

New York ratified the 2014 Amendments, *see id.* ¶¶ 99–101; *see* N.Y. Const. art. III, § 4(c) (effective January 1, 2015). At minimum, Petitioners could have brought their claim after the *Harkenrider* Map was adopted on May 20, 2022, or after the 2024 Congressional Map was adopted on February 28, 2024, as neither map altered the District's boundaries. *See* Pet. ¶¶ 58–59. Petitioners offer no explanation for their "entirely avoidable" delay, *League of Women Voters*, 206 A.D.3d at 1230, which "prejudice[s] [ ] voters[,] candidates," and the Legislature, *id.*

CONCLUSION

This Court should dismiss Petitioners' Petition or, alternatively, reject Petitioners' claim on the merits.

Dated: New York, New York
December 8, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____

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

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, it contains 13,987 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York
December 8, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____

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

EXHIBIT L

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

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

Petitioners,

vs.

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

Respondents.

Index No.: 164002/2025
Hon. Jeffrey H. Pearlman

Mot. Seq. 001 and 006

MEMORANDUM OF LAW IN OPPOSITION TO
THE PETITION AND IN SUPPORT OF MOTION TO DISMISS

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

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

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

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PRELIMINARY STATEMENT

Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, "Respondents"), respectfully submit this memorandum of law in opposition to the Petition and in support of their motion to dismiss pursuant to CPLR 3211(a)(7). Respondents adopt and expressly incorporate herein the arguments made by Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba in opposition to the Petition (NYSCEF Doc. No. 116).

Following extensive litigation, the Democratic-controlled New York State Legislature drew the 2024 Congressional Map and approved it on February 28, 2024. On the same day, Democratic Governor Kathy Hochul signed the map into law. As Petitioners readily concede, with the 2024 Map, the Legislature did not alter the configuration of CD-11, which covers Staten Island and portions of Brooklyn, and has remained relatively constant since 1980. This configuration has long satisfied applicable federal law, including section 2 of the federal Voting Rights Act of 1965 (52 USCA § 10301) ("federal VRA") and the standard articulated in *Thornburg v Gingles* (478 U.S. 30 [1986]), as well as New York State Constitutional standards, including Article III, § 4(c) adopted in 2014. Simply stated, the 2024 map of CD-11 is, and has been for decades, geographically coherent and electorally stable, and its minority CVAP profile indisputably has been steady across the post-census cycles.

Recognizing that CD-11's 2024 map is immune from challenge under federal law and Article III, § 4(c), Petitioners now argue that the "best approach" for interpreting Article III, § 4(c) is to ignore long-settled federal law to which Article III, § 4(c) is subject and instead apply the vote

dilution framework set forth in the New York State Voting Rights Act, the John R. Lewis Voting Rights Act of New York (Election Law § 17-206) ("NYVRA"). This argument is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law. By its express terms, the NYVRA applies only to local elections, not congressional elections, and was enacted eight years *after* the People adopted Article III, § 4(c). Petitioners make this argument, despite expressly admitting the NYVRA "does not, by its terms, directly regulate congressional redistricting"[1]

Based solely on this supposed "best approach," Petitioners seek to invalidate CD-11's 2024 Map in favor of their "Illustrative Map," which jettisons twelve long-standing precincts in favor of heavily Democratic precincts located across five miles of open water in lower Manhattan.

On its face, Petitioners' claim must be dismissed as a matter of law and without the necessity of a trial, because it violates the express terms of the NY Constitution, the NYVRA, and several canons of constitutional and statutory construction. As adopted by the People, Article III, § 4(c) is "*[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements*" (NY Const art. III, § 4(c) ["Article III, § 4(c)"] [emphasis added]). Thus, by its express terms, Article III, § 4(c) is subject *only* to the federal constitution and statutes (*i.e.*, the federal VRA and *Gingles*) and the New York Constitution. It is not subject to *any* state statutes, let alone the NYVRA.

Compounding this problem, Petitioners fail to offer any authority demonstrating that a constitutional provision is subject to a subsequently enacted statute, much less that a subsequently enacted statute can provide insight as to the People's intent for a previously adopted constitutional

[1] Petitioners' Memorandum of Law in Support of Petition dated November 19, 2025 (NYSCEF No.63) ("Petitioners' Mem.") at 2.

provision. Indeed, since the language in Article III, § 4(c) is plain and unambiguous—a point Petitioners do not dispute—there is no need to resort to external aids for interpreting this constitutional enactment and certainly not to a statute enacted *eight years later*.

Petitioners' claim also fails under the maxim *expressio unius exclusion alterius* ("the expression of one is exclusion of others"), which creates an irrefutable inference that what was omitted or not included in a constitutional provision or statute was intended to be omitted or excluded. This applies to Article III, § 4(c) since the People expressly subjected that provision only to federal statutes, not state statutes. The maxim applies with equal force to Petitioners' thinly veiled attempt to drastically expand the reach of NYVRA outside its clearly delineated scope of local elections, which by its own express terms, applies only to local elections. If the Legislature had intended to apply NYVRA's "loosened requirements" to congressional districts such as CD-11, it would have done so. It did not and it is not the judiciary's place to provide the purely legislative remedy that Petitioners clearly seek.

Moreover, even if NYVRA's analytical framework could be applied to Article III, § 4(c) (it cannot), Petitioners' claim fails because the NYVRA is unconstitutional under both the federal and state constitutions. Since the statute unabashedly sorts voters based on race, it is subject to strict scrutiny, which is fatal to the NYVRA because it neither furthers a compelling state interest nor is it narrowly tailored. This too requires dismissal of Petitioners' claim as a matter of law and without a trial.

In any event, Petitioners' Illustrative Map cannot pass constitutional muster as it is nothing more than a hyper-partisan gerrymander designed to relocate large blocs of voters along indisputably partisan lines. It is less compact by every commonly used metric, severs established communities of interest and political subdivisions, and relies on a tenuous, ferry-only water

corridor to connect distant populations across the New York Harbor. It also needlessly abandons core retention—moving more than thirty percent of CD-11's electorate and disproportionately reassigning Asian voters—thereby flipping partisan performance without any meaningful increase in Black and Latino voting strength.

Finally, the effect of Petitioners' novel theory is legally untenable and unworkable in practice. Across New York, CD-11 "is not unique" in that every Republican held district in the State has a minority population.[2] Taken to its logical conclusion, Petitioners' theory of the NY Constitution would require the State to redraw every Republican leaning district into a minority influence district likely to elect a Democrat.[3] This partisan result would undermine the intent of the people's anti-gerrymandering amendments to the NY Constitution, not to mention put in sharp relief that the NYVRA's unbounded reach plainly fails strict scrutiny and should be struck down as unconstitutional.

For these reasons, set forth in detail below, Respondents respectfully request that this Court dismiss this proceeding.

STATEMENT OF FACTS

I. This proceeding

Petitioners challenge New York's 2024 congressional districting plan, Senate Bill S8653A, alleging that the current configuration of Congressional District 11 ("CD-11") on Staten Island and portions of Brooklyn unlawfully dilutes the voting strength of Black and Latino voters in violation

[2] Affirmation of Nicholas J. Faso, dated December 8, 2025 ("Faso Aff."), Ex. B (Expert Report of Dr. John Alford) at 15. All references to "Ex." herein refer to exhibits to the Faso Aff.
[3] Indeed, Petitioners contend that the Legislature and the Governor were *required* to "construct[] CD-11 as a minority influence district" and that "failure to create such a district violates Article III, Section 4(c)(1) of the New York Constitution" (Petition [NYSCEF Doc. No. 1] ¶ 12.

of Article III, § 4(c)(1) of the New York Constitution.[4] They assert that voting in the district is racially polarized, that Black and Latino voters are politically cohesive but routinely unable to elect their preferred candidates, and that a remedial "minority influence" district pairing Staten Island with lower Manhattan would cure the alleged dilution while complying with traditional redistricting criteria. [5] Petitioners seek a declaration that the enacted plan is unconstitutional, a permanent injunction against its use, and an order directing the Legislature to adopt a new plan that joins Staten Island with lower Manhattan for CD-11.

The challenged plan was enacted after the Independent Redistricting Commission submitted a second congressional map in February 2024. The Legislature rejected that submission and enacted a revised map on February 28, 2024, which did not change the configuration of CD-11. Governor Kathy Hochul signed S8653A into law the same day. The petition acknowledges this history but contains no allegation that Black or Latino voters objected to the Democratic Legislature's adoption of the plan.

Petitioners sue exclusively under Article III, § 4(c)(1) of the NY Constitution. They characterize this case as one of first impression on the substantive standards governing that provision. Although their sole claim arises under the NY Constitution, Petitioners ask the Court to apply standards drawn from the New York Voting Rights Act—even though, on its face, that statute does not apply to congressional redistricting. Petitioners themselves are forced to concede that the NYVRA "does not, by its terms, directly regulate congressional redistricting."[6] Despite

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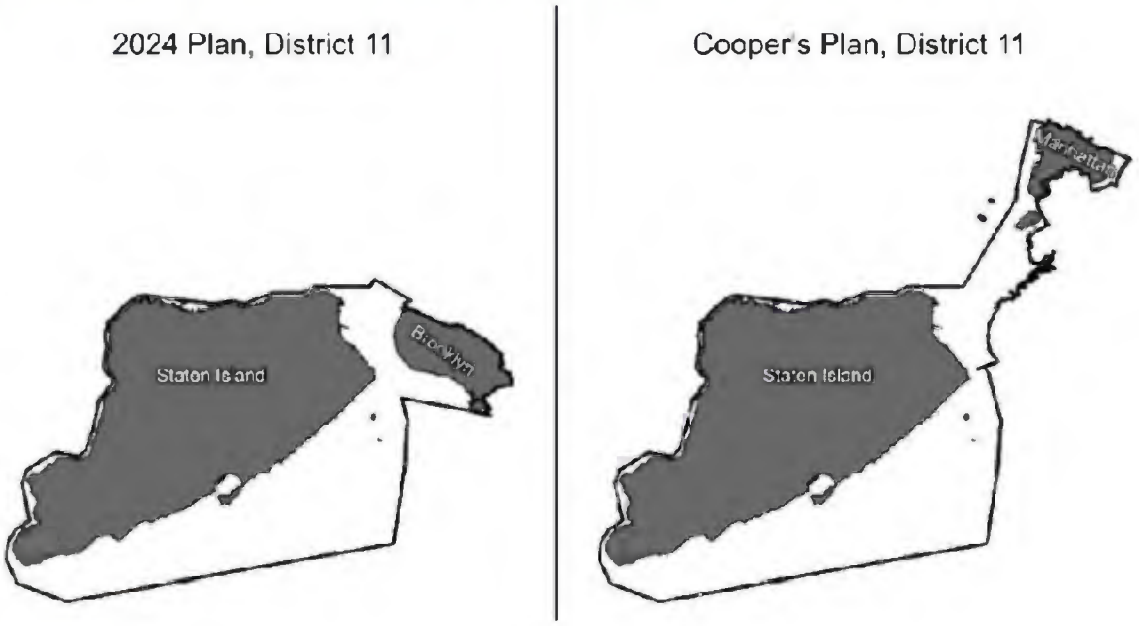
[4] *Id.* at ¶ 1.
[5] *Id.* at ¶¶ 12-13.
[6] Petitioners' Memorandum of Law, dated November 19 [*sic*], 2025 (NYSCEF Doc. No. 63) ("Petitioners' Mem."), at 2.

acknowledging this shaky ground, Petitioners insist that applying the NYVRA to the NY Constitution is "the best approach [] for this Court."[7]

Petitioners then leap to an extreme remedy: they propose a district pairing Staten Island with lower Manhattan, resulting in a classic gerrymandered district that is not compact and severs communities of interest. The following image compares the existing CD-11 with Petitioners' illustrative map:

Figure V.C.1 Compactness of D11 from 2024 Plan to Cooper's Illustrative Plan



Source: BGD analysis [8]

II. Respondents' Experts

Respondents offer the expert opinions of Dr. John R. Alford, a tenured Full Professor of Political Science at Rice University, and Thomas Bryan, an accomplished demographer with extensive experience in redistricting matters.

[7] *Id.* at 2.
[8] Ex. A (Expert Report of Thomas Bryan ["Bryan Report"]) at pg. 45, Figure V.C.1.

Dr. Alford's expert report confirms that both the existing CD-11 and Petitioners' illustrative CD-11 contain relatively small Black and Latino citizen voting-age populations ("CVAP")—below 10% Black and slightly over 15% Latino in each—and that the combined Black and Latino share remains under one-quarter in both versions.[9] The marginal two-point increase for the combined Black-and-Latino share in Petitioners' illustrative district is smaller than the increase in the White share; thus, any purported "minority influence" gains are not driven by an increase in minority CVAP.[10] Instead, the proposed district's performance shifts because it swaps Republican-leaning Anglo and Asian precincts for Democratic-leaning areas, thereby changing partisan balance rather than minority voting power.[11]

Professor Alford further explains that the current plan has been graded "A" for partisan fairness and geographic features by the Princeton Gerrymandering Project.[12] It yields a New York City–area delegation where the substantial majority of districts elect candidates preferred by minority voters.[13] In this setting, CD-11 itself is geographically compact with a combined Black and Hispanic CVAP below 25% and currently represented by a Hispanic Republican.[14] Petitioners' alternative is less compact, would still feature a combined Black and Hispanic CVAP below 25%, and would lean Democratic solely because White voting patterns differ between the current and proposed configurations.[15] In short, Petitioners' plan rebalances partisan composition while maintaining a materially similar minority share, further underscoring its partisan design.

