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
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*Congressional Districts* (Oct. 7, 2025).[3] Congresswoman Malliotakis won reelection again in 2024 and is the incumbent elected Congressmember from CD11. Malliotakis Aff. ¶ 2.

Following the 2022 congressional election, certain petitioners challenged the *Harkenrider* Map based on its procedural flaws in a special proceeding, asking the New York courts to order the IRC to reconvene and submit a new proposed map to the Legislature under the 2014 Amendments and thus replace the *Harkenrider* Map for future elections. *Hoffmann*, 41 N.Y.3d at 355. The Court of Appeals agreed in *Hoffmann*, holding that "the IRC should comply with its constitutional mandate [under the 2014 Amendments] by submitting to the legislature . . . a [ ] congressional redistricting plan and implementing legislation," which plan was to govern congressional elections in New York beginning in 2024. *Id.* at 370. The IRC thereafter proposed a congressional map for the Legislature's consideration, *see* 2023 NY Senate Bill S8639; 2023 NY Assembly Bill A9304; *see also* Moskowitz Aff., Ex.D (N.Y. State Indep. Redistricting Comm'n, *Congressional Plan 2024*), which map the IRC had overwhelmingly approved in a 9-1 vote, Moskowitz Aff., Ex.E at 1. The IRC's proposal only slightly modified the *Harkenrider* Map without making any changes to CD11, *see id.*, and received strong bipartisan support, *see id.* at 2. Large bipartisan majorities in the Assembly and Senate approved the IRC's proposal with only minor changes—and none to CD11, *see* Moskowitz Aff., Ex.F—with the overwhelming majority of Black and Latino senators and assembly members in the Legislature voting in favor of the map maintaining CD11's current boundaries, including Respondents Andrea Stewart-Cousins and Carl E. Heastie.[4] Respondent Governor Hochul signed the congressional map into law on February 28, 2024. N.Y. State Law §§ 110–12 (the "2024 Congressional Map").

[3] Available at https://data.gis.ny.gov/datasets/sharegisny::nys-congressional-districts/explore.

[4] Available at https://legiscan.com/NY/rollcall/S08653/id/1401640.

### B. Petitioners Bring This Action Under Only One Theory—Article III, Section 4 Of The New York Constitution Incorporates The Influence-District Requirement Found In The Later-Enacted NYVRA—And The Parties Litigate This Case Under That Theory

On October 27, 2025, Petitioners filed their Petition in New York County Supreme Court initiating the special proceeding below and naming as Respondents the Board of Elections of the State of New York (the "Board") and certain state officials, in their official capacities. Moskowitz Aff., Ex.G ("Pet.") at 1. Petitioners' sole theory was that Article III, Section 4 of the New York Constitution incorporates the influence-district mandate in the later-enacted NYVRA, and that CD11 reduces the "influence" that Black and Latino voters "could" have in elections in CD11 under that standard. *Id.* ¶¶ 9–12, 98, 100–02. The remedy that Petitioners sought was to redraw CD11 "to create a minority influence district that pairs Staten Island with lower Manhattan," *id.* ¶ 13, replacing a bipartisan mix of Asian and White voters in CD11 with Democrat-favoring White voters from Lower Manhattan, Moskowitz Aff., Ex.H ("Alford Rep.") at 9, 13–14.

Before trial, the parties filed memoranda of law, all of which focused on the sole theory that Petitioners presented in the Petition—namely, that Article III, Section 4 incorporates the NYVRA's "influence" district standards. Moskowitz Aff., Ex.I; Moskowitz Aff., Ex.J ("Gov.Ltr."); Moskowitz Aff., Ex.K ("Int'r.Resp't.Br."); Moskowitz Aff., Ex.L. The only parties that took an active part in the proceedings were Petitioners, Respondents Kosinski, Casale, and Riley, and Intervenor-Respondents—Congresswoman Malliotakis and a number of citizen voters (the "Individual Voters") from CD11. Int'r.Resp't.Br.; Moskowitz Aff., Ex.L. As Intervenor-Respondents explained in their briefing, the New York Constitution does not incorporate the NYVRA, which was adopted eight years after the 2014 Amendments and only applies to local New York "board[s] of elections" and "political subdivision[s]." N.Y. Elec. Law § 17-206(2)(a); Int'r.Resp't.Br.10–20. Intervenor-Respondents further explained that, if the Supreme Court did

accept Petitioners' sole Article-III-Section-4-equals-NYVRA theory, it would need to interpret the NYVRA's "usually be defeated" inquiry to require a showing that minority-preferred candidates are routinely defeated in elections across the entire jurisdiction, which Petitioners could not do (as demonstrated by Intervenor-Respondents' expert reports). *Id.* at 20–31. In addition, Intervenor-Respondents argued at great length that ordering the redrawing of CD11 based upon race would violate the U.S. Constitution's Equal Protection Clause. *Id.* at 32–39.

Respondents Hochul, Stewart-Cousins, Heastie, and James (the "State Respondents") did not oppose the Petition—even though Respondent Hochul signed the map into law, and Respondents Stewart-Cousins and Heastie voted for it—but purported to remain neutral. They did explain that "the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or State Legislative Districts" as it is "clearly limited to political subdivisions." Gov.Ltr.2. And while they contended that Article III, Section 4 "provide[s] broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law," they did not advance any standard for the Court to apply. *Id.* at 3–5.

Two sets of *amici* submitted briefs arguing for the Court to apply their own alternative approaches. *See* Moskowitz Aff., Ex.M ("NYCLU et al. Am.Br.") at 11; Moskowitz Aff., Ex.N ("Prof.Am.Br.") at 19–20. Most relevant for what the Supreme Court ultimately ordered here, in their *amicus* brief, Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos urged the Court to interpret the Petition as raising a "coalition crossover district" claim (rather than the "influence" district claim set forth in the Petition). Prof.Am.Br.7, 19–20. Under this theory, voters from two or more protected classes may band together to bring a vote-dilution claim (the "coalition" aspect), and can elect their preferred candidates with support from majority voters (the "crossover" aspect). *See id.* at 7. This theory differs significantly from the test for proving a vote-

dilution claim under Section 2 of the federal VRA, where plaintiffs must initially satisfy the three *Gingles* factors—including by showing, first, that the minority group is "sufficiently large and geographically compact to constitute a majority" in a reasonably configured district—and then show that, under the totality of the circumstances, the "political process is [not] equally open to minority voters." *Thornburg v. Gingles*, 478 U.S. 30, 50, 79 (1986) (citation omitted). By contrast, in a so-called "coalition crossover" district, Prof.Am.Br.7, minority groups need not be "sufficiently large and geographically compact to constitute a majority," *see Gingles*, 478 U.S. at 50, so long as those groups can team up with certain majority voters to "elect the minority coalition's preferred candidates," Prof.Am.Br.7.

Professors Greenwood and Stephanopoulos then offered the Court a standard to apply in assessing that purported "coalition crossover" claim. Relying on Justice Souter's dissenting opinion in *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 485–86 (2006) ("*LULAC*") (Souter, J., concurring in part and dissenting in part), they argued that to prove such a claim on the merits, Petitioners would need to present evidence of a reasonable alternative map where "minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election," Prof.Am.Br.21. Under this standard, the Professors advised that "the Court should expect to see data from both primary and general elections" to determine whether a reasonable crossover district was possible. Prof.Am.Br.21. The Professors did not perform any analysis of Article III, Section 4 of the New York Constitution or otherwise suggest that the language of this provision allows for crossover-district claims. *See generally id.* Although the Professors offered this standard to replace the first *Gingles* factor—which, again, requires vote-dilution plaintiffs to show that it is possible to create a reasonably configured "majority-minority"

district in which the minority group makes up a majority of the electorate, *see id.* at 9–10—they did not otherwise suggest changing the *Gingles* two-step framework, which requires that a vote-dilution plaintiff meet the three *Gingles* factors and then "show, under the totality of circumstances, that the political process is not equally open to minority voters" to prove a Section 2 violation, *id.* at 9 (quoting *Allen v. Milligan*, 599 U.S. 1, 18 (2023)).

In their reply briefing, Intervenor-Respondents made clear that litigating this case under one of the new theories that *amici* articulated or on some other theory that the Supreme Court invented would violate due process, given that these theories had not been vetted in any of the adversarial briefing in the case, nor were the parties' expert reports tailored to these theories' particularities. Moskowitz Aff., Ex.O at 10–13. Rather, the parties prepared their briefing and expert reports in accordance with the only theory put forth in the Petition—that the NYVRA's standards apply to Petitioners' Article III, Section 4 vote-dilution claim. *Id.* at 11–13.

### C. The Case Proceeds To Trial, Where The Parties Present Evidence Tailored To Petitioners' NYVRA Influence-District Theory

At trial, the parties presented evidence only on the legal theory in the Petition: that Article III, Section 4 incorporates the NYVRA's standards. Those standards require a plaintiff to first satisfy the NYVRA's threshold "usually be defeated" inquiry—that is, "that candidates or electoral choices preferred by members of the protected class would usually be defeated." N.Y. Elec. Law § 17-206(2)(b)(ii). If the plaintiff makes that showing, then it must also demonstrate either that (a) "voting patterns of members of the protected class within the political subdivision are racially polarized" (the "racially-polarized-voting test"), or (b) "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired" (the "totality-of-the-circumstances test"). *Id.* In addition, the plaintiff must show that "there is an alternative practice that would allow the minority

group to 'have equitable access to fully participate in the electoral process.'" *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 39 (2025) (quoting N.Y. Elec. Law § 17-206(5)(a)).

With respect to the "usually be defeated" threshold and racially-polarized-voting test, Petitioners presented Dr. Maxwell Palmer, who testified that Black and Latino-preferred candidates won five out of twenty (or 25%) of the elections in CD11 that Dr. Palmer analyzed between 2017 and 2024. Moskowitz Aff., Ex.P, Trial Transcript ("Tr.") at 194:15–18. Dr. Palmer admitted that his analysis omitted CD11's 2018 congressional election, where the Black and Latino-preferred candidate won. Tr.197:11–198:22. Including that election in Dr. Palmer's set would have increased Black and Latino-preferred candidates' win percentage from 25% to 28%. Tr.199:3–10. But whether that election is counted or not, Black and Latino individuals account for less than 23% of CD11's voting-age population (or less than 30% of Staten Island), making a 25% or 28% win percentage near proportionality. *See id.*; Borelli Rep.7; *infra* p.13. Despite this near-proportionality, Dr. Palmer concluded that winning 25% of some elections met his definition of "usually defeated." Tr.194:23–195:4. He did not consider that "Black and Hispanic preferred candidates routinely win elections . . . in New York City and New York State," and failed to consider how Black and Latino candidates of choice fared in other districts in New York. Tr.205:8–13; Tr.211:13–17.

For the totality-of-the-circumstances test, Petitioners offered Dr. Thomas Sugrue, who "conducted research on historical and current patterns of racial discrimination, racial segregation, and racial disparities in socio-economic status in New York City, with a focus on [Staten Island]." Moskowitz Aff., Ex.Q ("Sugrue Rep.") at 3–4. Dr. Sugrue's historical discussion of Staten Island excluded facts that did not fit his narrative, Moskowitz Aff., Ex.R ("Borelli Rep.") at 3–4, including the State's history of civil rights activism and Staten Islanders' significant advancements

in the areas of civil rights and racial equality, *id.* at 5, 7, 19–29. Nor did Dr. Sugrue discuss how Staten Island is replete with public and private organizations committed to helping minorities, including by ensuring access to the political process, and that the hate crime rate is far lower there than in Manhattan. *Id.* The only purported example of a past voting qualification having been used in New York—literacy tests—was banned over 50 years ago, and Dr. Sugrue could not link their use to any existing voting conditions in Staten Island. *Id.* at 4–5. Rather, New York and Staten Island have expanded language services to help minority voters. *Id.* at 31–33. Dr. Sugrue's discussion of the alleged racial socioeconomic disparities on Staten Island likewise ignored the substantial progress made on that front in recent decades. *Id.* at 5, 37–45. He provided no evidence that Blacks and Latinos have been excluded from public office, while ignoring or attempting to downplay the significant success that minority candidates, like Congresswoman Malliotakis, *have* achieved. *Id.* at 4. And Dr. Sugrue's evidence of racial appeals in political campaigns ignored congressional campaigns, provided an incomplete account of Staten Island's secession campaign, and simply summarized four unrelated campaign incidents over more than a decade. *Id.* at 52–58.

To show an "alternative practice," *Clarke*, 237 A.D.3d at 39, Petitioners presented Mr. William Cooper, who "develop[ed] an illustrative plan that would join Staten Island with Manhattan in a reconfigured CD-11," Tr.302:10–14; Moskowitz Aff., Ex.S ("Cooper Rep.") ¶ 22, by "shift[ing] the boundaries of CD 11 to retain all of Staten Island and then adds most, but not all, of the portion of Lower Manhattan currently occupied by CD 10," Cooper Rep. ¶ 43. His map then moved "Bensonhurst and Bath Beach—two more predominantly Chinese-American neighborhoods in Brooklyn—"into CD10, as well as "[p]art of the Financial District" and "22 persons in Tribeca." *Id.* ¶ 44. Although he purported to "follow[ ] traditional redistricting principles" when preparing his map, he admitted that his illustrative CD11 "scores worse for

compactness than the currently enacted map," Tr.305:7–20; Cooper Rep. ¶ 54, and his testimony showed that Petitioners' proposal for CD11 disregarded communities of interest, *see* Tr.259:20–21; Tr.317:23–318:22; Tr.318:23–319:21; Tr.323:6–25; Tr.327:9–13; Tr.329:24–330:1; Tr.330:12–331:6, essentially admitting that he knew nothing about the similarities or differences between Staten Island and Lower Manhattan, *see* Tr.259:20–21 (Mr. Cooper admitting that he was "not that familiar" with New York City); Tr.320:4–6 (when asked whether there are any similarities between Staten Island and the Financial District, Mr. Cooper testifying that he "ha[d] a very tasty outdoor pizza in the Financial District" that he "bought [ ] from a Spanish-speaking gentleman," and that "there are Spanish speakers in Staten Island"). Regarding his complete lack of knowledge of the relevant communities of interest, Mr. Cooper explained that he "was under the assumption there would probably be petitioners here to testify as there usually are in federal court." Tr.329:15–20. Petitioners remarkably presented no such witnesses.