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[9] Ex. B (Expert Report of Dr. John Alford ["Alford Report"]) at 7.
[10] *Id.* at 6.
[11] *Id.* at 8
[12] *Id.* at 14-15.
[13] *Id.* at 14.
[14] *Id.* at 15.
[15] *Id.*

Mr. Bryan's demographic and redistricting report demonstrates that Petitioners' illustrative district for CD-11 is inferior to the enacted plan on multiple traditional criteria: compactness, respect for political geography, communities of interest, and differential core retention.[16] Mr. Bryan shows that the enacted CD-11 is a nearly perfectly compact district anchored by Staten Island with direct connection into Brooklyn via the Verrazzano Bridge, whereas the illustrative district extends five miles by water to lower Manhattan, connecting distinct populations only by ferry. On multiple empirical measures (including Reock, Polsby-Popper, Convex-Hull, and Schwartzberg), Petitioners' proposed district is less compact and fails an "eyeball" assessment relative to the enacted map.[17]

Mr. Bryan also documents that the illustrative district fractures political and neighborhood geographies to a significantly greater degree. Using current precinct files, he concludes that neither the 2021 nor the 2024 enacted plans split any current voting precincts, while Petitioners' illustrative plan splits twelve precincts, without any showing that such splits were required to achieve population equality.[18] Both the enacted 2024 plan and the illustrative plan split two Neighborhood Tabulation Areas, but the illustrative district's added precinct splits demonstrate its inferior adherence to political geography.[19]

Critically, the illustrative plan achieves its purported "minority influence" not by enhancing Black or Latino representation, but by substantially reconfiguring—and reducing—the Asian community's representation in CD-11 while modestly increasing the White, non-Hispanic share. Under the enacted plan, Asians are the largest minority group in both CD-10 and CD-11, with

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[16] Ex. A (Bryan Report) at ¶¶ 196-205.
[17] *Id.* ¶¶ 160-163.
[18] *Id.* ¶¶ 157-159.
[19] *Id.* ¶¶ 160-163.

roughly equal population presence.[20] Under Petitioners' proposal, the Asian population is significantly increased in CD-10 and significantly decreased in CD-11, amounting to a gutting of the largest single minority CVAP in CD-11. Mr. Bryan's analysis shows that the illustrative plan moves 31.5% of CD-11 CVAP overall, but a disproportionate 57.1% of Asian CVAP, compared to only 12.9% of Any-Part-Black CVAP, highlighting the targeted redistribution of the Asian community.[21] In net, the illustrative district significantly increases White, non-Hispanic CVAP in CD-11, only fractionally increases Any-Part-Black and Hispanic CVAP, and sharply lowers Asian representation. This reconfiguration undercuts Petitioners' claimed minority-influence rationale and aligns more with partisan objectives.

Election performance further confirms the partisan thrust of Petitioners' remedial map. Under the enacted plan, CD-11, with a combined Black and Hispanic CVAP near 23%, elected a Republican in 2020, 2022, and 2024. By contrast, Mr. Bryan's analysis shows that Petitioners' illustrative plan would make CD-11 a "dead heat" while maintaining materially similar combined Black-and-Latino CVAP.[22] This shift arises because the proposal moves heavily Democratic precincts into CD-11 and moves Republican-leaning precincts out, not because it meaningfully changes Black or Latino voting strength. Mr. Bryan concludes it is "difficult to arrive at any other conclusion than [that] Cooper's draw benefits Democrats because of an increase in White, non-Hispanic Democrats – and not because of the fractional changes to the two smaller minority populations in and around the district."[23]

III. <u>Democrats' prior efforts to gerrymander CD-11</u>

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[20] *Id.* ¶ 56.
[21] *Id.* ¶ 56.
[22] *Id.* ¶¶ 194, 201.
[23] *Id.* ¶ 63

Significantly, this case appears to be part of a continuing partisan project to gerrymander Staten Island's seat. Democratic map-drawers have repeatedly targeted the Staten Island–based seat for partisan gain. In 2022, Democratic leaders in Albany introduced a proposed congressional map that the New York Times described as "an aggressive reconfiguration of the state's congressional districts led by Democratic lawmakers, creating clearer opportunities to flip several House seats . . . as Democrats strain to maintain their congressional majority in a difficult political environment."[24] That plan would have swept the district away from more conservative South Brooklyn neighborhoods and into "wealthy liberal" enclaves like Park Slope and Sunset Park—an alignment widely criticized as partisan and culturally incoherent.[25] The Times also reported how Democrats' pursuit of a safer path to flip CD-11 directly drove other contortions on the map, including the infamous "Jerrymander[ed]" configuration of adjacent NY-10.[26] As described, the interborough routing of NY-10 was "pushed sharply north and rerouted" specifically "to meander its way" around a redesigned CD-11 that extended from Staten Island into Bay Ridge, Sunset Park, and Park Slope, with the goal of advantaging "whichever Democrat runs against Representative Nicole Malliotakis."[27]

That recent history aligns with Petitioners' current ask to detach CD-11 from Brooklyn communities linked by bridge and instead annex Lower Manhattan across five miles of open water. Predictably, this contortion flips the district's partisan performance without materially changing the Black and Latino voting population.

STANDARD

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[24] Ex. C, Katie Glueck, *Park Slope and Staten Island: An Unlikely Political Marriage*, THE NEW YORK TIMES, February 21, 2022.
[25] *Id.*
[26] Ex. D, Nicholas Frandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, The New York Times, January 31, 2022.
[27] *Id.*

In a special proceeding such as this, "[t]here shall be a petition, which shall comply with the requirements of a complaint in an action" (CPLR 402). To survive a motion to dismiss under CPLR 3211(a)(7), the complaint must plead enough facts to state a claim to relief that is plausible on its face (*A.M.P. v Benjamin*, 201 AD3d 50 [3d Dept 2021]). While the Court must accept the facts alleged as true and accord Petitioners every favorable inference, "bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion" (*Palazzolo v Herrick, Feinstein, LLP.*, 298 AD2d 372, 372 [2d Dept 2002] [collecting cases]; *Struggs v Wells Fargo Bank, N.A.*, 87 Misc 3d 1226(A) [Sup Ct Richmond County 2025]). "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017]).

ARGUMENT

I. The 2024 Map is entitled to a strong presumption of constitutionality

As a statutory enactment, the 2024 plan "enjoys a strong presumption of constitutionality. To rebut that presumption, the party attempting to strike down a statute as facially unconstitutional bears the heavy burden of proving beyond a reasonable doubt that the statute is in conflict with the Constitution" (*People v Viviani*, 36 NY3d 564, 576 [2021] [internal citations and punctuation omitted]). Courts "strike them down only as a last unavoidable result" (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted], quoting *Matter of Van Berkel v Power*, 16 NY2d 37, 40 [1965]). In addition, the party challenging a statute "bear[s] the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment" (*id.* [internal citation and punctuation omitted]).

Petitioners cannot satisfy this burden because they allege only that the 2024 map for CD-11 violates one of the "principles" under Article III, § 4(c), namely, § 4(c)(1), which 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. Petitioners fail to address *any* of the other principles set forth in § 4(c)(2)-(6). On this basis alone, Petitioners cannot meet their "heavy burden" and the Petition must be dismissed (*see, e.g.*, *Cohen v Cuomo*, 35 Misc 3d 478, 484 [Sup Ct, New York County 2012], *aff'd*, 19 NY3d 196 [2012 [dismissing challenge to redistricting plan because the petitioners failed to rebut presumption of constitutionality]).[28]

Moreover, the presumption of constitutionality is not the only burden Petitioners must overcome. All acts of official duty, including the creation of a redistricting plan, are presumed to be in accordance with law and officials are presumed to have not done "anything contrary to [their] official duty, or omit anything which [their] official duty requires to be done" (*People v Dominique*, 90 NY2d 880, 881 [1997]; *see also Matter of Steinberg*, 137 AD2d 110, 114 [1st Dept 1988]). This presumption of regularity can only be overcome by "substantial evidence" rebutting the presumption, which Petitioners have failed to present here (*Dominique*, 90 NY2d at 881]).

In sum, as detailed below, this proceeding should be dismissed, as a matter of law and without a trial, because Petitioners wholly fail to prove beyond a reasonable doubt that the 2024 plan is unconstitutional.

II. <u>As a matter of law, the NYVRA standard does not apply to Article III, § 4(c)</u>

[28] In fact, Petitioners' Illustrative Map (Cooper Aff. Fig. 1 & F-1) indisputably violates several of the Article III, § 4(c) principles, including that "[e]ach district shall be as compact in form as practicable" (§ 4 [c] [4]) and "maintenance of cores of existing districts, existing political subdivisions, . . . and of communities of interest" (§ 4[c][5]).

The federal VRA applies to CD-11 and every other voting district in the United States (*Bartlett v Strickland*, 556 US 1, 18 [2009] ["Heightening these concerns even further is the fact that § 2 (of the federal VRA) applies nationwide to *every jurisdiction* that must draw lines for election districts required by state or local law"] [emphasis added]; *Harkenrider v Hochul*, 38 NY3d 494, 519, n 13 [2022] [noting that the requirements in Article III, § 4 "supplement the long-standing constitutional constraints on redistricting embodied in the State Constitution requiring, to the extent practical, that districts 'contain as nearly as may be an equal number of inhabitants,' 'consist of contiguous territory,' and be 'as compact in form as practical' and those required by federal law—such as conformity with the 'one person, one vote' principle and with the federal Voting Rights Act"] [internal citations omitted]). This means that congressional, assembly, and senate elections are governed by the federal vote dilution protections under the federal constitution and federal VRA as interpreted by the Supreme Court in *Thornburg v Gingles* (478 US 30 [1986]) and its progeny.[29]

Under *Gingles*, a plaintiff asserting a vote dilution claim must demonstrate that a voting district "thwarts a distinctive minority vote at least plausibly on account of race" (*Allen v Milligan*, 599 US 1, 19 [2023] [internal quotation marks omitted]). To satisfy this *prima facie* standard, the plaintiff must show three preconditions: (1) "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district;" (2) "the minority group must be politically cohesive;" and (3) the "majority group must vote sufficiently as a bloc to enable it

[29] While the Supreme Court observed that "States that wish to draw crossover districts are free to do so" it cautioned that they may only do so "where no other prohibition exists" (*Bartlett v Strickland*, 556 US 1, 24 [2009]). The Supreme Court also rejected the contention that failure to create a crossover district "violates" Constitution, holding "only that there is no support for the claim that § 2 can require the creation of crossover districts in the first instance" (*id.*).

to usually defeat the minority group's preferred candidate" (*Wis. Legislature v Wis. Elections Comm'n*, 595 US 398, 402 [2022]).

The plaintiff's burden does not end with satisfying these preconditions. Next, the court must consider the "totality of circumstances" to determine whether the political process is equally open to minority voters" (*Gingles*, 478 US at 45).

Here, Petitioners do not contend that the express terms of Article III, § 4(c) are inconsistent with the federal VRA or that they require a less exacting standard than *Gingles*.[30] Yet, Petitioners urge that the "best approach is for this Court" to ignore the *Gingles* standard to which Article III, § 4(c) is expressly subject and instead incorporate the vote dilution framework set forth in the subsequently enacted NYVRA, which by its express terms applies only to local elections.[31]

Petitioners do so because they cannot prove that, under the *Gingles* standard, the 2024 map of CD-11 unlawfully dilutes minority vote.[32] Indeed, Petitioners cannot satisfy *Gingle's* first precondition because it is undisputed that the population of Black and Latino voters in CD-11 is not sufficiently large and compact to constitute a majority in any reasonably configured district.[33] Petitioners shamelessly acknowledge that they rely on the NYVRA because it "loosens two of [the *Gingles* standard's] requirements by requiring petitioners to show *either* racially polarized voting

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[30] For example, Petitioners argue that the NYVRA "sweeps more broadly than federal law" but fail to compare Article III, § 4(c) to the federal VRA or the *Gingles* standard, much less argue that Article III, § 4(c) "sweeps more broadly than federal law" or otherwise provides a different standard (Petitioners' Mem. at 7-8).
[31] *Id.* at 2.
[32] Petitioners neither alleged nor demonstrated that their "Illustrative Map", which joins Staten Island with lower Manhattan, satisfies the *Gingles* standard. As discussed in detail, *infra*, Point III, Petitioners cannot meet this burden.
[33] *See* Petitioners' Mem. at 16 (arguing that the NYVRA "loosens" the first *Gingles* precondition); Report of William Cooper (NYSCEF Doc. No. 62) ¶ 50.

or the totality of the circumstances factors, and by allowing them to show that vote dilution could be cured through a crossover or 'influence' district."[34]

Petitioners' attempt to ignore the plain and unambiguous language of Article III, § 4(c) and engraft a standard contained in a subsequently enacted statute fails, as a matter of law, because it violates long-settled principles of constitutional and statutory construction. Accordingly, Petitioners' claim should be dismissed as a matter of law and without a trial.

A. By its express terms, Article III, § 4(c) must be interpreted in accordance with federal law, not New York statutes, including the NYVRA

"When language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the People" (*King v Cuomo*, 81 NY2d 247, 253 [1993] [cleaned up]). "Effect must be given to the intent as indicated by the language employed. Especially should this be so in the interpretation of a written Constitution*, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State*" (*Settle v Van Evrea*, 49 NY 280, 281 [1872] [emphasis added]).Here, Article III, § 4(c) expressly directs that it be applied "*[s]ubject to* the requirements of the federal constitution and statutes and in compliance with state constitutional requirements" (emphasis added). Thus, on its face, the provision is governed by federal law and the NY Constitution—not by New York statutes—and it says nothing of the NYVRA.[35]

The words "subject to" are unambiguous and, as "used in their ordinary sense, mean subordinate to, subservient to or limited by" (*Peters v Smolian*, 49 Misc 3d 408, 423 [Sup Ct, Suffolk County 2015], *aff'd* 154 AD3d 980 [2d Dept 2017]; *see also Auburn & S. Electric R. Co. v*

[34] Petitioners' Mem. at 16 (emphasis in original).
[35] Nor could it have referenced the NYVRA, much less could the framers or the people have contemplated that it would be subject to the NYVRA's standards, since the NYVRA was enacted eight years later.

Hoadley, 119 Misc 94, 97 [Sup Ct 1922], *affd* 206 AD 653 [4th Dept 1923] ["the term means 'charged with,' or 'subservient to'"]; *Raw Silk Trading Co. v Katz*, 201 AD 713, 716 [1st Dept 1922] ["The words 'subject to' have a well-defined meaning by legal interpretation."]).

The Court of Appeals construes "words of ordinary import with their usual and commonly understood meaning, and in that connection ha[s] regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016] [internal citations and punctuation omitted]). Merriam-Webster defines the phrasal verb "subject to" as "affected by or possibly affected by (something)"(Merriam-Webster Online Dictionary, subject to [https://www.merriam-webster.com/dictionary/subject%20to]).

This plain meaning is controlling. New York law gives full effect to unambiguous constitutional text and does not permit interpretive gloss that expands or alters the people's chosen language. As the Court of Appeals has emphasized, "[c]ourts do not have the leeway to construe their way around a self-evident constitutional provision" (*Matter of King*, 81 NY2d at 253; *see also Harkenrider*, 38 NY3d at 509 ["[O]ur starting point must be the text"]). Rather, "[i]n construing the language of the Constitution as in construing the language of a statute, [the Court of Appeals] look[s] for the intention of the People and give to the language used its ordinary meaning" (*Harkenrider*, 38 NY3d at 509 [internal citation and punctuation omitted]). This principle forecloses Petitioners' request to read into Article III, § 4(c) the standards of the subsequently enacted NYVRA.

The text of Article III, § 4(c) draws two deliberate lines. *First*, it subjects redistricting to federal constraints—"the requirements of the federal constitution and statutes"—thereby incorporating federal equal protection and Voting Rights Act obligations, as it must (*see Schneider*

v Rockefeller, 31 NY2d 420, 427 [1972] ["The Federal constitutional requirement of substantial equality of population among legislative districts is pre-eminent and our State constitutional requirements must be harmonized with the Federal standard."]). There can be no dispute that federal law constrains redistricting. As the Court of Appeals observed in *Harkenrider*, the NY Constitution not only embodies "longstanding constitutional constraints on redistricting" but also "those required by federal law — such as conformity with the 'one person, one vote' principle . . . and with the federal Voting Rights Act" (*Harkenrider*, 38 NY3d at 519 n 13 [internal citations and punctuation omitted]).

Second, at the state level, Article III, § 4(c) is subject to "state constitutional requirements," not the requirements of state "statutes," such as the subsequently enacted NYVRA. The juxtaposition is dispositive. Where the framers and the voters intended to incorporate statutes, they said so—at the federal level only. Where they intended state constraints, they specified "constitutional" requirements, but omitted statutes. Reading Article III, § 4(c) to import state statutory standards would rewrite the clause, collapse the voters' textually distinct references to "federal . . . statutes" and "state constitutional requirements," and violate the canon that a constitutional provision must be given effect rather than rendered surplusage (*Hoffman v New York State Independent Redistricting Comm.*, 41 NY3d 341, 359 [2023] ["Indeed, our well-settled doctrine requires us to give effect to each component of the [constitutional] provision or statute to avoid a construction that treats a word or phrase as superfluous"] [citations and internal quotations omitted]).

Redistricting jurisprudence confirms that Article III, § 4(c)'s "subject to" clause means what it says: federal law controls where it applies, and state constitutional requirements govern beyond that. In *Wolpoff v Cuomo*, the Court of Appeals upheld deviations from state redistricting

requirements where necessary to comply with federal equal-population and federal Voting Rights Act mandates—underscoring that the federal Constitution and federal VRA provide the operative external constraints contemplated by Article III, § 4(c) (80 NY2d 70, 77-78 [1992] ["The issue before us on these appeals is not whether the Senate redistricting plan technically violates the express language of the State Constitution. No one disputes that such a technical violation has occurred, and in *Matter of Orans,* we recognized that such violations were inevitable if the Legislature was to comply with Federal constitutional requirements."]; *see also Harkenrider*, 38 NY3d at 519 n 13 [noting that the NY Constitution is constrained by "the federal Voting Rights Act"]).

B. As a subsequently enacted statute, the NYVRA cannot, as a matter of law, modify Article III, § 4 of the Constitution

New York law also bars the Legislature from altering or enlarging constitutional standards by statute. "The Constitution is the supreme law of the state" (*Browne v City of New York*, 213 AD 206, 211 [1st Dept 1925], *affd* 241 NY 96 [1925]). As such, the Constitution:

> is higher in authority than any law, direction, or order made by any body or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made. In any case of conflict, the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity"

(*id.*, *quoting* Cooley, Constitutional Limitations [7th Ed., pg. 76]).

The Legislature is without power to amend the Constitution absent ratification by the people (NY Const art. XIX, § 1; *Browne*, 213 AD at 222 ["It has been decided many times that the provisions of a Constitution which regulate its amendment are not directory but mandatory, and that a strict observance of every substantial requirement is essential to the validity of the proposed amendment."]).

Petitioners' demand that this Court engraft the NYVRA into Article III, § 4(c) clearly violates these principles. In effect, they ask this Court to make a substantive change to the Constitution's framework that may be made only by constitutional amendment. Petitioners' theory would invert that hierarchy by allowing a 2022 statute to supply controlling standards for a 2014 constitutional amendment that carefully delineates the bodies of law to which it is subject.

In support of their strained theory, Petitioners rely solely on *People v Harris* (77 NY2d 434 [1991]) for the proposition that "[t]he Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to '[s]tate statutory or common law defining the scope of the individual right in question'"[36] (*id.* at 438). Petitioners' quotation of *Harris*, however, omitted the Court of Appeals' key limitation; namely, that courts may look to "*any preexisting*" state statutory or common law in assessing the scope of the right (*id.* [emphasis added]). This is significant because Petitioners cite no authority for the novel proposition that courts may use a *subsequently* enacted statute to discern the intent of the People as embodied in a previously adopted constitutional provision, nor could they (*see generally Nassau Ins. Co. v Guarascio*, 82 AD2d 505, 515 [2d Dept 1981] [noting that subsequent amendments generally cannot be considered as indicating the intention of the Legislature in adopting earlier statutes]).[37]

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[36] Petitioners' Mem. at 15.

[37] Petitioners also did not offer any authority for the proposition that, because a statute and constitutional provision are supposedly similar in scope, the subsequently enacted statute's specific analytical framework must be applied to the earlier adopted constitutional provision (Petitioners' Mem. at 16-17). Nor is there any basis to use the NYRVA as an interpretive guide, since Petitioners do not dispute that Article III, § 4(c) is plain and unambiguous. Thus, the Court may discern the People's intent without resort to extrinsic aids, including subsequently enacted statutes (Statutes § 76; *Roth v Michelson*, 55 NY2d 278, 283 [1982] ["[A] primary principle of statutory interpretation is that legislative intent, when unobscured by ambiguity or inconsistency, is to be determined by taking the legislative language literally"]).

As a state statute, the NYVRA cannot override the NY Constitution's plain text. Regardless of its independent scope or remedies in local and municipal elections, the NYVRA cannot define, modify, or expand the constitutional standards under Article III, § 4(c). Petitioners' request to apply NYVRA's standards to interpret the NY Constitution disregards the provision's plain language, collapses its deliberate federal-versus-state structure, and contravenes bedrock principles of New York constitutional law. This Court should reject that request and apply Article III, § 4(c) as written: subject to the requirements of the federal Constitution and federal statutes, including the federal VRA.

C. Under the maxim *expressio unius est exclusion alterius* there is an irrefutable inference that the Legislature intended to omit congressional elections from the NYVRA

The interpretive maxim *expressio unius est exclusion alterius* means "the expression of one is the exclusion of others" (Statutes § 240; *see also Matter of 1605 Book Ctr., Inc. v Tax Appeals Trib. of State of N.Y.*, 83 NY2d 240, 245-46 [1994]). Under this canon of construction, "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded" (*People v Page*, 35 NY3d 199, 206-07 [2020]). Courts apply this maxim where, as is the case with Article III, § 4(c) and the NYVRA, the words of the constitution or statute "are free from ambiguity and express plainly, clearly and distinctively the legislative intent" so that "the intent of the Legislature [may] be discerned from the language of the statute . . . without resort to extrinsic materials such as legislative history or memoranda" (*Matter of Rochester Community Sav. Bank v Bd. of Assessors of City of Rochester*, 248 AD2d 949, 950 [4th Dept 1998], *lv. denied*, 92 NY2d 811 [1998]; *Silver v Pataki*, 3 AD3d 101, 107 [1st Dept 2003] [applying maxim to Article VII, § 4 of the New York State Constitution]).

Article III, § 4(c) states that it is "*[s]ubject to* the requirements of the federal constitution and statutes and in compliance with state constitutional requirements" (emphasis added). The provision conspicuously omits any reference to state statutes. Thus, "an irrefutable inference must be drawn that" the Legislature and the People intentionally excluded state statutes from the requirements to which Article III, § 4(c) are subject (Statutes § 240; *see generally County of Niagara v Daines*, 96 AD3d 1433, 1435 [4th Dept 2012] [rejecting State's proposed interpretation of Social Services Law § 365]).

Similarly, to the extent Petitioners manufacture a challenge to the CD-11 map under the NYVRA, the maxim also bars expansion of the plain and unambiguous language of that statute. By its express terms, the "loosened requirements" for a voter dilution claim under the NYVRA, are limited to a "board of elections or political subdivision" (Election Law § 17-206 [2] [a]). Had the Legislature intended to extend the "loosened requirements" to congressional, assembly, or senate elections, it would have expressly done so in the statute (*Matter of Marian T.*, 36 NY3d 44, 51 [2020] ["Had the Legislature intended to limit judicial discretion in that manner, it would have said so in the statute"]; *Pearson v Pearson*, 81 AD2d 291, 294 [2d Dept 1981] [rejecting proposed construction of Domestic Relations Law § 170(5) and noting that "had the Legislature intended any such result, it would have so stated in the statute"]; *see generally* Statutes § 74 ["A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended"]).

Since the Legislature did not, there is an irrefutable inference that the Legislature intended to omit or exclude congressional, assembly, and senate elections from the NYVRA and its analytical framework (*Golden v Koch*, 49 NY2d 690 [1980] [holding that restrictions on the New

York City Mayor's power to vote on budget modifications "is limited only in the specific instances delineated" in the New York City Charter]).

Petitioners' contention that there is a risk of inconsistent application of voter dilution standards because the "more robust protections" in the NYVRA apply only to municipal and local elections[38] confirms that this is a purely legislative matter. This is an issue created by the Legislature which the courts cannot address, let alone remedy—only the Legislature may do so. (*Davis v State*, 54 AD2d 126, 129 [3d Dept 1976] ["[I]f the legislature had intended the statute to include the matter in question, it would have been easy for them to have said so and to have expressly included it"] [quoting Statutes § 74]; *see also Rodriguez v Pataki*, 308 F Supp 2d 346, 352 [SDNY 2004] ["New York's . . . redistricting laws are well within the purview and political prerogative of the State Legislature], *aff'd* 543 US 997 [2004]). If the Legislature wishes to extend the NYVRA to congressional, assembly, and senate elections it must first persuade the People to amend the NY Constitution and it also must amend the NYVRA. Until then, voter dilution claims under Article III, § 4(c) are subject to the federal VRA and the *Gingles* standard.[39]

D. The NYVRA cannot supply the standard because Article III, § 4 is "subject to" the federal constitution, and the NYVRA is unconstitutional

Even if the NY Constitution authorized this Court to look to state statutes for the standard under Article III, § 4(c), the NYVRA would not qualify because it is unconstitutional under both the federal and state constitutions, to which Article III, § 4(c) is expressly subject.

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[38] Petitioners' Mem. at 2, 18.

[39] Even if the Legislature amended the NYVRA to extend its analytical framework to congressional, assembly and State senate elections, Petitioners' Illustrative Map still would fail under Article III, § 4(c) since it unquestionably violates § 4(c)(3) ("[e]ach district shall be as compact in form as practicable") and § 4(c)(5) (requiring consideration of "the maintenance of cores of existing districts, of preexisting political subdivisions, . . . and of communities of interest").