Mr. Cooper also admitted that his illustrative plan "doesn't make Black or Latino voters a numerical population majority" in CD11. Tr.347:22–24. Black and Latino residents comprise approximately 30% of Staten Island's population, Cooper Rep.8 & Figure 3; Borelli Rep.7, and comprise only 22.70% of the voting-age population in CD11, *id.* at 9 & Figure 2. In Petitioners' proposed illustrative CD11, voting-age Black and Latino residents would comprise just 24.71% of the population—still less than a quarter of the total citizen-age population in CD11. *Id.* at 18 & Figure 9. The population of White voting-age residents would also increase, from 59.76% in the current CD11 to 62.31% in the proposed illustrative CD11. *Id.* at 9 & Figure 2; *id.* at 18 & Figure 9. Under Mr. Cooper's map, White voters would support the Black and Latino-preferred candidate with 41.8% of the vote. Moskowitz Aff., Ex.T ("Palmer Rep.") at 6; Tr.213:13–20. With these White voters voting for the Black and Latino-preferred candidate, that candidate would

win the general election in Mr. Cooper's CD11 16 out of 18 times, or 88.89% of the time. *See* Palmer Rep.8.

Turning to Intervenor-Respondents' experts, on the "usually defeated" prong of the analysis, they put forward Drs. Stephen Voss and Sean Trende. As Dr. Voss explained, Dr. Palmer's results "were inaccurate and not reliable based on the method and data he used," Tr.596:5–7, he implied a "higher level of confidence and a sort of false sense of precision th[a]n really [was] warranted," Tr.596:8–10, and he "overestimat[ed] cohesion among some of the groups in the electorate and overestimat[ed] racial polarization compared to what is defensible," Tr.596:12–15. Dr. Trende, for his part, concluded that Black and Latino-preferred candidates—that is, Democrats—routinely win New York State and in New York City, including in CD11. Trende Rep.5. No Republican has won a mayoral race since 2005, been elected Comptroller since 1938, or *ever* been elected NYC Public Advocate. *Id.* At the citywide level, Democrats won every statewide election that Dr. Palmer analyzed. *Id.* Dr. Trende also examined the election results at the individual congressional district level, showing that the Black and Latino-preferred candidates win every district wholly within or around New York City other than CD11, constitute 73% of the New York congressional delegation statewide, and won more votes in four of the eleven elections in Dr. Trende's dataset in CD11. *Id.* at 7–8. Dr. Trende's results for CD11 differ from Dr. Palmer's primarily because Dr. Palmer included the results from local races held in odd-numbered years when congressional races are not held. *Id.* at 5. Dr. Trende explained that those elections provide less "probative" information than congressional elections. *Id.* at 5 & n.1.

With respect to the totality-of-the-circumstances test, Intervenor-Respondents presented the report and testimony of Mr. Joseph Borelli, who walked through each of the NYVRA's totality-of-the-circumstances factors. Mr. Borelli explained, among other things, that Dr. Sugrue's

description of racial disparities in CD11 ignores the significant and thriving Asian community on Staten Island and the noteworthy advancements made by Staten Islanders in the areas of civil rights and racial equality. Borelli Rep.3–4. Staten Island was heavily involved in the abolition movement, and a full history of racial discrimination in New York shows significant progress in addressing racial discrimination in housing, employment, and voting rights on the state and national levels through both legal decisions and legislation. *Id.* at 19–20. There is no evidence that members of the protected class have been excluded from public office, and, to the contrary, racial and ethnic minorities have had great success on Staten Island in recent years—indeed, CD11, which encompasses the entirety of Staten Island, is represented by Latino Congresswoman Nicole Malliotakis in the House of Representatives. *Id.* at 29. There is also no evidence that Black and Latino voters or candidates have been denied access to the ballot, financial support, or other support, *id.* at 33, and disparities between Whites and Blacks and Latinos on Staten Island in areas such as education, employment, and housing have decreased in recent years, *id.* at 37–39.

These experts also put on extensive criticisms of Petitioners' illustrative map. Mr. Borelli explained that the diverse populations and physical distance between Staten Island and Lower Manhattan have ensured that they have little in common, such that it is impractical to group the two areas together. *Id.* at 3. Staten Island's average number of vehicles per household is nearly six times that of Manhattan's, *id.*, and whereas those in Lower Manhattan want to "break[ ] the car culture," those on Staten Island could not take their kids to school, go to the grocery store, or even really get to the ferry without a car, Tr.743:2–18. By contrast, Staten Island has much in common with Brooklyn—indeed, during the first half of 2025, of all Staten Island homebuyers that came from New York City (excluding those already living on Staten Island), 92% came from Brooklyn. Borelli Rep.18–19. Dr. Trende similarly made clear that the illustrative map's low compactness

scores were not justified because he removed intervening waterways and analyzed only CD11's land areas when there is no precedent for that approach. Trende Rep.17. Dr. Trende also showed that Mr. Cooper overstated his case regarding precedent supporting his connecting of Staten Island to Manhattan—the only congressional map that Mr. Cooper relied upon was drawn just seven years after the Verrazano-Narrows Bridge opened (over 50 years ago), before which traveling to Brooklyn and Manhattan required ferry rides and driving to other places in New York required going through New Jersey. *Id.* at 18. In addition, Mr. Cooper's illustrative map made the polarization numbers in each illustrative district look better than in the current CD11 and CD10 "not because it groups protected minority populations who have been separated from each other artificially by district lines" but instead because White Republicans "are cracked away from like-minded voters." Moskowitz Aff., Ex.U ("Voss Rep.") at 6; *see* Tr.623:21–25.

Finally, Respondents put forward Mr. Thomas Bryan and Dr. John Alford, who explained, among other things, that Mr. Cooper's illustrative plan moved precincts from CD10 to CD11 that voted approximately 80% Democratic in recent statewide and congressional contests, while moving precincts from CD11 to CD10 that voted only about 42–47% Democratic. Moskowitz Aff., Ex.V ("Bryan Rep.") at 71; s*ee* Alford Rep.9. Mr. Cooper also carved out Chinatown and "numerous blocks" outside of Chinatown "that contain other relatively low performing democratic precincts." Tr.540:16–24. In other words, the illustrative plan's main effect was to strengthen the White Democratic vote in CD11 while diminishing the representational strength of Asians—the largest existing minority group in that district under the enacted map. Bryan Rep.74; Alford Rep.9. Black and Latino voters' average support for their preferred candidate *decreases* under Dr. Cooper's illustrative map. Alford Rep.9 (noting that "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"). As Dr. Alford explained, what "accounts for the improved performance for minority preferred candidates (Democrats)" in the illustrative district is that "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." *Id.*

### D. The Supreme Court Rejects Petitioners' NYVRA-Based Theory, And Then Adopts An Approach That No Party Asked For

On January 21, 2026, the Supreme Court held that CD11 is "unconstitutional under Article III, Section 4(c)(1) of the New York State Constitution" and ordered the IRC to "reconvene to complete a new Congressional map . . . by February 6, 2026." Order at 18.

The Court did not adjudicate the case under Petitioners' theory and, in fact, explicitly rejected that theory. As the Court explained, accepting Petitioners' theory of adopting the NYVRA's standard for evaluating vote-dilution claims under Article III, Section 4 would be "impermissible" because the "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," "the NY VRA [was] passed years after the redistricting amendments were ratified," and "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." *Id.* at 5.

While the rest of the Supreme Court's opinion is frankly difficult to follow because it confusingly intermixes under labels such as "violation" and "remedy" considerations that every voting dilution case and scholar discusses as a matter of proving the relevant violation, the Court ultimately adopted the coalition-crossover-district theory that Professors Greenwood and Stephanopoulos proposed in their *amicus* brief. *See supra* pp.8–10. The Court rejected Intervenor-Respondents' argument that the standard for evaluating a vote-dilution claim under Article III,

Section 4 of the New York Constitution should be the same standard that applies to vote-dilution claims under Section 2 of the federal VRA, Order at 5–7, and then explained that "[t]o 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," *id.* at 13. Relying primarily on the Professors' *amicus* brief, the Court "adopt[ed] a three-pronged standard for evaluating a proposed crossover district in a vote dilution case pursuant to Article III, Section 4(c)(1)." *Id.* at 15. The first prong provides that "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." *Id.* The second prong requires that "these candidates must usually be victorious in the general election." *Id.* And the third prong states that "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates." *Id.* Regarding the second prong, the Court further clarified that the "usually be victorious" requirement "should only be interpreted to the extent that minority-preferred candidates win *more often than not*." *Id.* (emphasis added). And on the third prong, while the Court did not provide a definition for the term "decisive," the Court held that minority voters must "be 'decisive' *in primary races* so that crossover districts cannot be used to achieve vote dilution in favor of a different political party." *Id.* (emphasis added); *see* Prof.Am.Br.8 (arguing that "[w]hether minority voters outnumber majority voters in the relevant primary election is a proxy for this degree of political strength"). "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." *Id.* at 15.

**Despite holding that crossover-district plaintiffs "must" meet this three-pronged standard to succeed on their claim, *see id.* at 13, at no point did the Supreme Court assess whether Petitioners' proposed illustrative map (or any other evidence they submitted) actually met the Court's new criteria**. And, indeed, Petitioners had not submitted evidence on the Court's newly adopted criteria. In particular, Petitioners did not submit any evidence on primary elections in their proposed illustrative district, such that there was no evidence on whether minority voters "are able to select their candidates of choice in the primary election," whether these selected candidates are "usually [ ] victorious in the general election," or whether minority voters would "be 'decisive' in primary races." *See id.* at 15. In fact, the Supreme Court rejected Petitioners' entire approach in designing their proposed illustrative district—which rested on increasing the White Democratic vote in CD11, *supra* pp.7–8—explaining that what the New York Constitution would require under the Court's view is "adding Black and Latino voters from elsewhere" so that these voters do not "remain a diluted population indefinitely." Order at 13.

The Supreme Court did conduct a modified version of the totality-of-the-circumstances inquiry—the second step in the *Gingles* two-step framework and the second step under the Professors' approach, *see supra* pp.9–10, but which the Supreme Court discussed first, unlike in any vote dilution case that Intervenor-Respondents are aware of. *See* Order at 7–13. On this score, the Court did have some evidence before it, as the totality-of-the-circumstances test is part of the inquiry under the NYVRA (the standard that the parties actually litigated). The Court found that the "totality of the circumstances" "provide strong support for the claim that Black and Latino votes are being diluted in the current CD-11" because Petitioners showed "strong evidence of [a] racially polarized voting bloc," a "history of discrimination that impacts current day political participation and representation," and "that racial appeals are still made in political campaigns

today." *Id.* at 12–13. The Court first found that "racially polarized voting has been clearly demonstrated" based on Petitioners' expert Dr. Palmer's analysis that Black and Latino-preferred candidates won 5 of the races out of the "20 most recent elections in CD-11 used in [Dr. Palmer's] analysis." *Id.* at 8–9. The Court then determined that Petitioners demonstrated a "history of discrimination against minority voters in CD-11 [that] still impacts those communities today." *Id.* at 9. The Court explained this conclusion by repeating Petitioners' expert Dr. Sugrue's opinions, adopting almost every point he made about historical discrimination against Blacks and Latinos in New York and/or Staten Island in his report or trial testimony, without question—let alone mention of Intervenor-Respondents' and Respondents' expert opinions and testimony rebutting Dr. Sugrue's conclusions. *See id.* at 9–10. The Court also, remarkably, credited Dr. Sugrue's "testimony" that "de facto segregation remains the norm" today in New York State and Staten Island. *Id.* at 10. According to the Court, Petitioners demonstrated that this "discrimination" has also had "political" impacts in CD11 because "Black, Latino, and Asian State Islanders' political representation and participation in politics still lags behind White Staten Islanders." *Id.* The Court found that conclusion reasonable because Black, Latino, and Asian voters had lower average turnout rates than White voters in the 2020, 2022, and 2024 elections and because even though CD11 often elects minority candidates—like Congresswoman Malliotakis—and has for decades, "representation [is] still low." *Id.* at 10–11. Turning next to "overt and subtle racial appeals . . . in campaigns," the Court found that Petitioners showed these to be "common in campaigns in CD11," *id.* at 11, despite identifying only three purported examples of alleged racial appeals in campaigns from "the 1960s" to "2017," *id.* at 11–12. In all, the Court concluded from a one-sided examination of just four factors (out of the eleven under the NYVRA and seven under *Gingles*) that "a totality of the circumstances analysis indicates that as drawn" CD11 "result[s] in the denial

or abridgment of" Black and Latino voters' voting rights under the all-things-considered second step of the *Gingles* two-step inquiry. *Id.* at 12–13.