Laws, such as the NYVRA, that "sort voters on the basis of race are by their very nature odious" (*Wisconsin Legislature v Wisconsin Elections Commn.*, 595 US 398, 401 [2022] [internal citation and punctuation omitted]). The Equal Protection Clause of the Fourteenth Amendment expressly prohibits the States from making any law that "den[ies] to any person within its jurisdiction the equal protection of the laws" (US Const amend. XIV, § 1).[40] "Any exception to the Constitution's demand for equal protection must survive a daunting two-step examination known . . . as 'strict scrutiny'" (*Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 206 [2023] [citations omitted]). Satisfying strict scrutiny requires that the racial classification furthers "compelling governmental interests" and, if so, "whether the government's use of race is 'narrowly tailored'—meaning 'necessary'—to achieve that interest" (*id.* at 207).

The NYVRA necessarily triggers strict scrutiny because, on its face, it classifies voters by race (*see* Election Law § 17-204 [5] [defining "Protected class" as people "who are members of a race, color, or language-minority group"]; § 17-206 [2] [a] [providing that a political subdivision may not "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"], [c] [iv] [permitting the "combin[ing] of members of "more than one protected class"]; *see also Students for Fair Admissions, Inc.*, 600 US at 206). These inherently racial inquiries—whether voting is "racially polarized" and whether certain racial populations are able to "elect candidates of their choice"— mean that compliance with the NYVRA requires a political subdivision to sort its voters by race and "distribute[] burdens or benefits on the basis of individual racial classifications"

[40] The NY Constitution also includes an Equal Protection Clause. The Equal Protection Clauses under the NY Constitution and the US Constitution are coextensive and interpreted under the same framework (*Myers v Schneiderman*, 30 NY3d 1, 13 [2017] ["Our State's equal protection guarantees are coextensive with the rights protected under the Federal Equal Protection Clause"]).

(*Parents Involved in Community Schools v Seattle School Dist. No. 1*, 551 US 701, 720 [2007]). Even worse, those benefits and burdens—the ability or inability to elect one's candidate of choice—impact voting, a right "of the most fundamental significance under our constitutional structure" (*Illinois State Bd. of Elections v Socialist Workers Party*, 440 US 173, 184 [1979]).

The NYVRA cannot survive strict scrutiny because it neither furthers a compelling state interest nor is it narrowly tailored. A compelling state interest requires more than a "generalized assertion of past discrimination"—there must be "identified discrimination" established by a "strong basis in evidence" (*Shaw v Hunt*, 517 US 899, 909 [1996] [internal citations and punctuation omitted]). On its face, however, the NYVRA does not purport to address that interest. It expressly disclaims any requirement to show intentional discrimination (Election Law § 17-206 [2] [c]), and instead imposes liability absent any "identified discrimination" upon the common occurrence of "racially polarized voting" (*id.* § 2 [b] [i]). And its generalized goals—avoiding disparate impact and increasing minority electoral success—are untethered to any contemporaneous, jurisdiction-specific record. In effect, the NYVRA requires no past or present racial discrimination, meaning it makes racial distinctions in the absence of any identifiable interest, much less a compelling one.

In keeping with this lack of guardrails, the NYVRA sweeps far beyond any demonstrated need. It lacks the safeguards necessary to make it "narrowly tailored" to achieving its interest (*Students for Fair Admissions, Inc.*, 600 US at 207). In fact, the NYVRA was quite obviously drafted to circumvent the *Gingles* framework. It expressly rejects the *Gingles* preconditions by, *inter alia*, prohibiting courts from considering compactness for the purposes of liability, "combin[ing]" members of different minority groups, and imposing liability based on the mere presence of "racially polarized voting" (Election Law § 17-206 [2] [b], [c]). This shows that

NYVRA's drafters not only failed to consider less restrictive alternatives but intentionally crafted the NYVRA to *avoid* constitutional constraints.

The consequences of the NYVRA and Petitioners' theory prove it is not narrowly tailored. Under Petitioners' liability theory, the NYVRA's practical effect is to convert *any* Republican-leaning district that contains even a modest number of protected class voters into a compelled "crossover" or "influence" district engineered to elect Democrats, irrespective of whether there is any contemporaneous, jurisdiction-specific evidence of vote suppression or dilution. Dr. Alford's analysis shows that the performance gains touted in the Petitioners' illustrative configurations do not stem from creating any genuine minority "ability to elect" district—indeed, the minority citizen share remains well below a majority—but from merely swapping White (and some Asian) Republicans for White Democrats to manufacture a Democratic-leaning seat, *i.e.*, a partisan, not racial, reconfiguration.[41] As Dr. Alford explains, with "no lower bound on the proportion of minority voters needed, any Republican leaning district with any minority population . . . is subject to the same legal liability," enabling lawsuits to force wholesale re-drawing of Republican-leaning seats into Democratic-leaning crossover districts across Long Island and the lower Hudson Valley by importing more Democratic voters from adjacent areas.[42] That one-way partisan ratchet—unmoored from compactness, neutral criteria, or the *Gingles* framework—confirms the statute is not narrowly tailored to remedy an identified, compelling interest, but instead functions as a device to achieve partisan gerrymanders under the pretext of race. Adopting Petitioners' interpretation would not only bless this blatant gerrymandering, but also "unnecessarily infuse race into virtually every redistricting, raising

[41] Ex. B (Alford Report) at 13-14.
[42] *Id.* at 15.

serious constitutional questions" (*Bartlett*, 556 US at 21, quoting *League of United Latin Am. Citizens v Perry*, 548 US 399, 446 [2006]).

III. Petitioners' proposed map is a blatantly unconstitutional partisan gerrymander that violates traditional redistricting principles

Petitioners' proposed reconfiguration of CD-11 is a textbook partisan gerrymander prohibited by the NY Constitution that cannot be reconciled with core redistricting principles.

As the Court of Appeals explained, the 2014 Amendments "include certain substantive limitations on redistricting, including an express prohibition on partisan gerrymandering, commanding that '[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties'" (*Harkenrider*, 38 NY3d at 518, quoting NY Const, art III, § 4 [c] [5]). The Court also explained the amendments require that "redistricting, to the extent possible, maintain cores of existing districts, pre-existing political subdivisions — such as counties, cities, and towns — and communities of interest" (*id.* at 518 n 13), and, further, that these "requirements *supplement the longstanding constitutional constraints on redistricting* embodied in the State Constitution requiring, to the extent practical, that districts 'contain as nearly as may be an equal number of inhabitants,' 'consist of contiguous territory,' and be 'as compact in form as practicable'" *id.* at 518 n 13, quoting NY Const, art III, § 4 [c] [2] – [4] [emphasis added]).

Petitioners ask this Court to ignore these constitutional requirements by importing the NYVRA's analytic framework into Article III. This is wrong as a matter of law. Article III governs congressional maps and sets out binding, ordered criteria—equal population, contiguity, compactness, and preservation of cores, political subdivisions, and communities of interest—alongside the explicit ban on partisan purpose. Petitioners' proposed map impermissibly discards

compactness, fractures precincts, and pursues partisan performance on the fatally flawed theory that the NYVRA's standards govern congressional redistricting. When properly considered under the Constitution's framework, Petitioners' proposal fails.

A. Petitioners' proposal is a pretext for a partisan gerrymander

Petitioners' map is not a neutral adjustment to better reflect demographic realities; it is a surgical political project that transforms the only Republican-held congressional district in New York City into, at best, a toss-up by relocating large blocs of voters along unmistakably partisan lines.

Bryan's analysis of Cooper's Illustrative Plan confirms this point. Under the 2024 map, CD-11 is geographically coherent and electorally stable, and its minority CVAP profile has been steady across the post-census cycles. Cooper's wholesale reconfiguration, by contrast, targets electoral performance through two coordinated moves: exporting a large set of Republican-performing precincts out of CD-11 and importing heavily Democratic precincts from Lower Manhattan across five miles of open water.[43] In 2024, the precincts Cooper removes voted approximately 80% Republican across federal contests, while the precincts he imports from CD-10 voted about 58% Democratic.[44] Bryan's precinct-level analysis shows that, under Cooper's plan, CD-11 shifts from a 64.1% Republican result in 2024 to an inorganically engineered "dead heat."[45] That is partisan line-drawing by any meaningful measure. Petitioners' suggestion that this "competitiveness" is a virtue ignores that Article III forbids drawing districts to encourage or discourage competition (NY Const. art. III, § [c] [5] ["Districts shall not be drawn to *discourage*

[43] Ex. A (Bryan Report) ¶¶ 63, 192
[44] *Id.* ¶ 193.
[45] *Id.* ¶¶ 62, 189, 194.

competition or for the purpose of *favoring or disfavoring* incumbents or other particular candidates or political parties"] [emphasis added]).

Moreover, Petitioners' asserted "remedy" does not improve minority opportunity. Alford confirms that, in both the enacted 2024 CD-11 and Cooper's illustrative map, the combined Black-and-Latino CVAP remains under one-quarter of the district and changes only marginally under Petitioners' plan.[46] At the same time, Cooper's plan increases White non-Hispanic CVAP in by about 2.6 percentage points, yields only small upticks for Black and Hispanic CVAP, and sharply reduces Asian CVAP—the largest single minority group in CD-11—by roughly 4.6 percentage points (from about 17.0% to 12.4%).[47] Those shifts are inconsistent with a bona fide minority-protection remedy.

Bryan's differential-core-retention analysis shows who is actually being moved to effect Petitioners' design. Between the enacted plan and Cooper's plan, approximately 31.5% of CD-11 CVAP is relocated overall—but *57.1% of Asian CVAP* is moved out of CD-11, compared to only 12.9% of Any-Part-Black CVAP and roughly 26–28% of White non-Hispanic CVAP. The targeted removal of the largest minority group from CD-11, coupled with only fractional changes to Petitioners' preferred coalition components, further aligns with partisan engineering.

The nakedly partisan goal of Petitioners' proposal is confirmed by its electoral effects. As Alford and Bryan explain, Petitioners' plan accomplishes its supposed minority remedy by shipping out heavily Republican-performing precincts from CD-11 for substantially more Democratic precincts, converting a 2024 Republican margin of about 64.1% into a contrived

[46] Ex. B (Alford Report) at 7.
[47] Ex. A (Bryan Report) at ¶¶ 197, 199.

near-tie. That is not minority-rights remediation; it is partisan gerrymandering dressed in civil-rights rhetoric.

In short, Petitioners' minority-rights narrative cannot be reconciled with the empirical evidence that their plan: (i) only modestly alters Black-and-Latino CVAP, (ii) materially increases White non-Hispanic CVAP, (iii) significantly diminishes Asian CVAP and removes a majority of Asian CVAP from CD-11, and (iv) severely degrades compactness and communities of interest—all while producing the precise partisan performance shift Petitioners seek.

B. Cooper's map flunks compactness

"[R]eapportionment is one area in which appearances do matter" (*Shaw v Reno*, 509 US 630, 647 [1993]). New York law requires congressional districts to be contiguous and "as compact in form as practicable" (NY Const., Art III § [c] [4]). Compactness has long been a feature of the NY Constitution's "anti-gerrymander provisions" (*Schneider v Rockefeller*, 31 NY2d 420, 429 [1972]).

Compactness refers to the geographical shape of a district. "Bizarrely shaped" districts are not compact (*Bush v Vera*, 517 US 952, 979 [1996]). While districts "need not be drawn in the form of geometric figures or perfect circles," they should "be as compact as practicable" (*Matter of Bay Ridge Community Council, Inc. v Carey*, 103 AD2d 280, 282 [2d Dept 1984], *affd*, 66 NY2d 657 [1985]). The constitutional requirement for compactness gives the Legislature discretion to account for "existing political subdivision lines, topography, means of transportation and lines of communication," but it "forbid[s] a complete departure" (*Schneider*, 31 NY2d at 429).

Petitioners' proposed CD-11 radically departs from an otherwise compact district. The enacted CD-11 joins Staten Island and adjacent Brooklyn via the Verrazzano Bridge—an

alignment that is geographically coherent, functionally contiguous, and reflective of long-standing travel, commuting and service corridors.

Cooper's map violates these principles. It stretches a tentacle across approximately five miles of Upper New York Bay to annex Lower Manhattan, which is reachable only by ferry. On all standard metrics, this destroys CD-11's compactness. Bryan's analysis reflects a Reock score drop from approximately 0.52 to 0.30 and a Polsby-Popper decline from about 0.57 to 0.28.[48] Moreover, the "eyeball test for irregularities" confirms what the numbers show—an elongated, irregular district that reaches across open water to grab distant, dense electorates for partisan gain (*Alpha Phi Alpha Fraternity Inc. v Raffensperger*, 700 F Supp 3d 1136, 1255 [ND Ga 2023]).[49]

Incredibly, Cooper tries to salvage this by averaging compactness scores for the separate land pieces he stitches together. This approach "lacks both precedent and logic" and is not accepted in the scientific community as valid.[50] As Bryan explains:

> To defend his creative manipulation of conventional compactness measurements, Cooper relies on a novel and counterintuitive narrative that the compactness of his Illustrative Plan should be considered as two separate pieces. This is illogical - since a necessary criterion for all redistricting endeavors is contiguity of geographic space. One cannot simply ignore areas that are either unpopulated or consist solely of water to improve compactness measures.[51]

In other words, compactness is assessed for the district as drawn, not, as Cooper suggests, by disaggregating land patches and ignoring the open space between them.

Bryan further explains that Cooper's novel approach to compactness results in absurdities:

> If Cooper's logic is held, what are the practical limits? Could Staten Island potentially be connected to the Bronx via the East River? Going further, what about the highly compact Poughkeepsie City (nearly 90 miles up the Hudson), which has a 35.4% Black population and 22.5% Hispanic population?[43] Or perhaps Hudson City (130 miles up the Hudson), with 16.5% Black population and 10.4% Hispanic

[48] Ex. A (Bryan Report) ¶ 141, Table V.C.2.
[49] *Id.* ¶¶ 145-147.
[50] *Id.* at ¶ 109.
[51] *Id.* at ¶ 109.

> Population?[44] Those are connected to Staten Island by water? The actual compactness scores of those combinations would be effectively zero – but by Cooper's logic, the compactness would be acceptable – because each distant individual piece is compact.[52]

Since Cooper's compactness analysis is not generally accepted by the scientific community, it should be rejected as unreliable.

C. Cooper's plan fractures political geography and communities of interest

The NY Constitution also directs map-drawers to "consider the maintenance of existing districts, of preexisting political subdivisions, . . . and of communities of interest" (NY Const. art. III, § 4 [c] [5]). Core retention "is simply a demographic accounting of the movement of persons from one district to another brought about by redistricting. A CRA is a way of quantifying precisely how a realignment affects the continuity of representation among a district's residents."[53]

The enacted 2024 plan satisfies core retention requirements. Using current precincts, it splits none. Cooper's Illustrative map, however, jettisons twelve current precincts without any population-equality necessity.[54] Petitioners thus cannot claim any improvement on this measure.

Petitioners' map also disserves the Asian community, which is the largest minority community of interest in CD-11.[55] Bryan demonstrates that Asians are the single largest minority CVAP in both CD-10 and CD-11 under the enacted map and are nearly evenly distributed between the two.[56] Cooper's plan radically disrupts this balance, ballooning the Asian population in CD-10 to roughly 224,000 and slashing it in CD-11 to about 105,000, while physically severing

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[52] *Id.* at ¶ 136.
[53] *Id.* at ¶ 146.
[54] *Id.* at ¶ 132.
[55] *Id.* at ¶ 55
[56] *Id.* at ¶ 28.

contiguous concentrations of Chinese residents in Lower Manhattan and reattaching Chinatown to distant, demographically dissimilar Brooklyn neighborhoods.[57]

Cognizant of this major flaw, Petitioners assert that their plan "unite[s]" Chinese-American communities, but the data show the opposite: it relocates and dilutes Asian CVAP in CD-11 and stitches disparate neighborhoods across non-Asian corridors.[58]

Petitioners' proposed plan objectively is not compact, fails the core retention analysis, and divides communities of interest. Taken together, these failings "have sufficient probative force to call for an explanation" (*Karcher v Daggett*, 462 US 725, 755 [1983] [STEVENS, J., concurring]).

IV. Petitioner's proposed plan fails because it cannot satisfy *Gingles*

The standard here should be the Supreme Court's framework in *Gingles*, not the NYVRA, because Article III, § 4 is expressly "[s]ubject to the requirements of the federal constitution and statutes." In fact, as discussed above, the NYVRA cannot provide the standard because the NY Constitution expressly omits state statutes from the laws by which it is governed.

Applying the *Gingles* framework for section 2 of the federal VRA also makes far more sense because *Gingles* was established law at the time the 2014 Amendments were enacted, and Article III, § 4(c) closely tracks Section 2 of the federal VRA in both its phrasing and test. Section 2 prohibits voting practices that "*result[] in a denial or abridgement*" of the right to vote based on race, and a violation "is established if, *based on the totality of circumstances*, it is shown that members of a protected class "have less opportunity than other members of the electorate to

[57] *Id.* at ¶ 28.
[58] *Id.* at ¶ 145.

participate in the political process and *to elect representatives of their choice*" (52 USC § 10301 [a], [b] [emphasis added]).

Article III, § 4(c) is materially parallel. It provides that district lines shall not "*result in, the denial or abridgement*" of minority voting rights, and must 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* . . . and *to elect representatives of their choice*" (emphasis added). Given these similarities, and the established body of federal law existing at the time the 2014 Amendments were ratified, application of *Gingles* to Article III, § 4(c) is the only sensible choice.

The Supreme Court has interpreted section 2 of the federal VRA as prohibiting vote dilution (*Wisconsin Legislature*, 595 US at 402, citing *Thornburg v Gingles*, 478 US 30, 46–51 [1986]). In *Gingles*, the Supreme Court provided exactly what Petitioners seek here: "a framework for demonstrating a violation of that sort" (*id.* at 402). Since Article III, § 4(c) is expressly subject to "the federal constitution and statutes," and section 2 of the federal VRA tracks the language of that constitutional provision, the Supreme Court's *Gingles* framework is not just the most logical standard, but also the only legal one.

Under *Gingles*, a plaintiff must first satisfy three "preconditions": "(1) The minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district, (2) the minority group must be politically cohesive, and (3) a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate" (*Wisconsin Legislature*, 595 US at 402, citing *Gingles*, 478 US at 50-51). Only when these preconditions are satisfied does a court proceed to considering the "totality of circumstances to determine 'whether the political process is equally open to minority voters'" (*id.* at 402, quoting *Gingles*, 478 US at

79). Satisfaction of the *Gingles* preconditions is thus "necessary but not sufficient" to prove vote dilution (*id.* at 402).

With respect to the first precondition, "[a] district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact" *Allen v Milligan*, 599 US 1, 18 [2023]). There is no liability for vote dilution where "because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created" (*Bush v Vera*, 517 US 952, 979 [1996]). In other words, "if a reasonably compact district can be created, nothing in § 2 requires the race-based creation of a district that is far from compact" (*id.*). This is because the purpose of the first precondition is to "establish that the minority has the potential to elect a representative of its own choice in some single-member district" (*Growe v Emison*, 507 US 25, 40 [1993]).

Here, when properly considered under the *Gingles* framework, Petitioners' vote dilution claim fails out of the starting gate. It is undisputed that the Black and Latino voting population in CD-11 is neither sufficiently large nor compact to constitute a majority in any reasonably configured district. The Black and Latino population within CD-11 is concentrated along Staten Island's north shore and includes only 199,394 voters,[59] or 25.7% of the total CVAP,[60] with Black voters constituting only 7.4% and Latino voters constituting only 18.3%.[61] Even assuming, *arguendo*, that combining Black and Latino voters is legally permissible (*Petteway v Galveston County*, 111 F4th 596, 599 [5th Cir 2024] [holding that combining minority groups for so-called "coalition claims" is impermissible]), the combined population in CD-11 is too small and disperse

[59] Ex. A (Bryan Report) ¶ 88, Table IV.E.1.
[60] *Id.* at ¶ 81.
[61] *Id.* at pg. 31, Table IV.G.2 (*2024 Plan Total Population Percentages: 13 Districts in and Around NYC).*

to create a reasonably configured majority-minority district (*see e.g.*, *Reed v Town of Babylon*, 914 F Supp 843, 868 [EDNY 1996] [rejecting vote dilution claim where African-American population constituted only 13.3% of the voting-age population, were divided into three separate concentrations separated by significant white populations and geographic barriers, and creation of a majority-minority district would require "a minimum of about 94% of the entire African-American population of the Town" to be placed in a single district]).

V. Even if the NYVRA applied, Petitioners claim fails because they have not established that their preferred candidates "would usually be defeated"

Under section 2(b)(ii) of the NYVRA, a plaintiff alleging vote dilution in a district-based election system must make a threshold showing that "candidates . . . preferred by members of the protected class *would usually be defeated*" and either (A) racially polarized voting 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."

This Court should give the phrase "usually be defeated" its plain and ordinary meaning—namely, that candidates preferred by the protected class would regularly or almost always lose. "[T]he text of a provision 'is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning'" (*Matter of Albany Law School v New York State Off. of Mental Retardation and Dev. Disabilities*, 19 NY3d 106, 120 [2012] [internal citation omitted]). Where a term is undefined, New York Courts "construe words of ordinary import with their usual and commonly understood meaning" and often rely on "dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016]).

"Usually" should be construed in accordance with its common usage. "Usually" is defined as (1) "[o]rdinary; customary" and "[e]xpected based on previous experience, or on a pattern or

course of conduct to" by Black's Law Dictionary, (2) "in the way that most often happens" by the Cambridge Dictionary, and (3) "according to the usual or ordinary course of things : most often: as a rule" in the Merriam-Webster Dictionary (Black's Law Dictionary, usual [12th ed. 2024]; Merriam-Webster Online Dictionary, usually [https://www.merriam-webster.com/dictionary/usually]; Cambridge Online Dictionary, usually [https://dictionary.cambridge.org/dictionary/english/usually]). In other words, "usually" refers to events that occur customarily, normally, or with consistent frequency.

Nothing in the NYVRA supplies a technical definition of "usually," and no contextual cue suggests a specialized or idiosyncratic meaning. To the contrary, the statute's structure and purpose confirm that the phrase functions as a threshold indicator of systemic electoral disadvantage—*i.e.*, a condition in which candidates of choice for the protected class do not merely lose occasionally or sporadically, but are defeated as a matter of course. Reading "usually" to mean "regularly" or "almost always" calibrates the threshold to capture entrenched patterns of defeat while avoiding any distortion that would trivialize the standard (*e.g.*, by equating "usually" with "sometimes").

Additionally, in the context of a district-based system, the Court should consider whether the preferred candidates are "usually" defeated across the entirety of the district, not just the particular district being challenged. Section 2(b)(ii) is directed at vote dilution in a "district-based election system," which, by definition, is a method of election implemented through a multi-district plan. In this context, the threshold question whether minority-preferred candidates "would usually be defeated" should be evaluated across the plan as a whole, not confined to outcomes in a single electoral district. A single-district snapshot cannot capture whether the districting scheme systematically impairs the protected class's electoral opportunity—it speaks only to local partisan lean or candidate-specific dynamics. A plan-wide assessment, by contrast, asks the right question:

whether, in the ordinary course, the design and interaction of districts result in the recurring defeat of the protected class's candidates of choice.

Focusing narrowly on one district would misread the statutory threshold and produce an unworkable rule. In any jurisdiction with normal political geography, some districts will naturally lean toward a party or coalition that is not the protected class's candidate of choice—that alone does not evidence dilution. If a single-district showing sufficed, the statute would mandate reengineering every partisan-leaning district whenever minority-preferred candidates lose there, regardless of whether the plan overall affords genuine electoral opportunity elsewhere. That is not what the NYVRA provides. The statute targets systemic dilution—patterns where the protected class's candidates of choice are regularly or almost always defeated across the map—not the ordinary operation of political preference within one safely partisan district.

Here, looking at New York's congressional map as a whole, the preferred candidates of Black and Latino voters are not "usually defeated." In the 2018 election, under the pre-2020 census map, every one of the thirteen House seats in and around New York City elected a Democrat, including CD-11.[62] The 2020 election was also a "landslide" for Democrats across the state, except that CD-11 swung to the republican candidate.[63] In 2022, under the newly drawn maps, all but two House seats in and around New York City elected a Democrat.[64] And in 2024, under the second set of new maps, all but CD-11 elected Democrats.[65] In total, from 2018 to 2024, the congressional map has largely favored Democrat candidates: of fifty-two House races in and around New York City, Democrats won forty-eight.[66]

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[62] Ex. A (Bryan Report) ¶ 118.
[63] *Id.* at ¶ 178.
[64] *Id.* at ¶ 179.
[65] *Id.* at ¶ 181.
[66] *Id.* at ¶ 190.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the relief sought in the Petition, dismiss this proceeding, and grant such other and further relief as this Court deems just and equitable.

Dated: December 8, 2025
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*

Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440
nfaso@cullenllp.com
cbuckey@cullenllp.com

Attorneys for Respondents

CERTIFICATE OF COMPLIANCE

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Dated: December 8, 2025
Albany, New York

/s/ *Nicholas J. Faso*

EXHIBIT M

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

Michael Williams, José Ramìrez-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- Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba, *Intervenors-Respondents*.	Index No. 164002/2025 Hon. Jeffrey H. Pearlman Mot. Seq. 001, 006, and 007

BRIEF OF AMICI CURIAE THE NEW YORK CIVIL LIBERTIES UNION, THE NAACP LEGAL DEFENSE AND EDUCATION FUND, THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, AND THE CENTER FOR LAW AND SOCIAL JUSTICE IN SUPPORT OF NO PARTY

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INTEREST OF AMICI CURIAE

Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims and developing voting rights policy under state and federal laws in New York and around the United States. Amici include groups that were among the principal architects of the John R. Lewis Voting Rights Act of New York ("NYVRA"). Amici and the communities that they serve have a significant interest in ensuring that there are clear and manageable standards for assessing racial vote dilution claims under the constitution and laws of the State of New York. Amici include counsel who litigated many of the precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under the NYVRA (*New York Communities for Change v County of Nassau,* Index No. 602316/2024 [Sup Ct, Nassau County]), which included allegations that the challenged map diluted the electoral influence of Asian voters in the greater New Hyde Park area. Although the case was resolved by a settlement implementing a new map prior to a final judgment on the merits (*id.* NYSCEF Doc No. 370), Amici's experience developing the law and evidence supporting those influence dilution allegations can be of assistance to the Court here.