The Court declined Petitioners' invitation "for the Court to adopt" "new district lines" and did not accept Petitioners' proposed illustrative map, reasoning that Article III, Section 5(b) of the New York Constitution and the Court of Appeals' *Harkenrider* and *Hoffmann* decisions required the Court "to reconvene the IRC to redraw the CD-11 map so that it comports with the standard described above." *Id.* at 15–17. The Court ordered that "new congressional lines must be completed by February 6, 2026." *Id.* at 17. And, most relevant for this stay motion, the Court enjoined Respondents "from conducting any election" under the 2024 Congressional Map "or otherwise giving any effect to [its] boundaries" as drawn, and ordered that the case "shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order." *Id.* at 18.

**LEGAL STANDARD**

When an appeal is pending based on an order from the Supreme Court, the court "to which an appeal is taken" "may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal." CPLR § 5519(c). Moreover, the appellate courts also have "inherent authority" to stay proceedings in the Supreme Court while an appeal is pending. *Tax Equity Now NY LLC v. City of New York*, 173 A.D.3d 464, 465 (1st Dep't 2019) (granting discretionary stay pending appeal of denial of motion to dismiss). This power derives from the courts' "responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them." *Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 2012 N.Y. Slip Op. 52150(U), 2012 WL 5870726, at *3 (Sup. Ct. N.Y. Cnty. Nov. 20, 2012) (quoting *Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep't 1986)). Granting a discretionary stay is appropriate where the appellant shows

there is merit in the appeal, *Deutsche Bank Nat. Tr. Co. v. Royal Blue Realty Holdings, Inc.*, 2016 N.Y. Slip Op. 31510(U), 2016 WL 4194201, at *4 (Sup. Ct. N.Y. Cnty. Aug. 8, 2016), and that "prejudice or irreparable damage will result from a denial of the stay," *Kobrick*, 2012 WL 5870726, at *3.

When considering whether to grant a motion for leave to appeal to the Court of Appeals, courts consider whether the appeal presents "issues [that] are novel or of public importance." NYCRR § 500.22(b)(4). That is because the Court of Appeals' role includes "address[ing] important legal [i]ssues" by, for instance, "develop[ing] emerging areas" of law and "[c]onstru[ing] statutes in developing areas of regulation." N.Y. Court of Appeals, *The New York Court of Appeals Civil Jurisdiction and Practice Outline* 17 (July 2023)[5]; *accord People v. Hawkins*, 11 N.Y.3d 484, 493 (2008) ("authoritatively declare and settle the law uniformly throughout the state" regarding "legal issues of statewide significance"); *Babigian v. Wachtler*, 69 N.Y.2d 1012, 1014 (1987) ("issues of law of particular significance . . . that merit[ ] the attention of [the Court of Appeals]"); *Corbett v. Scott*, 243 N.Y. 66, 67 (1926) ("a question of law" that the Court of Appeals has not yet "passed on").

## ARGUMENT

### I. Intervenor-Respondents Are Certain To Succeed On The Merits Of Their Appeal

#### A. The Supreme Court's Adjudication Of This Case Under A Test That No Party Proposed—Including With Elements That No Party Submitted Evidence On—Is An Egregious Violation Of The Due Process Clause, Basic Principles Of Fairness, And The Party Presentation Principle

1. The Fourteenth Amendment's Due Process Clause "centrally concerns the fundamental fairness of governmental activity," *N. C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam.*

[5] Available at https://www.nyscourts.gov/ctapps/forms/civiloutline.pdf.

*Tr.*, 588 U.S. 262, 268 (2019) (citation omitted); *see also People v. Collier*, 223 A.D.3d 539, 542 (1st Dep't 2024), *leave to appeal denied*, 42 N.Y.3d 962 (2024), and "imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair," *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981). Those standards, "at a minimum," require "notice and opportunity for hearing appropriate to the nature of the case," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950); *see also People ex rel. Abrams v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803, 806 (1992), meaning procedures "reasonably calculated, under all the circumstances, to . . . afford [participating parties] an opportunity to present their objections," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *see Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) (due process requires "an opportunity to present every available defense"); *Apple Health*, 80 N.Y.2d at 806 (due process requires "opportunity to be heard at a meaningful time and in a meaningful manner" (citations omitted)). A court deprives litigants "of the right of fair warning," *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), when it "reconfigure[s]" the applicable "scheme, unfairly, in *midcourse* [ ] to 'bait and switch'" the responding party, *Reich v. Collins*, 513 U.S. 106, 111 (1994).

Consistent with these fairness principles, trial courts must base their decisions "solely on the legal rules and evidence adduced at the hearing," *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970), and not "surprise[ ]" litigants with "final decision [ ] of issues upon which they have had no opportunity to introduce evidence," *Hormel v. Helvering*, 312 U.S. 552, 556 (1941). A trial court cannot make a "sua sponte determination" without providing a party "the opportunity to present evidence refuting the court's [ ] determination." *Aurora Loan Servs., LLC v. Moreno*, 166 A.D.3d 933, 935 (2d Dep't 2018) (citation omitted). Rather, the "principle of party presentation" requires courts to "rely on the parties to frame the issues for decision." *United States v. Sineneng-Smith*,

590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). To remain "bastions of due process," courts must not "seize upon an issue not raised by any party . . . , without providing . . . notice of the issue and an opportunity for all parties to be heard on it." *Wells Fargo Bank, N.A. v. St. Louis*, 229 A.D.3d 116, 122 (2d Dep't 2024); *see also Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009) (explaining that the Court of Appeals is "not in the business of blindsiding litigants, who expect us to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made").

2. Here, the Supreme Court adjudicated this case under a standard that Petitioners did not advance, which "unfairly" and unconstitutionally "bait[ed] and switch[ed]" Intervenor-Respondents, *Reich*, 513 U.S. at 111, violating the party-presentation principle, *see Sineneng-Smith*, 590 U.S. at 375, depriving the parties of the "right of fair warning," and transgressing basic principles of fairness, *Bouie*, 378 U.S. at 352.

The parties "frame[d] the issues for decision" by litigating a single legal theory throughout this case. *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243). The Petition's sole theory was that the Supreme Court should "apply the same standards set forth under the NY VRA to adjudicate" Petitioners' Article III, Section 4 claim, Pet. ¶ 50, and determine—under that NYVRA standard—whether "[a] minority influence district is both possible and required" in CD11, Pet. ¶¶ 97–102. Given that "fram[ing]," *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243), Intervenor-Respondents prepared expert evidence refuting Petitioners' claim under the standards set forth in the NYVRA and presented extensive merits briefing under that theory and as informed by those experts, *see* Int'r.Resp't.Br.20–31; *see generally* Trende Rep.; Voss Rep.; Borelli Rep. Petitioners' own evidence focused on the NYVRA standards as well. *See generally* Cooper Rep.; Sugrue Rep.; Palmer Rep. While two sets of non-

party *amici* urged the Supreme Court to adopt their own separate standards, *see* NYCLU et al. Am.Br.11; Prof.Am.Br.19–20, no party briefed the constitutionality of those standards or submitted evidence tailored to those standards.

The Supreme Court failed to "rely on the parties to frame the issues for decision," *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243), and instead adopted a wholly different standard to resolve this case "without providing . . . notice of the issue and an opportunity for all parties to be heard on it," *Wells Fargo Bank*, 229 A.D.3d at 122. It held that "Article III, Section 4(c)(1)'s language indicate[s]" that "crossover claims" "are allowed in actions in the state of New York," and then "adopt[ed]" a "standard for evaluating a proposed crossover district" based on U.S. Supreme Court dissenting opinions and the "legal scholarship" of *amici curiae.* Order at 14–15. In particular, the Court cited Justice Souter's dissent in *LULAC*, 548 U.S. 399, urging the U.S. Supreme Court to recognize certain crossover claims where "minority voters . . . constitute a majority of those voting in the primary of the . . . party tending to win in the general election." Order at 14 (quoting *LULAC*, 548 U.S. at 485–86 (Souter, J., concurring in part and dissenting in part)).[6] The Court then adopted *amici*'s proposed standard for "crossover claims." *See id.* at 14–15 (citing NYCLU et al. Am.Br.139). The Court held that to prove a crossover district claim, a plaintiff must show that in a proposed district, "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election," those candidates win the general election "more often than not," and minority voters' preference in the primary election is "decisive"—*i.e.*, they are not simply "grouped with White voters who

[6] The Supreme Court also suggested that Justice Breyer's dissent in *LULAC* was important to its analysis, but, in addressing this dissent, quoted language from Justice Souter's dissenting opinion. *See* Order at 14. This mistake appears to have its origin in the *amicus* brief submitted by the NYCLU, NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and Center for Law and Social Justice, where *amici* incorrectly attributed the same language to Justice Breyer, rather than Justice Souter. *See* NYCLU et al. Am.Br.22.

would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not." *Id.* at 15.

The Supreme Court's decision egregiously violates due process. Neither Petitioners nor their experts proposed a "crossover" district to prove Petitioners' vote-dilution claim, under the Professors' test or otherwise. Yet, the Supreme Court announced a new test post-trial requiring Petitioners to put forward a reasonably configured district shown through both primary and general election data to permit minority voters to nominate their preferred candidates in the dominant-party primary and to see those candidates "usually" prevail in the general election. Order at 15. **But no party submitted any evidence at all about whether minority voters are decisive in any party's primary in any actual or proposed district, much less whether they control candidate selection in a proposed crossover district that satisfies this new three-prong test**. *See id.* Notably, the *amici* that the Supreme Court relied upon recognized that "the Court should expect to see data from both primary and general elections" if Petitioners were to prove a crossover claim. Prof.Am.Br.21. That data was simply never before the Court, meaning that the Court could not even apply its own test in concluding that CD11's current configuration violates Article III, Section 4 of the New York Constitution. Order at 13–16; *see supra* pp.10–11. By deciding this case under an approach that Petitioners did not allege (and, indeed, submitted no evidence to support as to multiple elements), the Supreme Court denied Intervenor-Respondents the "minimum" guarantees of due process, *Mullane*, 339 U.S. at 313, by failing to provide them a meaningful "opportunity to present their objections," *United Student Aid Funds*, 559 U.S. at 272. That is reversible error. *See Aurora Loan Servs.*, 166 A.D.3d at 935.

The Supreme Court's error is all the more egregious because Petitioners did not even try to prove a claim under the Court's belatedly adopted theory. Petitioners bore the burden of proof

on their claim, *see, e.g.*, *Harkenrider*, 38 N.Y.3d at 519, and the Supreme Court itself determined that, to prove this claim, Petitioners were *required* to "first show that minority voters make up a sufficient portion of the [proposed] district's population" to satisfy the Supreme Court's new "crossover" criteria, Order at 13. In other words, Petitioners had to prove the existence of a reasonable alternative crossover district that satisfied the new criteria that the Supreme Court embraced—namely, a reasonably configured district in which minority voters can select their candidates of choice in the dominant party's primary and are "decisive" in those primary contests, with those candidates prevailing "more often than not" in the general election—***before*** the Court could order the remedy of redrawing CD11. *See id.* at 14–16; *see also* Prof.Am.Br.21–22. That showing necessarily would entail evidence from both primary and general elections demonstrating how minority voters actually perform, and whether they in fact control the outcome in the proposed crossover district. *See* Prof.Am.Br.21–22. **But Petitioners made no such showing—and the Supreme Court did not hold otherwise. Indeed, remarkably, the Supreme Court did not analyze at all whether Petitioners had presented any evidence under its new test.**

Because the Supreme Court sprang this new test on the parties after trial, none of the parties had an opportunity to submit evidence regarding it. The few pieces of evidence that the Supreme Court did discuss—involving the totality-of-the-circumstances inquiry, which is only the second step under the Professors' test (and, indeed, *Gingles*)—did not support the Supreme Court's conclusion on the second step of *Gingles*. Order at 12. Although the Supreme Court purported to rely on the *Gingles*' totality-of-the-circumstances second-step factors, it only assessed a few of these factors, declining to analyze factors that clearly weighed against Petitioners' claim. Order at 7. Without bothering to address Intervenor-Respondents' and Respondents' contrary evidence, the Supreme Court held that "the history of discrimination against minority voters in CD-11 still

impacts those communities today" based primarily on historical practices (such as redlining and literacy tests) that are no longer in effect and, remarkably, gave credit to Dr. Sugrue's testimony that "de facto segregation remains the norm," despite there being no evidence to support that assertion. *Id.* at 9–10. The trial evidence showed the opposite: that Staten Island "was often at the forefront of efforts countering unequal treatment of minorities," has made "significant progress" "in addressing racial discrimination," and "has strived to end hate and discrimination." Borelli Rep.4–5. The Supreme Court further concluded that racial appeals are "common in campaigns in CD11," but identified only three purported instances of alleged racial appeals in campaigns, two of which were decades old and the most recent of which occurred in 2017. *Id.* at 11–12. None of this evidence suggests that racial appeals are "common" in political campaigns in CD11, and none of the evidence suggested that "the political processes leading to nomination or election . . . are not equally open to participation by" Black and Latino voters in CD11. *See Gingles*, 478 U.S. at 43 (citation omitted). As for racially polarized voting, there was no evidence or testimony suggesting that the current win percentage for Black and Latino-preferred candidates in CD11—25% or 28%, *see supra* p.11—is in any way problematic, where the voting-age Black and Latino populations together comprise only 22.70% of CD11, Cooper Rep.9 & Figure 2, and less than 30% of Staten Island, Borelli Rep.7.

### B. Article III, Section 4 Does Not Authorize The Greenwood/Stephanopoulos Crossover District Theory That The Supreme Court Adopted

1. When construing the New York Constitution, courts give "the language used its ordinary meaning" and apply well-settled principles of construction. *In re Sherill*, 188 N.Y. 185, 207 (1907); *see Harkenrider*, 38 N.Y.3d at 509. The court must give effect 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 Mem'l*

*Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022) (citation omitted). A court errs by "amend[ing]" a provision to "add[ ] words that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). And 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).