INTRODUCTION

New York recognizes two types of racial vote dilution: (1) the traditional dilution of a minority group's opportunity to elect their candidates of choice and (2) the dilution of a minority

group's electoral influence. Although related, these two racial vote dilution claims address distinct harms and are subject to distinct analyses. An opportunity-to-elect claim addresses a minority group's inability to elect their preferred candidate to office. By contrast, an influence claim addresses the harm to a minority group who cannot necessarily elect their preferred candidate to office, but who has enough votes to make them a consequential member of winning coalitions. In an influence claim, minority groups must show that but for the challenged electoral scheme, the minority group could at least get a "foot in the door" to get the attention of other groups and elected officials. As the State Respondents note, "States are free to adopt greater voting rights protections than provided by federal law" and can decide as a matter of legislative choice to use crossover or influence districts, regardless of whether they are protected by the federal Voting Rights Act ("VRA") (NYSCEF Doc No. 95 at 4-5 [citations omitted]).

Moreover, these racial vote dilution claims are analytically distinct from partisan gerrymandering claims or other claims that seek to maximize partisan advantage. In racial vote dilution cases, the experiences of racial minorities with racial discrimination are central to the legal doctrine. These claims are essential to addressing some of the deepest and most pernicious forms of discrimination (*see e.g. Singleton v Allen*, 782 F Supp 3d 1092, 1270-72 [ND Ala 2025] [describing how a total lack of electoral opportunities for a Black community resulted in it facing "intense poverty" that "is extreme by any measure and so primitive that it often startles people"]). Although racial vote dilution claims sometimes have partisan consequences, racial minorities are not harmed every time minority voters are placed in a district that does not elect a candidate of their preferred political party. Neither the NYVRA nor VRA require the maximization of partisan advantage. To the contrary, efforts to maximize partisan advantage in redistricting have led to racial vote dilution (*see e.g. Pope v County of Albany*, 94 F Supp 3d 302, 317-18, 348-49 [ND NY

2015] [finding that a Democratic-controlled legislature "packed" Black voters into a few districts in order to protect white incumbents]; *Coads v Nassau County*, 86 Misc 3d 627 [Sup Ct, Nassau County 2024] [denying summary judgment to county on claims that redistricting plan enacted by Republican-controlled legislature packed and cracked Black, Latino, and Asian voters in enacting a partisan gerrymander]).

Accordingly, Amici write to address three issues.

First, Amici provide definitions of the different species of opportunity-to-elect claims and influence claims. Amici show that New York law should treat protections against influence dilution as distinct from opportunity-to-elect dilution. Among other things, in an influence claim, fewer people are affected and the quantum of political power at issue is less than in opportunity-to-elect claims. As a result, the threshold showing for demanding a change to a map to satisfy an influence claim must necessarily be different than the showing for demanding a change pursuant to an opportunity-to-elect claim. As a prudential matter, carefully defining influence dilution claims enables mapmakers to honor protections against opportunity-to-elect dilution while balancing those protections with traditional districting concerns.

Second, Amici write to provide the Court with some considerations that could inform a manageable standard for assessing influence dilution claims under New York law in cases where the plaintiff challenges a redistricting scheme *and* proposes another redistricting scheme as a remedy.[1] State Respondents have taken the position that the state constitution protects against racial vote dilution to a greater extent than federal law, and may protect against influence dilution. But the State Respondents have declined to propose a standard for either form of racial vote

[1] As opposed to, for example, a NYVRA case in which a plaintiff challenges a village redistricting scheme and proposes an at-large ranked-choice scheme or other non-districting remedies.

dilution.[2] Amici, therefore, propose standards for adjudicating both opportunity-to-elect dilution and influence dilution claims. Amici recognize that such standards must provide effective guidance for governments, voters, and courts to assess liability.

Lastly, Amici identify the ways in which courts have ensured that racial vote dilution claims remain distinct from partisan gerrymandering claims. Courts have long made clear that racial vote dilution should not be an avenue for partisan maximization. Amici's standards for influence and crossover claims seek to address this concern.

Amici's proposed standards for the Court's consideration are consistent with federal constitutional law, focus on the vindication of the rights of minority voters, respect state traditional districting principles in proving *both* the cause of dilution and its remedy. Such a standard is necessary as courts may and will increasingly need to analyze dilutions of political participation for emerging cohesive minority groups under both the NYVRA and the New York State Constitution.

ARGUMENT

I. Influence Dilution and Opportunity-to-Election Dilution are Distinct Forms of Racial Vote Dilution with Distinct Remedies.

Racial vote dilution occurs when a challenged electoral system "operate[s] to minimize or cancel out the voting strength of racial minorities in the voting population" (*Thornburg v Gingles*, 478 US 30, 46-48 [1986] [cleaned up]). "The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue

[2] To be clear, Amici do not address whether the state constitution provides a cause of action for influence dilution. Instead, as discussed below, because influence dilution claims are cognizable under the NYVRA and local redistricting statutes, Amici assume such a cause of action exists under the state constitution and propose standards for addressing influence dilution claims under the circumstances common to both constitutional and statutory redistricting claims.

of its numerical superiority, will regularly defeat the choices of minority voters" (*id*. at 48). One way this happens is when states and local governments use district-based methods of representation in which district lines concentrate certain voters into one or more districts, which decreases the power of those constituents' votes and "packs" their electoral power into too few districts (*id*. at 46 n.11). Another way this happens is by officials separating minority voters in a way that diminishes their voting power because they cannot impact election outcomes in any district, which is known as "cracking" (*id*. at 46). Under either racial vote dilution tactic, minority voters in one district have less power to impact the outcome of an election than non-minority voters do.

A. Opportunity-to-Elect Claims and Remedies.

Federal and state law protect against racial vote dilution. To prove a racial vote dilution claim, plaintiffs typically need to show that the district lines were drawn in a way that resulted in an unequal opportunity for a racial minority group to participate in the political process and elect their preferred candidate (*see Allen v Milligan*, 599 US 1, 25-26 [2023]). These types of claims are known as opportunity-to-elect claims. Plaintiffs seek remedies that redraw district lines so that harmed voters' ability to elect candidates of their choice is no longer impaired. In this context, the phrase "elect a candidate of choice" refers to minority voters' ability to elect their preferred candidate, even a member of their group if they so choose (*see Rural W. Tennessee Afr-Am Affairs Council v Sundquist*, 209 F3d 835, 840 [6th Cir 2000] ["[T]he Voting Rights Act's guarantee of equal opportunity is not met when "[c]andidates favored by blacks can win, but only if the candidates are white." (quotation omitted)]). Opportunity-to-elect claims can arise in three types of districts: (1) districts in which a single minority group constitutes a majority of the electorate and are able to elect their candidates of choice; (2) "coalition districts," in which multiple,

politically cohesive minority groups who together constitute a majority of the electorate are able to elect their candidates of choice; and (3) "crossover districts," in which a racial minority group is so sufficiently large and politically cohesive, that it is able to elect its candidates of choice with the support of a small but reliable group of voters from the racial majority group.[3]

B. Influence Dilution Claims and Remedies.

A related but distinct ability-to-elect claim is an influence-dilution claim. Influence dilution occurs when an electoral scheme makes negligible the voting strength of a group who would otherwise be a consequential participant in building competitive electoral coalitions (*see* Engstrom, *supra* note 3, at 2-3). Under that claim, racial minority voters lack the numbers to be able to elect their candidate of choice over the preferences of other groups (*id.*). But when their community is not cracked into disparate districts or overly packed in a single district, the minority group is sufficiently large and politically cohesive, such that candidates and other groups should be interested in appealing to their voters. An influence district is one in which a racial minority group lacks the opportunity to necessarily elect their most preferred candidate, but the racial group does have an opportunity to play an essential role in a competitive general election coalition (*see* Engstrom, *supra* note 3, at 7).

[3] *See* Richard L. Engstrom, *Redistricting: Influence Districts—A Note of Caution and a Better Measure,* at 2, University of California, Berkeley Law School, The Chief Justice Earl Warren Institute on Law and Public Policy [May 2011] ["Engstrom"], https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-11/c19.-richard-l.-engstrom-redistricting-influence-districts-a-note-of-caution-and-a-better-measure-may-2011.pdf. Dr. Engstrom's article is part of the Legislative Record for the NYVRA, which is available on the website of the New York State Senate. *See* New York State Senate, *Legislative Record - John R. Lewis Voting Rights Act of New York (NYVRA)* [June 20, 2022] https://www.nysenate.gov/newsroom/articles/2022/zellnor-myrie/legislative-record-john-r-lewis-voting-rights-act-new-york

Influence districts are a recognized and legitimate method of protecting against racial vote dilution (*id.*). The government's refusal to draw an influence district can result in an "unfair disadvantage to [minority] voters in the exercise of the most important right in our democracy, and the purpose of the VRA is to prevent discrimination in the exercise of the right to vote" (*Metts v Murphy*, 347 F3d 346, 361 [1st Cir 2003], *on reh'g en banc,* 363 F3d 8 [1st Cir 2004]). New York courts have recognized the viability of these claims (*see, e.g.*, *Coads v Nassau County*, 86 Misc 3d 627, 655 [Sup Ct, Nassau County 2024] [finding that the plaintiffs claim of vote dilution alleging that district lines concentrated a group of voters into only a few districts so that they could not ultimately influence the outcome of an election was a material factual issue]; *Clarke v Town of Newburgh*, 2025 WL 3235042 [2025] [affirming that the NYVRA specifically allows for remedies that might allow for minorities to influence the outcome of elections without their constituting a majority in a single-member district]; *Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167 [Sup Ct, Westchester County 2025] [recognizing the inability to influence the outcome of an election as within the zone of interests protected by the NYVRA]). As the State Respondents note, the State Constitution may provide a cause of action against influence dilution (NYSCEF Doc No. 95 at 2-3).

II. New York's Protections Against Influence Dilution in Redistricting Must Be Reconciled with Protections Against Opportunity-to-Elect Dilution and Other Redistricting Criteria.

New York's state constitutional standards for statewide redistricting, as well as statutory standards for local redistricting, contain protections against racial vote dilution and offer other important criteria for drawing maps that provide fair legislative representation (*see* NY Const art III, § 4 [providing standards for statewide redistricting plans]; *see e.g.* Municipal Home Rule Law [MHRL] § 34[4] [providing standards for county legislature redistricting plans]). New York's

redistricting criteria generally align with those that federal courts have identified as "traditional districting criteria" (*Milligan*, 599 US at 20 [referring to compactness, contiguity, and respect for existing political subdivisions]), with New York's notable addition of prohibitions on partisan gerrymandering, incumbency protection, and discouraging competition (*see* NY Const art III, § 4[c][5]). Redistricting plans under the state constitution balance all of these considerations and resolve the tensions among them to give wide berth to avoiding racial predominance, which occurs when "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district" (*Alabama Legislative Black gero v Alabama*, 575 US 254, 272 [2015] [citation omitted]).

In addition to balancing protections against racial vote dilution and other traditional districting principles, mapmakers must also balance the tension between protections against the dilution of minority groups' opportunities to elect their candidates of choice and protections against influence dilution. This tension animated the 2006 amendment to the federal VRA that effectively overruled the holding of *Georgia v Ashcroft,* which raised concerns that jurisdictions would seek to break down effective opportunity-to-elect districts into more districts with low probabilities of electing minority candidates of choice.[4] New York law and prudential concerns favor resolving any such tension in its redistricting criteria by treating influence dilution as a secondary consideration to compliance with protections against opportunity-to-elect dilution.

First, the text of both the state constitutional and statutory redistricting standards for protecting against racial vote dilution expressly protect against the dilution of minority voters' opportunity "to elect representatives of their choice" (NY Const art III, § 4[c][1]; *see e.g.* MHRL

[4] 539 US 461, 480 (2003), *superseded by* Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub L No. 109-246 § 5, codified as amended at 52 USC § 10304[b].

§ 34[4][b]). As the State Respondents' brief explains, this provision of the state constitution may protect against influence dilution (NYSCEF Doc No. 95 at 3), but regardless, this express language should give primacy to protections against opportunity-to-elect dilution over implicit protections against influence dilution.

Like the state constitution, reconciliation of the NYVRA's protections in redistricting cases also requires prioritizing protections against the opportunity-to-elect dilution over influence dilution and providing distinct standards for each. The text of the NYVRA makes clear that the law protects against the impairment of members of a protected class's "ability . . . to elect their candidates of choice" and, distinctly, their ability "to influence the outcome of elections" (Election Law § 17-206[2]).[5] To bring a successful claim for either, a plaintiff must show that the harm is the "result of vote dilution" (*Id.*). The statutory text expressly provides some common framework for both types of vote dilution claims—that is, proof of inequity of electoral opportunities under a totality of the circumstances inquiry, which, where practicable, includes evidence that racially polarized voting usually defeats the protected class's candidate (Election Law § 17-206[2][a] & [b]). This proof of systemic racial inequity in elections is required regardless of whether a vote dilution plaintiff is challenging an at-large method of election or a single-member districting scheme.

The NYVRA's legislative record shows the law leaves space for the courts to develop manageable standards for inflation dilution claims, in particular, anticipating that the California

[5] Due to the diversity of election practices in the thousands of local governments in New York State and the breadth of the statute's applicability, from both a liability and remedial perspective, the NYVRA does not explicitly address the applicability of other districting principles. Instead, the NYVRA's protections against racial vote dilution were drafted to strike a balance between providing state courts guidance in a complex field and adapting New York law in a way that can be applied to the wide variety of local government election practices across the state.