Courts "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 at issue. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep't 1983). 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[ ]," courts generally construe the provision "consistently with federal precedent" interpreting the federal law, and "striv[e] to resolve federal and state" claims in the same way, *Zakrzewska 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 involving "civil rights," as "these statutes serve the same remedial purpose . . . to combat discrimination." *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429 (2004).

2. Article III, Section 4 of the New York Constitution does not even arguably incorporate the Greenwood/Stephanopoulos crossover-district theory that the Supreme Court adopted. The People amended the New York Constitution in 2014 to address a history of "partisan and racial gerrymandering." *See Harkenrider*, 38 N.Y.3d at 503. Today, 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 abridgement 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 "crossover" districts or any of the aspects of the Greenwood/Stephanopoulos cross-over district theory.

Article III, Section 4 is "modeled after," *Bicknell*, 6 N.Y.S.2d at 453–54, and "substantively and textually similar," *Zakrzewska*, 14 N.Y.3d at 479, to Section 2 of the federal VRA. Congress enacted the VRA in 1965 in an "attempt[ ] to forever banish the blight of racial discrimination in voting" by creating "stringent new remedies for voting discrimination." *Allen*, 599 U.S. at 10 (citations omitted). In its original form, Section 2 ensured 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). Congress amended Section 2 in 1980, however, after the U.S. Supreme Court determined that it did not "prohibit laws that are discriminatory only in effect." *Allen*, 599 U.S. at 11–14. Section 2 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). In its current form, Section 2 prohibits providing racial or language minorities, "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice," "based on the totality of circumstances." *Id.* § 10301(b).

Section 2 prohibits the "dispersal of a group's members into districts in which they constitute an ineffective minority of voters," which is referred to as "vote dilution." *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (citation modified). The Supreme Court has created "three threshold conditions" for proving such a 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 301–02 (emphasis added) (quoting *Gingles*, 478 U.S. at 50–51). Since the creation of these *Gingles* factors, the U.S. Supreme Court has been steadfast in their application, rejecting alleged violations of Section 2 where the minority group at issue cannot constitute a majority in a reasonably configured district.

As particularly relevant here, the U.S. Supreme Court has concluded that Section 2 does not require crossover districts for that very reason. *Bartlett v. Strickland*, 556 U.S. 1, 21–23 (2009) (plurality op.). The Court explained that in districts in which minority groups cannot form a majority, they have "the same opportunity to elect their candidate as any other political group with the same relative voting strength," and that is all that Section 2 requires. *Id.* at 5 (plurality op.). Section 2, the Court reasoned, "does not protect any possible opportunity or mechanism through which minority voters could work with other constituencies to elect their candidate of choice." *Id.* at 21 (plurality op.). And it certainly "does not guarantee minority voters an electoral advantage," *id.* at 20 (plurality op.), which is what would occur if the Court were to allow crossover claims. The Court then 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 purposes of" the VRA. *Id.* at 21–23 (plurality op.).

After Congress amended Section 2 and the Supreme Court decided *Bartlett*, in 2014, the People of New York adopted Article III, Section 4, modeling it after and utilizing substantially similar language as Section 2. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). Both provisions aim to combat discrimination and do so 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 a voting district violates both provisions when, "based on the totality of the circumstances," racial groups "have less opportunity" to "participate in the political process" and to "elect representatives of their choice." *Compare* 52 U.S.C. §§ 10301(b), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

Because New York modeled Article III, Section 4 on Section 2 and, in so doing, utilized the same language that the U.S. Supreme Court determined does not require crossover districts, Article III, Section 4 likewise does not mandate the creation of crossover districts. *See Bicknell*, 6 N.Y.S.2d at 453–54; *Zakrzewska*, 14 N.Y.3d at 479. Article III, Section 4 mirrors Section 2 in multiple, material ways. To start, Section 2 states that no "practice," including the drawing of district lines, "shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or*" "*because he is a member of a language minority group*." 52 U.S.C. §§ 10301(a), 10303(f)(2) (emphases added); *see Cooper*, 581 U.S. at 292. Article III, Section 4 similarly provides that "districts shall not be drawn to have the purpose of, *nor shall they result in, the denial or abridgement of*" "*racial or language minority voting rights*." N.Y. Const. art. III, § 4(c)(1) (emphases added). Then, Section 2 goes on to say that districts cannot be drawn such that, "*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(b) (emphases added). Article III, Section 4 again tracks this second provision, providing 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). In light of these similarities and given that the U.S. Supreme Court determined that Section 2 does not require the creation of crossover districts, *Bartlett*, 556 U.S. at 21–23 (plurality op.), the substantially identical Article III, Section 4 does not require the creation of crossover districts.

Accordingly, for there to be a violation of Article III, Section 4 in CD11, either the Black or the Latino populations would have to be "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." *Cooper*, 581 U.S. at 301 (citation omitted).[7] But Petitioners failed to make such a showing. Petitioners did not present any evidence suggesting that there is a "reasonably configured legislative district," *id.*, in which the Black and Latino populations, considered independently or even combined, would constitute a majority. *See* Tr.347:22–24; Cooper Rep. ¶ 50 & Figure 9. To the contrary, the Black and Latino populations make up only 24.71% of the voting-age population in Petitioners' illustrative map. *See* Cooper Rep. ¶ 50 & Figure 9. In the current district, voting-age Black and Latino residents comprise less than 23% of CD11's population, Cooper Rep.9, and there was no evidence presented

[7] 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 County*, 111 F.4th 596, 603 (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.

suggesting that it is possible to redraw CD11 so that Black and Latino residents comprise over 50% of the population. Petitioners' claim therefore fails under the first *Gingles* factor. *Cooper*, 581 U.S. at 301.[8]

The specific crossover-district requirement proffered by Professors Greenwood and Stephanopoulos—that a "minority population is sufficiently large [to] nominate its preferred candidate in the primary and see this candidate take office after the general election," Prof.Am.Br.20—appears nowhere in the New York Constitution's text. Again, Article III, Section 4 provides only that districts be drawn so 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." N.Y. Const. art. III, § 4(c)(1). It does not say that minority groups that cannot otherwise form a majority in a given jurisdiction are entitled to a *greater* opportunity to elect representatives of their choice than other members of the electorate. *See id.* But that is what the Professors' crossover-district theory entails: because that theory requires that districts be drawn so that minority groups can form political coalitions with a majority group to elect their candidates of choice, a crossover district gives minority groups a political preference over other members of the electorate within that same district that has no basis in Article III.

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[8] Interpreting a State's redistricting provisions by reference to analogous provisions in the VRA makes sense. The Supreme Court of Colorado, for example, looked to the VRA to interpret a state constitutional amendment in *In re Colorado Independent Congressional Redistricting Commission*, 497 P.3d 493 (Colo. 2021). The amendment prevented a redistricting plan from denying or abridging a person's right to vote because of "race or membership in a language minority group, including diluting the impact of [a] racial or language minority's group's electoral influence." *Id.* at 505 (citation omitted). Although the amendment had dilution and influence language not found in the VRA, the court concluded that the amendment was "coextensive with the VRA provisions as they existed in 2018 and create[d] no further [redistricting] requirements" or any "additional protections for [minority] voters in the form of influence, crossover, or coalition districts." *Id.* at 512. It relied, *inter alia*, on the fact that the General Assembly had failed to define 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) (giving the phrase "single language minority" in a California election statute the same meaning as in the federal VRA because the California legislature "undoubtedly would have, said so" if it intended the phrase "to have a different meaning under state law"). This reasoning is even more compelling here given the greater extent to which the language of Article III, Section 4 parallels Section 2. *Supra* pp.30–33.

Finally, the doctrine of constitutional avoidance compels interpreting Article III, Section 4 to not mandate the creation of crossover districts (including under the Greenwood/Stephanopoulos theory), *Bridgeport*, 191 N.Y. at 97–98, where requiring such districts raises "serious constitutional concerns under the Equal Protection Clause" of the Fourteenth Amendment, *Bartlett*, 556 U.S. at 21 (plurality op.). The Equal Protection Clause permits racial classifications only "as a last resort," making its "driving force" the "imperative of racial neutrality." *Id.* (citation omitted). But if Article III, Section 4 "were interpreted to require crossover districts," "it would unnecessarily infuse race into virtually every redistricting" by "[i]njecting [a] racial measure" into the redistricting process. *Id.* at 21–22 (plurality op.) (citation omitted). It would require the "perilous enterprise" of mapdrawers "relying on a combination of race and party to presume an effective majority" and "predictions" that they "would hold together as an effective majority over time" as opposed to considering only "objective" redistricting criteria. *Id.* at 22–23 (plurality op.). These constitutional concerns are part of why the U.S. Supreme Court has interpreted Section 2 as not requiring the creation of crossover districts, *id.* at 21 (plurality op.), or minority influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.), and the Court has only become more skeptical of race-based government action in its recent precedent, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) ("*SFFA*").

3. The Supreme Court erred in concluding that Article III, Section 4 authorizes crossover claims, including under the Professors' theory. Despite acknowledging that "crossover claims were rejected under the VRA in *Bartlett*," the Supreme Court nevertheless held that "Article III, Section 4(c)(1)'s language indicate[s] that they are allowed in actions in the state of New York." Order at 14. But nowhere does the Supreme Court explain why that would be the case. Rather, the Court's sole determination on this score was that the 2014 redistricting amendments were

intended to "expand on those provided by the federal government" in the federal VRA. *Id.* at 6. But even assuming that Article III, Section 4 is more expansive than the federal VRA in some manner, *but see infra* pp.29–33, it does not follow that Article III, Section 4 authorizes crossover district claims at all, let alone under the Greenwood/Stephanopoulos theory. Article III, Section 4 does not mention crossover districts, and instead simply guarantees that districts 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).

Further, under the Supreme Court's interpretation, Article III, Section 4 would require drawing districts so as to provide minority groups with *more* opportunity than other members of the electorate to elect representatives of their choice. As the Supreme Court explained, a crossover district is one where minority voters' preferred candidates are "usually [ ] victorious in the general election," that is, where "minority-preferred candidates win *more often than not*." Order at 15 (emphasis added). In other words, the Supreme Court's interpretation "grant[s] minority voters 'a right to preserve their strength for the purposes of forging an advantageous political alliance.'" *Bartlett*, 556 U.S. at 14–15 (plurality op.) (citation omitted). However, "[n]othing" in Article III, Section 4 "grants special protection to a minority group's right to form political coalitions," *id.*, nor does this provision "guarantee minority voters an electoral advantage" over other voters, *id.* at 20 (plurality op.), such that they must win more than half of the time. The Supreme Court's interpretation will "place courts in the untenable position of predicting many political variables and tying them to race-based assumptions," requiring courts to engage in "speculative" and "elusive" inquiries, such as: "What percentage of white voters supported minority-preferred candidates in the past? How reliable would the crossover votes be in future elections? What types

of candidates have white and minority voters supported together in the past and will those trends continue? Were past crossover votes based on incumbency and did that depend on race? What are the historical turnout rates among white and minority voters and will they stay the same?" *Id.* at 17 (plurality op.). As the U.S. Supreme Court explained in *Bartlett*, courts "are inherently ill-equipped to make decisions based on highly political judgments of the sort that crossover-district claims would require," *id.* (plurality op.) (citation omitted), and reading such a requirement into Article III, Section 4 would render this constitutional provision exceedingly difficult, if not impossible, to apply consistently in practice.

The Supreme Court did not even bother to address the serious constitutional concerns inherent in its crossover-district theory. *See Bridgeport*, 191 N.Y. at 97–98; *Bartlett*, 556 U.S. at 21 (plurality op.). The Supreme Court held that, to draw a crossover CD11, mapmakers will need to "add[ ] Black and Latino voters from elsewhere" in a way that ensures that these voters' preferred candidates will win more than half of the time. Order at 13–15. The Supreme Court determined that a crossover district must be drawn to ensure that minority voters' preferred candidate "win[s] more often than not"—even if these voters constitute less than a majority of the district's total population. Order at 15. If the newly drawn district also exhibits racially polarized voting (which the U.S. Supreme Court has recognized is a common condition, *Cooper*, 581 U.S. at 304 n.5), then the Supreme Court's invented test will necessarily entail that the candidate favored by other racial groups will *lose* more often than not. In other words, the Supreme Court's interpretation of Article III, Section 4 will "unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions," and "result[ing] in a substantial increase in the number of mandatory districts drawn with race as 'the predominant factor motivating the

legislature's decision.'" *Bartlett*, 556 U.S. at 21–22 (plurality op.) (citation omitted). As explained above, constitutional avoidance canon mandates against precisely this result. *Supra* p.35.

### C. The Supreme Court Ordered The IRC To Adopt A Racial Gerrymander That Violates The U.S. Constitution, A Point That The Supreme Court Inexplicably Refused Even To Address

1. "The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans." *Cooper*, 581 U.S. at 291. A State violates the Equal Protection Clause if it "separat[es] its citizens into different voting districts on the basis of race" without "sufficient justification." *Id.* (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)). When "race was the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district," strict scrutiny applies. *Id.* (citation omitted); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995). This doctrine ensures 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 it applies regardless of whether the mapdrawer is a legislature, *Cooper*, 581 U.S. at 291, or a court, *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401 (2022).

Drawing a district based on race triggers strict-scrutiny review because doing so establishes that "race furnished the predominant rationale for that district's redesign." *Cooper*, 581 U.S. at 299–301. That is so because the only way for a mapdrawer to achieve such an express racial goal is to move voters "within or without a particular district" based on race until the goal is met—the definition of race predominating over a district's design. *Id.* at 291, 299–300. That conclusion remains true even if the district at issue "respects traditional [redistricting] principles" so long as race was nevertheless the one "criterion that, in the [mapdrawers' view], could not be

compromised." *Bethune-Hill*, 580 U.S. at 189 (citations omitted; alterations omitted). For example, in *Wisconsin Legislature*, the U.S. Supreme Court held that the "intentional addition of a seventh majority-black district" in Wisconsin's legislative map alone subjected the map to "strict-scrutiny" review—despite arguments that the map complied with traditional redistricting principles—because "race [was] the predominant factor motivating the placement of voters in or out of [that] particular district," such that no further showing was needed to show that the map constituted "race-based redistricting." 595 U.S. at 402–03.

Similarly, in *Cooper*, the Court held that North Carolina's state legislative map triggered strict-scrutiny review under the predominant rationale test without any need for the Court to discuss the district's compliance with traditional redistricting principles because there was direct evidence that the North Carolina General Assembly had "purposefully established a racial target" in drawing that district—namely ensuring that Black voters "ma[d]e up no less than a majority of the voting-age population" there. 581 U.S. at 299–301. A party satisfies the predominant-rationale test by showing that "race was the predominant factor motivating the [map-drawer's] decision to place a significant number of voters within or without a particular district" through one of three evidentiary pathways: "[1] direct evidence of legislative intent, [2] circumstantial evidence of a district's shape and demographics, or [3] a mix of both." *Id.* at 291. This test requires a litigant "simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district." *Id.* at 318 (citation omitted).

Thus, a mapdrawer triggers strict-scrutiny review when there is evidence that he drew the at issue map with an express race-based purpose, as that race-based goal constitutes "direct evidence of [ ] intent" alone sufficient to satisfy the test. *Id.* at 291. The U.S. Supreme Court has

consistently reaffirmed these principles, repeatedly concluding that 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.*, *Bethune-Hill*, 580 U.S. at 192–93; *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03.

Once a law triggers strict scrutiny, the law's proponent must demonstrate that the law is "narrowly tailored to achieving a compelling state interest," otherwise the law will violate the Equal Protection Clause. *Wis. Legislature*, 595 U.S. at 401. The U.S. Supreme Court has only recognized two compelling state interests that can potentially justify race-based government action. First, States have 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). However, "generalized assertion[s] of past discrimination" do not suffice. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*"). Second, the Court has "long assumed" that attempting to comply with Section 2 of the VRA is a "compelling interest" in the redistricting context 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.[9] Notably, the Court has only made that assumption because Section 2 is the rare race-based statute that can survive strict-scrutiny review due to its "exacting requirements" and safeguards that narrowly tailor its application. *Allen*, 599 U.S. at 30.

[9] In *Louisiana v. Callais*, 606 U.S. ____, 2025 WL 1773632 (June 27, 2025), the U.S. Supreme Court ordered and heard reargument on the question of whether a State's drawing of a majority-minority district under Section 2 of the federal VRA satisfies the Equal Protection Clause, and so potentially appears poised to cut back on its longstanding assumption that a State's compliance with Section 2 of the VRA is a compelling state interest.

For a race-based law to be "narrowly tailored," the law's use of race must be "necessary" to "achiev[ing] [the law's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted). Narrow tailoring requires that "the means chosen to accomplish the government's asserted purpose must be *specifically and narrowly framed* to accomplish that purpose"—an exacting standard. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013) (citations omitted) (emphasis added). For example, to satisfy strict scrutiny, a State that claims a compelling interest in remediating a specific instance of past intentional discrimination must demonstrate that its chosen remedy is "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).

2. The court below remarkably did not address whether requiring a race-based redrawing of CD11 would violate the U.S. Constitution's Equal Protection Clause, despite Intervenor-Respondents raising this argument repeatedly and at length in pre-trial briefing, Int'r.Resp't.Br.32–39; Moskowitz Aff., Ex.O at 15–29, during opening statements, Tr.27:9–28:19, and in post-trial briefing, Moskowitz Aff., Ex.W at 99–120. Intervenor-Respondents very clearly directed their argument toward *any* judicially-adopted, race-based redrawing of CD11, so the fact that the Supreme Court rejected both Petitioners' theory and their remedial approach of adding Democrat White voters from Lower Manhattan into CD11 does nothing to lessen the Equal Protection Clause problem with its order. Indeed, it is beyond any serious dispute that the Supreme Court's "crossover" district remedy—which orders a change to CD11's boundaries so that Black and Latino candidates will win more elections by "adding Black and Latino voters from elsewhere," Order at 13—triggers and fails strict scrutiny review, and so violates the Equal Protection Clause.

a. The Supreme Court's remedy is expressly race-based and therefore must satisfy strict-scrutiny review. That remedy mandates placing voters in or out of CD11 based not just

predominantly, *Cooper*, 581 U.S. at 299–301; *Bethune-Hill*, 580 U.S. at 192–93, but entirely upon racial considerations. As the Supreme Court itself explained, to create the new crossover district that the Court just ordered, the IRC will need to "add[ ] Black and Latino voters from elsewhere" in order to achieve the goal of giving Black and Latino voters the benefit of increased electoral power. Order at 13. In other words, the "predominant motive for the design of the district as a whole" 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, because the map-drawers must move new voters into the district and/or take current voters out of the district to change racial outcomes of elections, until Black and Latino voters have enough "actual influence" to be "decisive in the selection of candidates," Order at 15. While States may be permitted to draw a district that happens to be a crossover district even where the State is "aware of racial considerations" or "racial demographics," no State is allowed to draw such a district where "the overriding reason for choosing [it]" is "race for its own sake" without first satisfying strict scrutiny. *Allen*, 599 U.S. at 30–31 (citations omitted). That would inflict the very harm that the Equal Protection Clause prohibits: using racial stereotypes, presuming that members of the same racial or ethnic group share political preferences, and signaling that the district exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

Even if a crossover district that the IRC adopted under the Supreme Court's mandate were to comply with traditional redistricting principles,[10] it would still trigger strict scrutiny because the Court's order constitutes "direct evidence of [ ] intent" to draw the map to achieve an express race-based purpose. *Cooper*, 581 U.S. at 291; *see Wis. Legislature*, 595 U.S. at 401–04. Any IRC

[10] Petitioners' proposed map clearly violated those principles, which is presumably why the Supreme Court did not even attempt to address it, including Mr. Cooper's disastrous testimony admitting that he knew nothing about the communities of interest at issue when drawing the map, *supra* pp.12–14.

map's potential compliance with such principles is irrelevant because there is "direct evidence" here that race is "the predominant consideration in deciding to place a significant number of voters within or without a particular district." *Cooper*, 581 U.S. at 291, 318 (citation omitted). Namely, the Court held that in order to remedy the racial vote-dilution that it purported to identify in CD11, mapmakers must "add[ ] Black and Latino voters from elsewhere" into CD11, Order at 13, until they no longer have "insufficient" "political power" to influence elections, *id.* at 12. That "direct evidence" of drawing the new CD11 to achieve a "purposefully established [ ] racial target" is all that is necessary to trigger strict scrutiny under the predominant-rationale test. *Cooper*, 581 U.S. at 291, 299–301; *see Wis. Legislature*, 595 U.S. at 399–404.

b. Neither the Supreme Court nor Petitioners came close to carrying Petitioners' burden to show that the racial reconfiguration of CD11 satisfies strict scrutiny; indeed, they did not even try.

Racially redrawing CD11 does not further any compelling government interest. Petitioners did not present any evidentiary basis—let alone the requisite "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). The Supreme Court's order referenced long-discontinued practices, such as redlining and the fact that "New York state"—like many other States—required "literacy tests to vote" beginning "[i]n the 1920s," Order at 10, but these are the type of "generalized assertion[s] of past discrimination" that do not constitute a compelling state interest to engage in race-based action, *Shaw II*, 517 U.S. at 909–10. And even if these past discriminatory practices were responsible for lower "education rates" and "socioeconomic status" for Blacks and Latinos in Staten Island, Order at 10, Petitioners presented no evidence, let alone "strong" evidence, that engaging in race-based *redistricting* is somehow "necessary" to remediate that "discrimination," *Shaw II*, 517 U.S. at 909–10. The Supreme Court's reliance on "overt and

subtle racial appeals . . . in campaigns in CD-11," Order at 11, fares no better in establishing a compelling interest that would justify the race-based action here. Three sporadic, isolated instances of arguably discriminatory appeals in campaigns over a period of *eight decades* cannot possibly constitute a "strong" evidentiary basis establishing that the insidious practice of race-based redistricting is absolutely "necessary" to achieve any legitimate state interest *today*. *Shaw II*, 517 U.S. at 909–10; *see SFFA*, 600 U.S. at 207. In any event, New York—like all States—also lacks Congress' constitutional authority to use voting-rights laws to remedy societal discrimination, further demonstrating that mandating cross-over districts advances no compelling *state* interest. *See City of Richmond*, 488 U.S. at 490–91, 495 (citation omitted).

Even if there were some compelling interest here, there was no record evidence even remotely suggesting that any race-based district would be narrowly tailored to achieving that interest. To be "narrowly tailored," a statute's use of race must be "necessary" to "achiev[ing] [the law's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted) (emphasis added). That demanding standard is only satisfied where "the means chosen to accomplish the government's asserted purpose [are] specifically and narrowly framed to accomplish that purpose." *Fisher*, 570 U.S. at 311 (citations omitted). For example, if a State relies on its compelling interest in remediating a specific instance of past intentional discrimination to pass a race-based law, then its selected remedy must be "necessary to cure [the] effects" of that identified discrimination. *See City of Richmond*, 488 U.S. at 510 (plurality op.); *accord SFFA*, 600 U.S. at 249 (Thomas, J., concurring). The proponent of such a law bears the burden of showing that a race-based remedy is "necessary" to satisfy the narrow-tailoring prong. *SFFA*, 600 U.S. at 206–07 (citations omitted). Petitioners failed to submit any evidence that could satisfy narrow tailoring here. At most, Petitioners showed that—using their own experts' hand-picked elections—a district can be drawn

where the Black and Latino population that accounts for less than 25% of CD11 wins approximately 90% of elections—as compared to the far more proportionate 25% of elections that population wins under CD11's current configuration. *See supra* p.11. That showing in no way establishes that engaging in race-based redistricting is *necessary* to achieve a compelling state interest. Petitioners did not even try to explain—and the Supreme Court did not address—why race-neutral measures would fail to sufficiently increase Black and Latino voters' electoral influence in CD11 from its current baseline (winning 25% of elections even under Petitioners' own experts' hand-picked dataset with less than 25% of the population), if such an increase were necessary for some reason. *See supra* pp.11–14.

### D. The Supreme Court Violated The U.S. Constitution's Elections Clause

1. Under the Elections Clause, "[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). As such, "the Elections Clause expressly vests power to carry out its provisions in '*the Legislature*' of each State," which represents "a deliberate choice that [courts] must respect." *Moore*, 600 U.S. at 34 (citation omitted; emphasis added). Thus, when "state court[s] interpret[ ] [ ] state law in cases implicating the Elections Clause"—including cases adjudicating state-law challenges to congressional maps—they must "not transgress the ordinary bounds of judicial review" and "arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

The U.S. Supreme Court recently provided clarification on the appropriate role of state courts in resolving state-law challenges to congressional redistricting maps in *Moore*. In that case, North Carolina voters and voting-rights groups challenged North Carolina's congressional map as an unlawful partisan gerrymander under the State's constitution. *Id.* at 11. The legislative defendants in the case contended that the Elections Clause "insulates state legislatures [drawing

congressional maps] from review by state courts for compliance with state law," *id.* at 19, whereas other parties argued that state courts have plenary power to review congressional maps and "free rein" to determine what state law is, *id.* at 34. Thus, the parties put before the Court two starkly opposed positions: one that would undermine state courts' authority to ensure that redistricting maps comply with state law, and another that would effectively nullify the Elections Clause's safeguards for state Legislatures' constitutional role in redistricting. *See id.* at 34–37.

*Moore* adopted a middle path, cautioning state courts against relying on novel or strained interpretations of state law to exert excessive control over the congressional-redistricting process. *See id.* Although "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law," it also does not provide that "state courts . . . have free rein" in deciding whether a congressional map complies with state law. *Id.* at 34. In particular, 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 risk "transgress[ing] 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. And if a state court "so exceed[s] 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," then the U.S. Supreme Court stands ready "to exercise judicial review." *Id.* at 37.

Justice Kavanaugh's concurring opinion in *Moore* squarely addressed the question of what "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 that interpretation exceeds the bounds of "ordinary state court review." *Id.* at 38 (Kavanaugh, J., concurring). He analyzed

three potential standards, each of which "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 38–39 & n.1. Justice Kavanaugh ultimately recommended that the Court "adopt Chief Justice Rehnquist's straightforward standard" from *Bush v. Gore*. *Id.* at 39–40. Under that 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 affording "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate [the Court's] responsibility to enforce the explicit requirements of [the federal Constitution]." *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring). Justice Kavanaugh further emphasized that this approach "should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions," and that, when evaluating 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, "ensure[s] that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op).

2. Here, the Supreme Court's decision to insert a crossover-district mandate into Article III, Section 4 to invalidate and require the redrawing of a legislatively adopted congressional map—without even the benefits of adversarial testing—is the kind of "impermissibl[e] distort[ion]" of state law "in a federal election case," *id.* at 38–39 & n.1 (Kavanaugh, J.,

concurring), that "[dis]respect[s] [ ] the constitutionally prescribed role of state *legislatures*," *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring), and so violates the Elections Clause.