Supreme Court might provide such a standard in the then-forthcoming case of *Pico Neighborhood Assn. v City of Santa Monica,* 15 Cal 5th 292 [Cal 2023].[6] Although the *Pico* Court did "not decide the scope of the CVRA's ability-to-influence prong in this case," it recognized the prospect of "an influence [dilution] theory distinct from" and 'broader than" a claim that a method of election dilutes a group's "ability to elect their candidates of choice" (*id.* at 323-24). The distinction is that in an influence dilution claim—as compared to an opportunity-to-elect claim—the communities affected are smaller, the quantum of political power at stake is lesser, and the occasions for grouping or dividing those communities are more frequent. Treating protections against influence dilution as a secondary inquiry to compliance with protections against opportunity-to-elect dilution properly and manageably gives effect to all applicable redistricting criteria, whether as a constitutional or statutory matter. This approach is both consistent with New York's canons of interpretation (*see* Statutes § 221) and has the salutary effect of ensuring that the proposed remedial plan includes reasonably configured districts that adhere to New York's districting principles without race predominating (*Robinson v Ardoin*, 86 F4th 574, 595 [5th Cir 2023] ["The Supreme Court has implemented a high bar to racial gerrymander challenges, requiring a showing of racial predominance such that traditional redistricting criteria are subordinate to the racial consideration."]). Moreover, as a prudential matter, this prioritization provides clear guidance to mapmakers, who are always faced with the task of reconciling a set of criteria in tension. And to the extent the protection of minority opportunity-to-elect and minority political influence are in tension, the conflict should be resolved in favor of avoiding the greater injury.

[6] Legal Defense Fund & New York Civil Liberties Union, *Memorandum on Key Provisions of the John R. Lewis Voting Rights Act of New York (S.1046/A.6678)* [May 31, 2022] at 10-12, https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-11/nyvra-provisions-memo-ldf-nyclu-5-31-22.pdf.

III. Amici Propose a Standard Applicable to Claims Alleging That a Redistricting Plan Dilutes Minority Electoral Influence.

At present, there is no clear definition of influence claims in New York law. In this case, the Petition is unclear as to whether Petitioners are seeking to prove an influence claim or a "coalition crossover" claim (*see generally* Proposed Amicus Brief of Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos, NYSCEF Doc No. 135 ("Professors Amicus"). Amici take no position on the viability of Petitioners' claim here.

To the extent the Court views this case as involving an influence claim, however, Amici believe that providing clear standards for influence claims prevents the concept of influence districts from being misapplied by courts and plaintiffs, or abused by elected officials (*see* Engstrom, *supra* note 3, at 7). For that reason, Amici propose that the Court adopt the following standard for identifying and proving racial vote dilution for an influence claim.

Like all racial vote dilution plaintiffs, regardless of the challenged scheme or injury, a plaintiff in an influence dilution case must prove that (a) under the totality of circumstances, the protected class has less electoral opportunity than the rest of the electorate and (b) a "reasonable alternative policy" would effectively remedy the electoral impairment of the protected class.

To satisfy the reasonable alternative policy prong, a plaintiff alleging the dilution of their group's opportunity to elect a candidate of choice need only show—without reference to the challenged map—that it is possible to draw a reasonably configured majority-minority district or crossover district in which the minority group could usually (that is, more often than not) elect their candidate of choice. By contrast, for an influence claim, a plaintiff must propose a remedial plan that reasonably respects those principles comparably to the challenged plan. The plaintiff's illustrative plan for an influence claim must reveal that the challenged plan *unreasonably* fragments or concentrates a politically cohesive minority community in a way that is inconsistent

with objective districting principles like compactness, contiguity, and respect for municipal boundaries. The plaintiff would also have to show that their illustrative plan would remedy the deviation from New York's established districting principles as well as the dilution of actual electoral influence by demonstrating some material net change in electoral outcomes.

Under Amici's proposed framework, New York courts can set a single standard for influence dilution claims where the plaintiff challenges a redistricting plan *and* proposes a redistricting plan as a remedy, which can be applicable for claims of this type brought under the state constitution, statutes setting local redistricting criteria, or the NYVRA.

A. The Totality of Circumstances Inquiry for Influence Dilution Plaintiffs Challenging Redistricting Plans is the Same as for Other Racial Vote Dilution Claims.

The State Constitution, the NYVRA, and other state redistricting laws each invite a totality of the circumstances inquiry into determining whether a protected minority group has unequal opportunities to participate in the political process and achieve electoral efficacy. The text of the State Constitution provides no other route to proving this element of racial vote dilution (*see* NY Const art III, § 4[c][1]). The totality of the circumstances inquiry need not be any different for influence dilution plaintiffs in redistricting cases like these than for any other racial vote dilution case, regardless of whether applying the federal VRA's "Senate Factors" (*Gingles*, 478 US at 44-45), or the NYVRA's closely related version (Election Law § 17-206[3]). Both sets of factors are "non-exhaustive and non-exclusive" (*Wright v Sumter County Bd. of Elections & Registration*, 301 F Supp 3d 1297, 1312 [MD Ga 2018], *aff'd*, 979 F3d 1282 [11th Cir 2020]; *see* Election Law § 17-206[3] ["Nothing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred."]).

The totality of circumstances in this context requires evidence that racially polarized voting usually defeats the preferred candidates of a politically cohesive minority group, which is the "linchpin of a vote dilution claim"[7] (*see Elizondo v Spring Branch Indep. Sch. Dist.*, 782 F Supp 3d 488, 551 [SD Tex 2025] [quoting *Westwego Citizens for Better Government v City of Westwego*, 872 F2d 1201, 1207 [5th Cir 1989]). The totality of circumstances inquiry is well-suited to interrogating whether minority voters have been deprived of political influence for reasons primarily attributable to past or present discrimination (*see e.g. Clerveaux*, 984 F3d at 237-43 [using these factors to prove the salience of race in the jurisdiction]).[8]

Part of why influence districts are meaningful as a tool to measure fair and equal political participation is that the concept acknowledges that politically cohesive and geographically compact communities, even if they do not make up a majority, may have a substantial impact on how their community's policies and politics are decided. Courts can and should consider data on

[7] Although the NYVRA states as an element in racial vote dilution claims against redistricting plans proof of the totality of circumstances in the disjunctive with proof of racially polarized voting (Election Law § 17-206[2][b][ii]), the State Constitution expressly references only "based on the totality of circumstances" in its racial vote dilution protections (NY Const. art III, § 4[c][1]). The NYVRA was designed to address racial vote dilution and suppression in local government elections in this state—including villages, towns, and special purpose districts— where many jurisdictions have only one election district, which would make proof of racial voting patterns all but impossible and effectively immunize those jurisdictions against liability for racial vote dilution. That concern is inapplicable to statewide elections where there are thousands of election districts. Regardless, the NYVRA's totality of circumstances inquiry is sufficiently capacious to incorporate proof of racially polarized voting that usually defeats the preferred candidate of the minority groups of interest wherever feasible.

[8] Importantly, and consistent with longstanding Second Circuit precedent, a finding of liability for racial vote dilution under New York law does not require a plaintiff to the prove that racial motivations are the cause of divergent racial voting patterns, as opposed to partisanship or other reasons (*see id.* at 232 [citing *Goosby v Town Bd. of Town of Hempstead*, 180 F3d 476, 493 [2d Cir 1999]; Election Law § 17-206[2][c][vi] ["evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered"]).

what proportion the minority group makes up of the legislator's electoral constituency and whether the legislator's voting record provides evidence that he or she is responsive to the minority group. Among other relevant legislative behavior, unresponsiveness might involve a lack of events or meetings held with the minority community and the failure to sponsor bills or policies on issues that are of particular importance to the relevant minority community (*see e.g. Clerveaux*, 984 F3d at 238-39; *Goosby*, 180 F3d at 495).

B. The Reasonable Alternative Policy Element for an Influence Claim Requires a Showing that the Dilution is Attributable to the Challenged Map's Deviation from Traditional Districting Principles and that a Remedial Plan Would Repair the Deviation while Remedying the Dilution.

Whether under the New York Constitution, the NYVRA, or similar local legislative redistricting criteria, a plaintiff alleging an influence dilution claim under New York law should show that the challenged redistricting plan deviates from the applicable redistricting criteria in a way that *unreasonably* fragments or concentrates a politically cohesive minority group in a way that impairs their ability to exert actual electoral influence. A plaintiff makes this showing by presenting a reasonable alternative illustrative map that would remedy the dilution of influence by repairing the deviation from traditional principles, while otherwise respecting the state's "objective" redistricting criteria of "compactness, contiguity, and respect for political subdivisions" (*Shaw v Reno*, 509 US 630, 647 [1993]). The focus is on these objective factors because traditional redistricting criteria can be "surprisingly ethereal and admit of degrees" (*Bethune-Hill v State Bd. of Elections*, 580 US 178, 190 [2017] [cleaned up]). The Court should focus on only measurable factors to prevent the state or its localities from inventing or elevating bespoke redistricting principles, like core retention (*Milligan*, 599 US at 21-22), incumbent protection (*League of United Latin American Citizens v Perry* ["*LULAC*"] 548 US 399, 422 [2006]), or preferences for certain

communities (*Singleton*, 782 F Supp 3d at 1344), as a means of justifying or perpetuating electoral systems that result in racial vote dilution.

Deviations from a state's districting principles can be circumstantial evidence of racial discrimination in redistricting (*see Connor v Finch*, 431 US 407, 422-26 [1977] [concluding that "unexplained departures from the results that might have been expected to flow from . . . neutral guidelines can lead . . . to a charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group."]). A plaintiff can demonstrate this deviation by, for example, showing that a challenged plan's cracking or packing of a minority community is attributable to ill-compact districts; unnecessary division of political subdivisions, or other clearly cognizable communities of interest; or a map's extreme partisan favoritism, efforts to advantage incumbents, or discouragement of competition. Traditional redistricting principles have always sought to keep communities of interest intact and Amici's proposed standard focusing on these principles for influence dilution will ensure that emerging minority groups are not gratuitously denied the opportunity to "pull, haul, and trade to find common political ground" (*Johnson v DeGrandy*, 512 US 997, 1020 [1994]).

Construing the reasonable policy alternative requirement in the context of influence districts resolves potential conflicts between influence and opportunity-to-elect dilution claims. The proposed standard for the Court to consider defuses concerns about racial predominance by focusing on the vindication of traditional districting principles in assessing both the cause of the influence dilution and its remedy.

C. An Illustrative Map Is an Effective Remedy for Influence Dilution when a Comparison to the Challenged Map Shows a Material Change in Election Outcomes That Reveals a Deprivation of Actual Electoral Influence.

An influence dilution claim must consider whether the protected class members can *actually* "influence the outcome of elections" for their community under a remedial map (Election Law § 17-206[2][a]). Amici propose that there must be some comparison of the electoral impact the protected class of voters stand to have under a remedial districting plan as compared to the challenged plan. A group does not have "electoral influence," after all, unless there are "real potential electoral consequences" to the ballots they cast.[9] Satisfying this prong of the proposed standard shows that the electoral harm caused by the gratuitous cracking or packing at issue is concrete and significant.

1. Material Net Change in Electoral Efficacy

A diluted minority group must be able to demonstrate an increase in electoral efficacy under a proposed remedial influence district. "[P]otential influence is relevant to a determination of whether the group lacks a meaningful opportunity to participate in the electoral system" (*Uno v City of Holyoke*, 72 F3d 973, 991 [1st Cir 1995]). Thus, making an inquiry into electoral efficacy important to determining if a protected class's voting participation has been deprived of meaning, and thus their influence diluted. A plaintiff should demonstrate that the proposed remedial district results in a net positive change in the protected group's actual effect on electoral outcomes, compared to a challenged plan that gratuitously cracks or packs their community in a way that makes their influence negligible.

[9] Bernard Grofman, *Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of Georgia v. Ashcroft: Social Science Perspectives on Minority Influence, Opportunity and Control*, 5 Election L Journal 250, 260 (2006).

Therefore, the plaintiff must "demonstrate a net gain in the protected class's potential to elect candidates under an alternative system," otherwise "it has not shown the [challenged] method of election 'impairs' the ability of the protected class to elect its preferred candidates" (*Pico Neighborhood Assn.*, 15 Cal 5th at 322).

2. Ensuring Actual Influence

A standard for what qualifies as an effective remedial district prevents the abuse of voting rights laws for partisan ends and instead preserves them for protecting against racial discrimination. Further, an effectiveness inquiry protects against both frivolous claims and discourages mapmakers attempting to hide voter suppression in the form of purported "influence districts" by packing or cracking minority voters into districts in which they have no electoral efficacy, then claiming that raw population percentages create the safe haven of an influence district (*see* Engstrom at 5 ["Relying on a percentage threshold, in isolation, is an invitation to misapply, and perhaps even abuse, the concept of influence districts."]).[10]

The reasonable alternative plan must offer an *effective* remedy. That is, the illustrative plan must remedy an unjustifiable deprivation of actual electoral influence in the challenged map. In the opportunity-to-elect context, an effective remedy is one where the illustrative remedial district would "usually" elect the protected class's preferred candidate (*cf. Abbott v Perez*, 585 US 579 [2018] [finding that the plaintiffs' illustrative district was an ineffective remedy because the minority-preferred candidate won only "7 out of the 35 relevant elections"]; *Abrams v Johnson*, 521 US 74, 94 [1997] [concluding that the VRA required a majority-minority district to ensure

[10] To achieve the gain in electoral efficacy that signifies a true influence dilution remedy, some judges have suggested that a remedial influence district should have at least a 25% minority population (*see Rural W. Tennessee Afr-Am Affairs Council,* 209 F3d 835, 846-47 [6th Cir 2000] [N.R. Jones, J., concurring]).

that the probability of electing minority candidates remained above 50%]). By contrast, in an influence claim, plaintiffs could succeed even if their illustrative district was not majority-minority *and* the minority-preferred candidate usually lost so long as their illustrative district materially increased the chances of minority-preferred candidates as compared to trivial success under the challenged map. For example, if under the challenged map, the minority-preferred candidates won 0% of elections but such candidates won 25% of elections in the plaintiffs' illustrative district that evidence demonstrates that minority voters could have a consequential "influence" as a part of a competitive coalition.

This principle applies both to potential districts where the protected class tends to vote for, or against, the winning candidate in the general election but has no ability to cast consequential votes in the outcome of a general election, let alone a primary. There is no change in actual influence when, for example, a claim would simply convert a challenged district dominated by white Republicans to a remedial district dominated by white Democrats if the votes of people of color would remain negligible in either case.

D. A Recent New York Case Illustrates How Influence Dilution Claims and Influence District Remedies Work in Practice.

In Nassau County, no Asian candidate has ever been elected to the 19-member county legislature even though Asian residents constitute over 12% of the population and 10% of eligible voters.[11] Asian residents are the fastest growing demographic group in the county and primarily

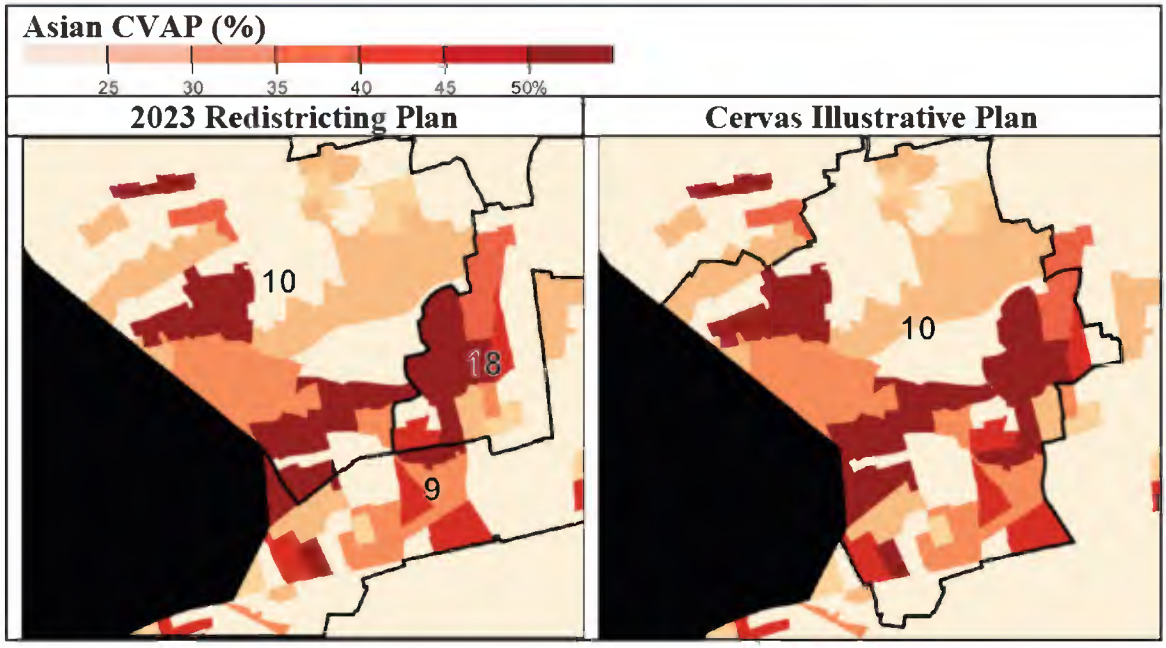
[11] See Expert Report of Dr. Jonathan Cervas, *New York Communities for Change v. County of Nassau*, Index No. 602316/2024, NYSCEF Doc No. 300 at ¶ 24, tbl. 2; ¶ 84 (Sup Ct, Nassau County Dec. 9, 2024) ("Cervas NYCC Report"); Plaintiffs' Consolidated Proposed Findings of Fact and Conclusions of Law, *New York Communities for Change v. County of Nassau*, Index No. 602316/2024, NYSCEF Doc No. 336 at ¶¶ 306, 662, (Sup Ct, Nassau County Dec. 9, 2024) ("*NYCC* PFOFCOL").

concentrated in two areas—the Hicksville area in the eastern part of the county and the greater New Hyde Park area in the western part of the County (*see* Cervas *NYCC* Report ¶ 20, tbl. 1; ¶ 82). But neither community was large enough to form a majority of the electorate in a district (*see id.* ¶ 83). In 2023, Nassau County enacted a redistricting plan for the county legislature that divided the Asian community in the New Hyde Park area into three districts—two of which were oddly shaped (*see NYCC* PFOFCOL ¶ 313; Cervas *NYCC* Report ¶¶ 84, 91). Asian residents did not exceed 23% of eligible voters in any of these three districts (*see id.*).

Plaintiffs challenged that redistricting plan, alleging that the map's deviations from traditional districting principles cracked a recognizable community of interest with a concentrated Asian population and impaired Asian voters' ability to influence electoral outcomes (*see NYCC* PFOFCOL ¶¶ 827-839). The plaintiffs' redistricting expert in that case was Dr. Jonathan Cervas, the special master who drew the 2022 congressional redistricting plan that underlies the district challenged in this case. Dr. Cervas created an illustrative remedial map that adhered to each of the statutory redistricting criteria applicable to county legislatures as well or better than the challenged map (*see* Cervas Report ¶ 2c). This resulted in an illustrative remedial district where Asian residents were over 34% of eligible voters (*see* Cervas *NYCC* Report ¶ 84).

Dr. Cervas was able to show, visually and statistically, that the challenged map's cracking of the Asian community was the product of deviation from the applicable principles of keeping districts as compact as practicable and preserving communities of interest (*see* Cervas Report ¶¶ 84-86; *NYCC* PFOFCOL ¶¶ 837-39; *see below* Cervas *NYCC* Report ¶ 86, Fig. 7).

Figure 7 Greater New Hyde Park Communities of Interest



In addition to evidence of recent and historical discrimination, plaintiffs presented evidence of racial voting patterns and reconstructed precinct-level election results to show that the challenged map's cracking impaired Asian electoral influence. Both Asian political cohesion and white bloc voting against minority-preferred candidates in the area had been increasing as the population of Asian residents grew (*NYCC* PFOFCOL ¶ 366). For the most recent (and most probative) set of election data available, plaintiffs showed that in the three cracked districts in the challenged map, candidates preferred by Asian voters were successful in 0% of the time; whereas in a compact remedial district that kept the greater New Hyde Park area whole, Asian preferred candidates were successful 25% of the time (*see* Cervas *NYCC* Report ¶¶ 93-97). Although Asian voters are not yet numerous enough to achieve the kind of results expected from an opportunity-to-elect district, this example shows what an influence dilution claim can yield: a remedial district that comports with traditional principles and provides a realistic opportunity for a significant, politically cohesive community to compete in the "pull, haul, and trade" with other groups instead of an electoral

scheme that made their voices and votes negligible (*Perez v Abbott*, 250 F Supp 3d 123, 139 [WD Tex 2017] [citation omitted]).

IV. Setting a Proper Standard for Racial Vote Dilution Claims Seeking Either Influence or Crossover Remedial Districts Will Help Avoid their Distortion Into "Partisan Maximization" Claims.

Causes of action in which race is central to the legal doctrine are essential in addressing some of the most egregious forms of discrimination. Unfortunately, at times, litigants whose primary concerns are partisan have attempted to misuse racial vote dilution claims for their own ends (*see e.g. Harding v County of Dallas*, 948 F3d 302, 306 [5th Cir 2020] [describing a federal VRA claim brought by "Anglo Republicans"]). A properly structured cause of action for racial vote dilution claims—whether involving influence or opportunity-to-elect claims—can help courts better distinguish and channel claims down the appropriate litigation paths. This approach helps to avoid unwelcome doctrinal distortion while providing full redress for racial vote dilution in all its forms.

Racial discrimination is morally, historically, and legally distinct from partisan subordination. Yet partisan impulses have repeatedly provided disturbing incentives for officials of both major parties to draw districts that disadvantage minority voters (*see e.g. LULAC*, 548 US at 440-41 [finding that a Republican legislature cracked Latinos to protect an incumbent]; *Black Political Task Force v Galvin*, 300 F Supp 2d 291, 313-15 [D Mass 2004] [finding that a Democratic-controlled legislature intentionally packed Black voters to protect white incumbents]).

This requires courts to be vigilant to ensure that racial vote dilution jurisprudence is not distorted or otherwise misused by anyone as a way to maximize partisan advantage.

Whether Petitioners are pursuing a crossover or influence claim (*see generally* Professors Amicus), Petitioners in this case[12] should be required to prove that racial minorities will have the opportunity to elect their preferred candidates in the primary elections of the dominant party in the illustrative remedial district. One potential way to satisfy this "gatekeeping condition" would be to require Petitioners to "show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election" (*LULAC*, 548 US at 485-86 [Breyer, J., dissenting in part] [proposing standards for adjudicating a crossover claim]). Alternatively, Petitioners could show that the minority-preferred candidate can win *both* contested primary *and* general elections in the illustrative district (*cf. id.* at 444 [rejecting a crossover claim where the plaintiffs could not show that a white Democrat was the Black-preferred candidate in both primary and general elections]).

In the absence of such evidence, influence or crossover claims can easily be distorted for partisan maximization. For example, without this requirement, a plaintiff could argue for the creation of new crossover or influence districts where white Democrats hold majorities in the primary and general elections as "remedies" for racial vote dilution even in places where white bloc voting usually defeats minority-preferred candidates in primary and general elections (*cf. e.g.*, *Gingles*, 478 US at 59; *Pope*, 94 F Supp 3d at 336-37). Justice Souter recognized this problem in his dissent in *Georgia v Ashcroft* (539 US 461, 508 [2003]). There, Georgia Democrats had created "influence" districts by breaking up opportunity-to-elect districts (*id.* at 470). Justice Souter noted that, although this approach might maximize partisan advantage for Democrats, it would do so at the expense of minority voters' ability to elect their preferred candidates: "if the proportion of

[12] Cases involving nonpartisan races should not be held to this standard.

[white] Democrats is high enough, the minority group may well have no impact whatever on which Democratic candidate is selected to run and ultimately elected" (*id*. at 508 [Souter, J., dissenting]).

Thus, whether the Court considers the issue to be influence or crossover claims, the Court should establish a standard that prevents the distortion of racial vote dilution claims purely for partisan electoral gain. Such a standard would benefit the law, the courts, and voters of all races and parties.

CONCLUSION

Amici respectfully request that the Court consider the arguments above in adjudicating the Petitioners' claim.

The undersigned certify that no generative artificial intelligence program was used in the creation of this document.

Dated: New York, New York
December 16, 2025

Respectfully submitted,

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

/s/
Perry M. Grossman
Molly K. Biklen
125 Broad Street
New York, NY 10004
(212) 607-3300
pgrossman@nyclu.org
mbiklen@nyclu.org

LATINOJUSTICE PRLDEF

Cesar Z. Ruiz

NAACP LEGAL DEFENSE AND EDUCATION FUND, INC.

/s/ John Cusick
John Cusick
Michael Pernick
Brittany Carter
Colin Burke
40 Rector Street, 5th Floor
New York, NY 1006
(212) 965-2200
jcusick@naacpldf.org
bcarter@naacpldf.org
cburke@naacpldf.org

Deuel Ross

475 Riverside Drive, Suite 1901
New York, NY 10115
(212) 392-4752
cruiz@latinojustice.org

Miranda Galindo
4700 Millenia Boulevard, Suite 500
Orlando, FL 32839-6019
(321) 754-1935
mgalindo@latinojustice.org

CENTER FOR LAW & SOCIAL JUSTICE

Lurie Daniel Favors
Medgar Evers College
1150 Carroll Street
Brooklyn, NY 11225
ldfavors@clsj.org

700 14th St. NW, Suite 600
Washington, DC 20005
dross@naacpldf.org

ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

/s/ Leah Wong
Leah Wong
Patrick Stegemoeller
99 Hudson Street, 12th Floor
New York, NY 10013
(212) 966-5932
lwong@aaldef.org
pstegemoeller@aaldef.org

Attorneys for the New York Civil Liberties Union, the NAACP Legal Defense and Educational Fund, Inc., Asian American Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Center for Law and Social Justice at Medgar Evers College, CUNY

EXHIBIT N

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

Michael Williams, José Ramìrez-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- Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba, Intervenors-Respondents.	Index No. 164002/2025 Hon. Jeffrey H. Pearlman Mot. Seq. 001, 006, and 007

AMICUS BRIEF OF PROFESSORS RUTH M. GREENWOOD AND NICHOLAS O. STEPHANOPOULOS IN SUPPORT OF NEITHER PARTY ON THE PETITION AND MOTION TO DISMISS

(Counsel for Amici listed on the following page)