The Supreme Court's *sua sponte* interpretation of Article III, Section 4 constitutes a radical departure from New York's principles of constitutional interpretation. *Supra* pp.28–29. Judicially inserting a crossover-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.). As explained, nothing in Article III, Section 4 references the right to a crossover district. *Supra* pp.29–30. Rather, the Supreme Court's newly adopted theory—instead of 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," N.Y. Const. art. III, § 4(c)(1)—rewrites Article III, Section 4 to require that minority groups have *more* opportunity than other members of the electorate to elect representatives of their choice, ensuring that "minority-preferred candidates" in a crossover district "win *more often than not*," Order at 15 (emphasis added). The Supreme Court's theory thus "transgress[es] the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, and "'impermissibly distorts' state law 'beyond what a fair reading required,'" *id.* at 38 (Kavanaugh, J., concurring) (citation omitted). This distortion of New York law "unconstitutionally intrude[s] upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution" and violates the Elections Clause. *Id.* at 36–37 (majority op.).

If *Moore*'s admonition means anything, a state court may not do what the Supreme Court did here. The Supreme Court did not apply any preexisting constitutional standard recognized in New York law, and instead came up with its own crossover-district construct—requiring, among

other things, that minority-preferred candidates "win more often than not" in a specially engineered district—without any footing in the text of Article III, Section 4 or in any prior decision of any New York court. *See* Order at 14–16. It announced that novel test for the first time in its post-trial opinion invalidating the Legislature's map, without adversarial briefing on the test it adopted, and then declared the new standard satisfied even though the parties had no opportunity to develop or present evidence tailored to its elements. *See supra* pp.22–28. For several aspects of the Supreme Court's test there is simply no evidence in the record at all. *Supra* pp.26–28. That is not a reasonable interpretation of the New York Constitution; it is a *post hoc* amendment of Article III, Section 4. By retroactively constitutionalizing a crossover-district theory of its own invention and then using that theory to strike down the Legislature's congressional plan mid-decade, the Supreme Court "transgress[ed] the ordinary bounds of judicial review" and arrogated to itself the authority that the Elections Clause reserves to the Legislature, making this case as clear an Elections Clause violation under *Moore* as could be imagined. *See Moore*, 600 U.S. at 36.

## II. A Stay Pending Appeal Is The Only Way To Prevent Substantial Prejudice To Intervenor-Respondents And Ensure That A Congressional Map Is In Place For The Upcoming Election Cycle

Both Intervenor-Respondents and the public will suffer serious and irreparable harm if the Supreme Court's order and any further proceedings are not stayed pending this appeal. As things stand, the Supreme Court's order has thrown New York's upcoming congressional elections into chaos, leaving the State with no operative congressional map at all for the quickly approaching 2026 election cycle. The Supreme Court's order (1) enjoins Respondents from conducting any election under the 2024 Congressional Map, and (2) directs the IRC to reconvene and draw a new congressional map by February 6, 2026. Order at 18. Several respondents—each a state official—filed a Notice of Appeal from that order on January 26, 2026, *see Williams v. Bd. of Elections of the State of N.Y.*, No.2026-00384 (1st Dep't), triggering CPLR Section 5519(a)'s automatic stay

provision, *see* CPLR § 5519(a)(1); *Hoffmann*, 41 N.Y.3d at 356–57. But the automatic stay applies only to the "executory directions of the judgment or order appealed from which command a person to do an act," and therefore stays only the portion of the order compelling the IRC to reconvene and draw a new map. *See Pokoik v. Dep't of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 15 (2d Dep't 1996). It does not stay the prohibitory injunction forbidding use of the 2024 Congressional Map, and does not stop the Supreme Court from conducting further proceedings. *Id.* The result will be a vacuum: the existing, duly enacted, and lawful map is enjoined; the IRC cannot craft a replacement while the appeal is pending; and there is no other map in place under which the State can administer the 2026 Congressional Election.

That untenable situation is especially acute given the imminent election calendar. Petitioning for the 2026 congressional primary begins on February 24, 2026—less than one month from now. *See* Moskowitz Aff., Ex.X at 4. It is highly unlikely that this appeal—even if expedited—will be fully briefed, argued, and resolved before that date. Yet election officials, candidates, and voters must know the governing district lines before petitioning, ballot preparation, and voter outreach can proceed in an orderly fashion. Without a stay pending appeal, the Supreme Court's unlawful order will prevent the 2026 Congressional Election from beginning on time under any congressional map, inflicting massive irreparable harm not only on Intervenor-Respondents, but on New York's voters. A stay is therefore necessary to ensure that the 2026 election can proceed under the current, entirely lawful 2024 Congressional Map, rather than collapsing into the uncertainty and confusion that the order below has unleashed.

Intervenor-Respondents will suffer irreparable harm without a stay. Congresswoman Malliotakis is the duly elected Representative to the U.S. House of Representatives from New York's CD11, and she intends to be a candidate for reelection in the upcoming election.

Malliotakis Aff. ¶¶ 2, 6. In fulfilling her solemn duty of "[s]erving [her] constituents and supporting legislation that will benefit the district and individuals and groups therein," *McCormick v. United States*, 500 U.S. 257, 272 (1991), she must cultivate and maintain the vital "relationship between" herself as "representative" and her "constituent[s]" so that she may effectively represent them in Congress, *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (citation omitted). She has invested substantial time, effort, and resources in developing relationships with the voters in CD11 as it is currently configured—relationships formed in reliance on the understanding that CD11 would maintain its longstanding configuration that was recently adopted by a bipartisan majority of the Legislature. *See* Malliotakis Aff. ¶¶ 5–6; Moskowitz Aff., Ex.Y ("Lai Aff.") ¶¶ 2–10; Moskowitz Aff., Ex.Z ("Medina Aff.") ¶¶ 2–9; Moskowitz Aff., Ex.AA ("Reeves Aff.") ¶¶ 2–9; Moskowitz Aff., Ex.BB ("Sisto Aff.") ¶¶ 2–8; Moskowitz Aff., Ex.CC ("Togba Aff.") ¶¶ 2–8. Now, there is no congressional map in place at all for the 2026 Congressional Election, resulting in a complete lack of clarity regarding what district Congresswoman Malliotakis can run in and disrupting these carefully built representational ties and campaign structures.

The Individual Voters will likewise suffer grave and irreparable harm if the current map remains enjoined while this appeal is ongoing. They reside within CD11 as presently drawn and have devoted substantial time, energy, and resources to supporting and campaigning on Congresswoman Malliotakis's behalf within that district—organizing, canvassing, fundraising, and speaking to neighbors and community members on the premise that CD11's long-stable boundaries would govern the upcoming election. *See* Lai Aff. ¶¶ 7–10; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–8; Togba Aff. ¶¶ 5–8. Without a map in place for the 2026 Congressional Election, Intervenor-Respondents' prior campaigning efforts will be rendered

uncertain and the Individual Voters (and all New Yorkers) will have no guidance as to where they can vote and who they can vote for. Moreover, as the court-ordered redrawing of CD11 would necessarily rely "on racial criteria," it promises to inflict precisely the "special representational harms racial classifications can cause in the voting context" that the Supreme Court has long condemned. *United States v. Hays*, 515 U.S. 737, 744–45 (1995); *see Shaw II*, 517 U.S. at 904. The Individual Voters have explained that they do not want to live in a racially gerrymandered district, which is an irreparable harm. *See Hays*, 515 U.S. at 744–45; Lai Aff. ¶ 11; Medina Aff. ¶ 10; Sisto Aff. ¶¶ 9; Togba Aff. ¶ 9.

In short, a stay is essential to prevent chaos for the impending 2026 Congressional Election, preserve the status quo under the lawful 2024 Congressional Map, and protect the public interest in orderly, timely elections conducted under stable and non-racially gerrymandered district lines.

## III. The Court Should Also Grant Leave To Appeal Directly To The Court Of Appeals Given The Importance Of The Issues Involved And The Need To Avoid Chaos In The Impending 2026 Congressional Elections

In addition to granting an interim stay and stay pending appeal of the Supreme Court's order, this Court should also grant leave to appeal directly to the Court of Appeals.

The legal issues presented in this appeal are of "statewide significance." *Hawkins*, 11 N.Y.3d at 493. The decision below adopts, for the first time, a judicially crafted "crossover" vote-dilution standard under Article III, Section 4(c)(1), which departs from the framework that the U.S. Supreme Court has devised to govern vote-dilution claims under Section 2 of the federal VRA, *supra* pp.30–33, and violates the U.S. Constitution's Equal Protection Clause and Elections Clause, *supra* pp.38–49. No prior decision of the Court of Appeals has addressed these "novel" issues, *see* NYCRR § 500.22(b)(4); *Corbett*, 243 N.Y. at 67, and resolution of these issues will govern future challenges to New York's congressional and legislative maps and could well shape the conduct of the Legislature, the IRC, and the courts for decades, *see Hawkins*, 11 N.Y.3d at

493; *Babigian*, 69 N.Y.2d at 1014. Resolving this appeal will require assessing whether Article III, Section 4 authorizes crossover districts and the crossover-district standard that the Supreme Court adopted here. *See supra* pp.28–33. The appeal will also determine whether the Supreme Court's approach complies with the Equal Protection Clause. *See supra* pp.38–45. And given the Supreme Court's radical departure from the text and history of the New York Constitution, this appeal will address whether that Court's order "transgress[es] the ordinary bounds of judicial review" so as to violate the Elections Clause. *Moore*, 600 U.S. at 36; *see supra* pp.45–49.

The Court of Appeals is best positioned to provide a definitive resolution to these complex and novel legal issues—at least until the federal issues reach the U.S. Supreme Court—and such resolution is needed now. As explained above, the decision to block New York's congressional map has thrown this State's upcoming congressional election cycle into chaos. *Supra* pp.49–50. Notably, if jurisdiction for this appeal is only proper in the Appellate Division, then the Court of Appeals will only be able to step in now if this Court grants Intervenor-Respondents permission to appeal to that Court. *See supra* n.1. Given the extraordinary public importance of ensuring stable, lawful rules for electing New York's congressional delegation, the importance the legal issues, and the practical necessity of prompt, definitive guidance from the State's highest court, granting leave for an immediate appeal to the Court of Appeals is appropriate.

## CONCLUSION

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

Dated: New York, New York
January 27, 2026

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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.: 2026-00384

New York County Index No.: 164002/2025

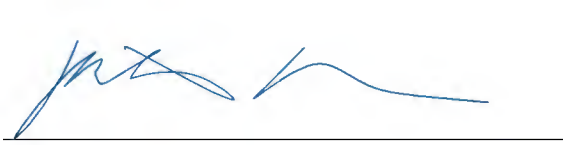
**AFFIRMATION OF REASONABLE NOTICE**

**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 the above referenced action and pending appeal. I am familiar with the facts and circumstances set forth herein.

2. Pursuant to Section 1250.4(b)(2) of the Appellate Division's Practice Rules, this affirmation is to advise that on Wednesday, January 28, 2026, Troutman Pepper Locke LLP sent an email to all parties' counsel in this case, including Andrew G. Celli, Emily Wanger, Aria Branch, Lucas Lallinger, Nicole Wittstein, Christopher Dodge, Kevin Gordon, Brian Quail, Nicholas Faso, Christopher Buckey, Seth Farber, and Andrea Trento, advising them that Intervenor-Respondents sought an immediate stay of all proceedings pending determination of this Motion in the above referenced action, along with a 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, pending resolution of the Appeal. A true and correct copy of the email correspondence is attached hereto as **Exhibit 1**.

I 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.



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# EXHIBIT 1

**From:** Loizides, Elizabeth
**Sent:** Wednesday, January 28, 2026 7:39 PM
**To:** 'ACELLI@ECBALAW.COM'; 'nwittstein@elias.law'; 'abranch@elias.law'; 'ewanger@ecbawm.com'; 'llallinger@elias.law'; Chris Dodge; 'kevin.murphy@elections.ny.gov'; 'seth.farber@ag.ny.gov'; 'brian.quail@elections.ny.gov'; 'nfaso@cullenllp.com'; 'cbuckey@cullenllp.com'; 'Andrea.Trento@ag.ny.gov'
**Cc:** Tseytlin, Misha; Moskowitz, Bennet J.; Braunstein, Andrew; O'Donnell, Kaitlin L.
**Subject:** Williams v. Bd. of Elections – Service of Appellate Division and Court of Appeals Papers

All,

Intervenor-Respondents filed an Application for Interim Relief with the Appellate Division, First Department, along with an Order to Show Cause with the Court of Appeals requesting a temporary stay of all proceedings in the above referenced action pending appeal.

A copy of the filing in the Appellate Division, First Department is accessible here: https://troutman.titanfile.com/channels/sGNDBT/

A copy of the filing, including the Preliminary Appeal Statement and Notice Served on the Attorney General, in the Court of Appeals is accessible here: https://troutman.titanfile.com/channels/sGNwgT/

Please confirm whether you will accept email service of these documents on behalf of your client by Thursday, January 29 2026 at 3PM EST.

Best,
Elizabeth

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STATE OF NEW YORK )
COUNTY OF NEW YORK ) SS

Willie Addison, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 1/29/2026 deponent caused to be served 1 copy(s) of the within

**Emergency Relief Application**

upon the attorneys at the address below, and by the following method:

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**Affidavit of Service**

**(Continued)**

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**Sworn to me this**

Thursday, January 29, 2026

KEVIN AYALA
Notary Public, State of New York
No. 01AY6207038
Qualified in New York County
Commission Expires 7/13/2029

**Case Name:** Michael Williams v. Board of Elections of the State of New York

**Docket/Case No:**

**Index:**

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

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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,

Intervenor-Respondents.

----------X

Index No. 164002/2025

Hon. Jeffrey H. Pearlman

**NOTICE OF APPEAL**

**PLEASE TAKE NOTICE** that Intervenor-Respondents Congresswomen Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, the "Appellants-Intervenor-Respondents"), by their attorneys,

Troutman Pepper Locke LLP, hereby appeal to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department from the Opinion and Order of the Hon. Jeffrey S. Pearlman, J.S.C., of the Supreme Court of the State of New York, County of New York, dated January 21, 2026 and entered in the office of the Clerk of the County of New York on January 22, 2026. Appellants-Intervenor-Respondents appeal from each and every part of the aforementioned Opinion and Order.

Appellants-Intervenor-Respondents served a Notice of Entry on Petitioners Michael Williams, José Ramírez-Garofalo, Aixa Torres, and Melissa Carty, and Respondents 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, Letitia James, in her official capacity as Attorney General of New York, New York Civil Liberties Union Foundation, and Nicholas O. Stephanopoulos on January 26, 2026, a copy of which is attached as Exhibit A.

An information statement pursuant to 22 NYCRR 1250.3 is attached as Exhibit B.

Dated: New York, New York
January 26, 2026

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-against-

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Index No. 164002/2025

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Dated: New York, New York
January 26, 2026

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

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

*Petitioners,*

vs.

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

*Respondents.*

**NOTICE OF APPEAL**

Index No.: 164002/2025
Hon. Jeffrey H. Pearlman

Mot. Seq. 001, 006, 007

**PLEASE TAKE NOTICE** that Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, "Respondents") hereby appeal to the Supreme Court of the State of New York, Appellate Division, First Department from the Decision and Order of the Supreme Court, New York County (Pearlman, J.), dated January 21,

2026 and entered in the office of the Clerk of the Supreme and County Court on January 22, 2026. Respondents hereby appeal from each and every part of said Decision & Order by which they are aggrieved. Copies of the Notice of Entry of the Decision & Order and Informational Statement are attached as **Exhibit A** and **Exhibit B**, respectively.

Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*
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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,

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Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*
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*Attorneys for Respondents Raymond J. Riley III, Peter S. Kosinski, and Anthony J. Casale*

## DECLARATION OF RAYMOND J. RILEY

I, Raymond J. Riley, declare:

1. I am the Co-Executive Director of the New York State Board of Elections since 2023 ("NYSBOE"). Previously, I was the Chief Clerk of the Kings County Board of Elections, part of the New York City Board of Elections, responsible for all operations in the borough since 2017.

2. I have personal knowledge of the matters set forth below based on my responsibilities at NYSBOE, my experience with statewide election administration, and my experience serving at the New York City Board of Elections ("NYCBOE").

3. I am a respondent in this proceeding in my official capacity as Co-Executive Director of the NYSBOE along with Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the NYSBOE, and Anthony J. Casale, in his official capacity as Commissioner of the NYSBOE (collectively, "Applicants").

4. I submit this affidavit in support of Applicants' application for an emergency stay of the Decision and Order of Supreme Court, New York County (Pearlman, J.) (the "Decision and Order").

5. The Decision and Order declares that the configuration of New York State's Eleventh Congressional District ("CD-11") is unconstitutional under the New York State Constitution and enjoins the NYSBOE from conducting any election under New York's 2024 Congressional Map, among other things.

6. As I previously affirmed to the trial court, the 2026 election calendar formally commences on February 24, 2026, which is the first day candidates may circulate designating petitions pursuant to New York Election Law § 6-134(4).

7. When district boundaries change, additional work is required at both the state and local level before petitioning can begin. In New York City in particular, any change to a congressional boundary that bisects existing election districts (EDs) requires a reapportionment process to ensure each ED is wholly contained within the revised higher-level districts. That process entails redrawing affected EDs on a borough-by-borough basis, updating geographic information system files, geocoding and migrating voters to their correct EDs, reconciling changes in the statewide registration system, reassessing poll-site capacity and assignments, and producing updated enrollment-by-ED reports. NYCBOE central staff then compiles and prints maps and sends them to each borough for review to verify that all statutory and operational requirements are met.

8. As I advised the trial court, this work cannot be compressed into only a few days and, if a new map were to be implemented for 2026, that map needed to be finalized by February 6, 2026 to allow sufficient time to complete these tasks before the start of petitioning.

9. The trial court adopted February 6, 2026 as the deadline for completion of any new congressional lines. That date passed without a new map. At the same time, the trial court's injunction prohibits the NYSBOE from conducting any election under the existing congressional map.

10. If the injunctive portion of the trial court's order is stayed by February 23, 2026, the NYSBOE and candidates will be able to commence the election calendar on time under the existing congressional map. This is because the current map has already been implemented, meaning all voter lists, EDs, and precincts are already in place and ready to be used.

11. Proceeding under the current map would avoid disruption of the election calendar, and uncertainty and confusion among voters and candidates.

12. Any other result guarantees widespread confusion and disruption.

13. At this point, it is too late to implement any new map in time for the February 24, 2026 start date.

14. Leaving the injunction in place would sow confusion among voters and campaigns. Candidates will not know in which districts to collect signatures, and voters will confront conflicting or outdated information.

15. This uncertainty would be statewide in scope because the trial court's injunction applies to "any election" and is not limited to CD-11 or its adjacent districts.

16. The only way to stabilize New York's election is to preserve the status quo by staying the trial court's injunction and allowing the election to proceed under the lawfully enacted map and in accordance with the statutory schedule.

I declare under penalty of perjury that the statements in this declaration are true and correct.

Dated: February 11, 2026
Albany, New York

RAYMOND J. RILEY, III

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.*

**AFFIRMATION OF NICHOLAS J. FASO**

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

I, NICHOLAS J. FASO, ESQ., affirm this 26th day of November, 2025, 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 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"). I submit this affirmation in support of Respondents' motion for recusal of the Honorable Jeffrey H. Pearlman, A.J.S.C.

2. Attached as **Exhibit A** is a copy of the transcript of the proceedings before this Court on November 7, 2025.

3. Attached as **Exhibit B** is a copy of Len Maniace, *Senate likely to have an empty seat*, THE JOURNAL NEWS, January 1, 2005, pg. 1B.

4. Attached as **Exhibit C** is a copy of Brian Pascus, *Hochul will rely on these longtime allies; State's first female governor pledges more consensus building and less combativeness*, CRAIN'S NEW YORK BUSINESS, August 30, 2021, pg. 1; Vol. 37.

5. Attached as **Exhibit D** is a copy of Dana Rubinstein, *New York Will Have Its First Female Governor*, THE NEW YORK TIMES, August 11, 2021, Section A; Column 0; National Desk; pg. 13.

6. Attached as **Exhibit E** is a copy of Jim Fitzgerald, *GOP challenging voters' right to cast ballots in NY state Senate battleground*, THE ASSOCIATED PRESS, October 31, 2006.

7. Attached as **Exhibit F** is a copy of Rebecca C. Lewis, *Judge Assigned to redistricting case has deep ties to Hochul, Stewart-Cousins*, CITY & STATE NEW YORK, October 28, 2025.

8. Attached as **Exhibit G** is a copy of Grace Ashford and Nick Corasaniti, *Lawsuit Plunges New York Into the National Gerrymandering Fight*, THE NEW YORK TIMES, October 27, 2025.

Dated: November 26, 2025
Albany, New York

/s/ *Nicholas J. Faso*

**CERTIFICATION**

The undersigned counsel hereby certifies pursuant to Section 202.8-b of the Uniform Rules for the Supreme Court and the County Court that, with the exception of the caption and signature block, the foregoing affirmation contains 353 words, based on the calculation made by the word-processing system used to prepare this document.

Dated: November 26, 2025
Albany, New York

/s/ *Nicholas J. Faso*

# Exhibit A

# November 7, 2025 Proceeding Transcript

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: 44

----------x

MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO, AIXA TORRES, and MELISSA CARTY, Index No.:

Petitioners, 164002/2025

-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 LETITA JAMES, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW YORK,

Respondents.

----------x

60 Centre Street
New York, New York
November 7th, 2025,

B E F O R E:

THE HONORABLE JEFFREY H. PEARLMAN, J.S.C.,

Appearances on Next Page.

WDL

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Reported by:
*William Leone*
*Senior Court Reporter*
*WDL*

THE COURT: Good morning.

This is the matter of Williams versus the Board of Elections of the State of New York, index number 164002/2025.

Appearance of counsel, please, starting with petitioner.

MR. WANGER: Good morning, Your Honor.

Emily Wanger, from the law firm Emery Celli on behalf of the petitioners.

I'm joined here today by my co-counsel from the Elias Law Group, who are appearing virtually by Teams. On behalf of the petitioners are Aria Branch and Chris Dodge.

We thank the Court for accommodating us by allowing cope counsel in D.C. to appear by Teams.

Mr. Dodge is here and we have a pending Motion For Pro Vac Vice for Ms. Branch. And they are the substantive experts. I'll be asking that they be heard on the matters before the Court today.

THE COURT: Good morning.

MR. MOSKOWITZ: Good morning, Ben Moskowitz, on behalf of the proposed intervenor respondents.

With me today is my colleague, virtually, Misha Tseytlin. We are both members of the New York Bar. I thank the Court for accommodating his virtual appearance. He's lead counsel in this case. I would also similarly ask that

he be permitted to take the lead for us today.

MR. FARBER: Good morning.

Seth Farber, with the Office of the New York State Attorney General, appearing for respondents Cathy Hochul, in her official capacity as Governor; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the State of New York; respondent Carl Heastie, in his official capacity of as the Speaker of New York State Assembly; and Letitia James, in her official capacity as Attorney General of New York.

With me at the bench is Roderick Arz, also of the Office of the Attorney General's Office.

THE COURT: Any other appearances that need to be made?

MR. FASO: Good morning.

Nicholas Faso, for respondents Commissioner Kosinski and Commissioner Casale and Co-Executive Director Raymond Riley.

MR. MURPHY: Kevin Murphy, New York City Board of Elections, co-counsel, on behalf of the same defendants.

We previously alerted to the Court that we were in the process of working with the Attorney General's office on receiving authorizations to seek outside counsel. We were informed that we would be receiving that authorization, but have not received it in writing. So we would ask the Court

that Mr. Faso be allowed to be heard, as he is our independent outside counsel until that's finalized.

MR. QUAIL: Good morning.

This is Brian Quail, New York State Board of Elections, respondents; Henry Berger and Essma Bagnuola, Commissioners; and Kristin Zebrowski Stavisky, Co-Executive Director.

THE COURT: Good morning, Mr. Quail. I'll add you to the list of the disclosures.

Good morning, everybody. Welcome to Part 44. Thank you for joining today.

I just wanted to get some preliminary matters out of the way.

As most of you know, several of the parties mentioned as respondents in this matter represented by the Attorney General have been my clients in the past. And I wanted to do a few more disclosures beyond that relating to some post-social relationships that I have had with various members listed in the caption. And I wanted to go through them all and then see if anyone had any discussion or questions.

So I think the easiest way is to just kind of roll through it, starting with those at the top.

I was Governor Hochul's Chief of Staff when she was Lieutenant Governor and her counsel as well during her first

term, the first two years, approximately, in 2015 and '16. And then, again, I was her special counsel when she ascended to the governor's role in '21 and '22 for a year.

I was State Senator Stewart-Cousins' election's counsel in 2004 and 2006. I was a volunteer as I was working in the State Senate at the time and used my volunteer time to represent her in those matters.

I was her Chief of Staff in 2014/'15, before I became Governor Hochul's Chief of Staff.

Let me go through a few more, not in any particular order.

Not in my particular order, and really starting from the caption, and this doesn't rise to the level of close social relationship, but it's a professional relationship that I feel should be disclosed.

If you don't know, but I'm sure most of you know, I spent 30 years in Albany before I ascended to the bench. So I've had many relations with many of the parties that are named here. They're all professional relationships at this time, with one exception. And I'll get to that.

Starting at the top:

Peter Kosinski and I worked together as adversaries in election law matters and then as counsel in legislature where we made many laws together, some even election laws. I thought that was worth disclosing, but that relationship

basically ended in the early 2000. I want to say 2006 or 2007 was probably the last professional interaction I had with Mr. Kosinski and I have no relation with him as Commissioner of the Board of Elections.

I have attended many, not many, I have attended functions with Ms. Stavisky and have served as counsel in the State Senate with her mother-in-law. I see the name and I think it's worth mention, but we have no relations beyond that other than attending functions together where we may have said, *Hello*.

Mr. Quail, who I see present today, is a classmate from law school. I'm Pearlman, he's Quail. We were standing in line together for first year as law students.

We've served in election capacity over the years, but I've had no interaction with Mr. Quail since 2015, '14 or '15. So it's been awhile.

Nice to see you, counselor.

Bear with me. I want to make sure I've covered everyone before I get to the last one.

Oh, Mr. Anthony Casale. I worked in the Assembly while he was an assembly member. And at the time I moonlighted in my tenure as a legislature as a public officer working in a liquor store. So Mr. Casale and I had conversations in the 1990s when I worked for Assemblyman Ivan Lafayette about what a mom and pop liquor store life is

like. And I thought that was worth disclosing. It was so long ago but worthy of discussion.

And then, now, lastly, Mr. Berger, Henry Berger.

This is the one that I have the most concern with, although, I don't think anybody else does.

I went through and I read the law and I read the regulations and I read the advisory opinions and I consulted with counsel. So I think I've addressed all the traps, but I have had a not a close personal relationship, but a close social relationship with Mr. Berger. And I thought it was worthy of disclosure at this time.

I think he may be the only one that I feel the need to disclose. So I'll take it from the top.

Mr. Berger was election counsel. He was trial counsel in 2004 for Andrea Stewart-Cousins. He was also election counsel in 2006. So we served together, me in a volunteer capacity, not for compensation, during my time in the Senate and he was a retained counsel by the Senate.

So we did work together in those two instances.

Then, afterwards, I maintained that professional relationship with Mr. Berger and we represented both democrat and republican candidates in election matters up until, I want to say, 2010. Then I had a weekend relation, a weekend with Mr. Berger and family in 2007. And again another weekend in 2014 where we traveled together. And

since then maybe we've had dinner once a year.

So I wanted to put that out there and then ask if there were any questions.

I think I've covered everything, but forgive me if I haven't. Feel free to raise it if I haven't.

With that, if anyone has any questions at this time?

(No response.)

MR. FASO: Your Honor, this is Nicholas Faso on behalf of Commissioners Kosinski, Casale and Mr. Riley. And we appreciate the disclosures.

We, again, I was just retained last afternoon so I'm catching up. But we also have some concerns about whether there may be a basis for mandatory recusal or, at minimal, discretional recusal. We haven't reached a conclusion on that, but we do think, at a minimum, we may make a Motion to Seek a Discretionary Recusal.

As Your Honor noted, there's, you know, a series of different relationships - professional, social, as counsel, as employee. And the press has questioned whether that may affect impartiality in this proceeding.

So it does seem prudent to consider at least whether to avoid any suggestion that the outcome of this proceeding was impacted by Your Honor's relationships with those parties, to consider recusal to ensure that that's not

going to be a criticism of the outcome.

THE COURT: Thank you, counsel.

Well, as a public officer for the last, I want to say, 37 years, and someone that taught government ethics and understands what you're raising here, you're entitled, I think I put everything on the record that's necessary. And I know that shouldn't question based on the statute and the regulations and the advisory opinion from the judiciary that should you decide to make that motion we'll address it when it comes.

MR. FASO: Understood, Your Honor. We would make that motion on an expedited basis, understanding it is a threshold issue that should be resolved at the outset before any subsequent proceedings.

THE COURT: I would also add that since counsel stated it's based on press reports that I -- These press reports were brought to my attention, but that there was no one actually quoted in such reports calling this into question and only cites to what anyone could find on the Internet.

So, again, I just want to point that out on the record.

MR. FASO: Just to be clear, Your Honor, I only mention the press reports to note that, you know, there is already a suggestion that there may be an appearance of a

lack of impartiality. And solely to the point to suggest that removing that from the proceedings would be beneficial for all parties.

THE COURT: Well, everyone is entitled to their opinions. And if a motion comes, we'll address it.

As I've stated, I'm familiar with the issue of the appearance versus the statute. I feel that based on my review of everything, I've addressed them here today and I'll wait what comes.

MR. FASO: Thank you, Your Honor.

THE COURT: All right. Anything else?

(No response.)

THE COURT: Let's move on to other matters.

Counsel, do we want to do the scheduling first? I know we have to set a briefing schedule at this point.

I'm curious how expeditious, understanding this is an election matter, this needs to be heard. I have my ideas but I'd like to hear from you on how quickly you want this to proceed.

MS. BRANCH: Good morning, Your Honor. Aria Branch on behalf of the plaintiffs.

As we had indicated in our complaint, there is a provision in the New York Constitution, which Your Honor may be familiar with Article III, Section 5, which provides that a challenge to an apportionment by the legislature shall be

decided by through court on a expedited basis and shall be given precedence over other causes and proceedings. And in particular, that the Court shall render its decision within 60 days after petition is filed.

So, we did a brief conferral with several of the other counsel to the case regarding a briefing schedule that we think would allow the Court to, hopefully, resolve the matter on the timeline set forth in the constitution. And our copy to put forward those deadlines we have not -- We've only briefly discussed them yesterday with some other counsel. Not all were present. And I'm happy to provide those deadlines as suggested deadlines for the Court, if that would be helpful.

THE COURT: Sure. Anything else from anybody else?

MR. FARBER: Yes, Your Honor. On behalf of the Governor, Attorney General.

We are aware of the schedule counsel is proposing. We were not present on that call. And we basically would propose modifications that at the end that might extend that schedule by approximately two weeks but I will defer to Ms. Branch who set out the schedule and then I will -- Well, actually, while I'm standing up, the schedule that we're aware of would call for an opening brief by November 17th, responses by December 1st, and then a reply by December 8th.

Our counterproposal on behalf of the respondents we

represent would be an opening brief by November 17th; a response or potential cross-motion by December 8th; a reply or response to the cross-motion by December 15th; and in the event of a cross-motion, reply by December 22nd.

Thank you, Your Honor.

MR. TSEYTLIN: Your Honor, Misha Tseytlin, for proposed intervenors.

You know, we obviously have a threshold issue where we think that it is important if there are even some parties and the Court should dispose of and to hopefully grant the motion before all this gets rolling because, you know, it is, I think, essential, given the nature of these proceedings to know who's in. Not sure about the comments just raised by defense counsel be even more assurance whether the State will be defending --

THE COURT: You're coming off a little garbled.

MR. MOSKOWITZ: It was whether the State will be defending. That was the part where you went blank.

MR. TSEYTLIN: Yes.

So, it's unclear to me whether the State will be defending its lawsuit in part or whole. Makes it even more important that those will be clearly looked at on our end from --

THE COURT: He's saying that it will be better to know whether the Attorney General or outside counsel is

going to represent the respondents in advance of the motion practice. Is that correct?

MR. TSEYTLIN: Yes, Your Honor. It would be unclear whether the State defends the Governor and will be actually opposing sought by petitioners, putting up experts against the petitioners' experts. So the uncertainty we think would very important to hopefully get our motion granted, hopefully today, so that there is no confusion or doubt that this lawsuit is very important and will be fully defended.

THE COURT: Any discussion there?

MR. FARBER: Your Honor, we are present. We are present to oppose the relief sought in petition.

So beyond that, I will represent that on behalf of respondents we represent, we take no position with respect to the proposed intervention.

Thank you.

THE COURT: All right. Anything else relating to the scheduling?

MR. TSEYTLIN: The other thing, Your Honor, on scheduling, and this should not slow anything down, but presuming that, as the intervenors, we will attempt to move to dismiss proposed answer, proposed to have the briefing on Motion to Dismiss that we will file lined up parallel with briefing that petitioners were proposing so that our Motion

to Dismiss will be filed on the same day as petitioners' opening brief and all of the response and replies, etc., will also be lined up so it will not slow down the case, but we will be able to raise by dismissal parties.

THE COURT: Understood.

Anything else before I take a brief recess?

MS. BRANCH: Just briefly, Your Honor.

We, plaintiffs, take position on proposed intervenors Motion to Intervene. And we think it is possible for the Court to set a schedule that will allow for Motion to Dismiss to be briefed and concurrently with the merits briefed in this case.

And we do think it is important obviously to have a swift resolution and on or before December 26th.

So we would appreciate a briefing schedule that will realistically be resolved before that time, given the timeline set forth in the constitution.

THE COURT: Thank you. Give me five minutes.

MR. FASO: Your Honor, if I may.

We'll also be setting a date for a hearing today? Presumably, will have competing experts and factual issues that necessitate a hearing.

Is that something that the Court is considering addressing that schedule today?

THE COURT: Yes.

MR. QUAIL: Your Honor, this is Brian Quail for the democratic respondents, the Board of Elections.

Every other respondent here has gone on record indicating that they take no position on the Motion For Intervention. And on behalf of my clients I would also indicate the same position. We take no position.

THE COURT: Thank you, counsel. Give me a minute.

(Whereupon, a short recess was held.)

THE COURT: Thank you everybody for your patience.

Let's have those that are not visible appear and then we'll go back on the record.

(Pause in proceedings.)

THE COURT: Back on the record.

So after a long discussion off the record regarding briefing schedule, I believe we have one.

Also, there was a brief discussion that I wanted to put on the record regarding any subsequent motions regarding the discussions that happened on the record, that they be mindful of the expeditious briefing schedule that we are pursuing.

With that, counsel, did you want to put on the record what we agreed to?

MS. BRANCH: Yes, Your Honor. Thank you.

Aria Branch, for the petitioners.

We have proposed November 17th for petitioners'

opening brief; December 8th for oppositions to put in brief and any Motions to Dismiss; December 19th for petitioners' response to Motions to Dismiss; and finally, December 23rd for any reply briefs.

We have also proposed that the Court would set aside January 6th and January 7th for a hearing in this matter.

THE COURT: Okay. Any discussion?

MR. FARBER: Your Honor, I think instead of the 19th we were talking about the 18th, unless the 18th is a weekend. I'm not sure.

THE COURT: The 19th is a Friday.

MR. FARBER: I think we were talking about the 18th, which is a Thursday.

THE COURT: Okay. Without objection, we'll switch the response cross to December 18th instead of the 19th.

Also ordered. Well, any discussion?

(No response.)

THE COURT: Also ordered, all without prejudice. We'll set that schedule. And we'll see you back here on January 6th at ten a.m.

MR. TSEYTLIN: Your Honor, may I ask how we are to proceed on the pending Motion to Intervene, whether it's going to be opposed?

THE COURT: Sorry. Whether what should be?

MR. TSEYTLIN: The last time on the Motion to Intervene, which appears to be unopposed --

THE COURT: I'm happy to grant that. There's no objection. So that's granted. Also, so ordered without prejudice.

Thank you for reminding me.

Anything else before we adjourn?

(No response.)

THE COURT: Thank you all for joining me. Have a good weekend.

* * * *

Certified to be a true and accurate transcript of the stenographic minutes taken within.

*William D. Leone*

William D. Leone
Senior Court Reporter

# Exhibit B

## Len Maniace Article

## *Senate likely to have an empty seat*

# Senate likely to have empty seat

The Journal News

January 1, 2005 Saturday



**Section:** NEWS; Pg. 1B

**Length:** 1198 words

**Byline:** Len Maniace

## Body

Stewart-Cousins, Spano await ruling on paper ballots

Len Maniace

The Journal News

The slow-motion vote count in the 35th state Senate District is about to make history: The seat almost certainly will be empty when the Senate convenes on Wednesday, the first time that has happened in the chamber since 1929.

That year - Calvin Coolidge was soon to leave the White House, Franklin Delano Roosevelt had just become governor of New York, and the stock market had not yet crashed - it took a state Senate committee to determine the winner of another race too close to call. The winner, Democrat Stephen Burkard of Queens, finally took office, but not until March 21.

When a winner will be named in the 35th Senate race this year is anyone's guess.

The post-Election Day phase of the contest has defied prediction, starting on election night when Sen. Nicholas Spano estimated that a winner would be known in a couple of weeks - once the paper ballots were counted. Two months later, as many as 665 ballots sit unopened and under dispute as Republican Spano leads Democratic county Legislator Andrea Stewart-Cousins by 58 votes - a tissue-thin margin of 0.05 percent. The district covers almost all of Yonkers, as well as Greenburgh and Mount Pleasant.

Residents of the district have tracked the count closely. Interviews with several residents revealed a mix of patience to see accurate results and criticism that the count should take so long. Some saw it as a valuable lesson in how every vote counts. Others viewed it with skepticism, questioning whether the end result will be credible even after all the ballot-by-ballot deliberation.

"Who's to say that it's still going to come out right?" asked Linda Smith, a Democrat in Yonkers who voted for Stewart-Cousins.

The Democrats say the uncounted ballots are valid and their opening will ensure a Stewart-Cousins victory. Republicans say they are flawed and should not be opened.

To open or not open the ballots is in the hands of the courts. The state Supreme Court had the first shot; it ruled on the validity of more than 1,100 ballots, but both sides have challenged its decision. On Monday, the Appellate Division of the state Supreme Court will try to settle the question. A ruling is expected before the end of next week, lawyers for both sides say.

But that may not be the final word in the case. Lawyers for Spano and Stewart-Cousins say they will attempt to seek relief from the state's highest court, the Court of Appeals, if they disagree with the appellate panel.

Democrats have suggested that the Spano camp harbors a hope of having its candidate declared victor by other means. Stewart-Cousins' lawyers complain the Spano legal team is attempting to delay completion of the vote count into the new year so the Republican-controlled state Senate could declare Spano the victor.

The Democrats cited Article 3, Section 9, of the state constitution, which sets out a role for the Legislature in determining elections, authority that led the Senate to select Burkard in 1929 and that brought the Assembly to settle a similar dispute in 1935. That section reads, in part: "Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members."

"I think that the Republicans have always looked at this provision of the state constitution as an opportunity to seat their candidate if their candidate was ahead," said Jeffrey Pearlman, an attorney for Stewart-Cousins. "And they have worked tirelessly to maintain that through litigation."

Senate Majority Leader Joseph Bruno's office said the Senate would not inject itself into the race to save Spano, who as the senior assistant majority leader is the third-ranking Republican in the Senate.

"Right now we are not going to do anything until the Board of Elections certifies a winner," Bruno spokesman Mark Hansen said. "And once the board certifies a winner, the winner will be sworn in, even if the other side plans to appeal the outcome of the race."

Republican attorney John Ciampoli called the suggestion that the Senate would name Spano the winner "a distraction."

"Now I'm hearing about a secret plan to fill the seat," Ciampoli said recently. "It is a side show."

Others have cited a role for the governor in filling vacancies, and questioned whether Gov. George Pataki, a Republican, might name Spano the winner. The governor's office declined to comment and referred questions to the state Board of Elections. Board spokesman Lee Daghlian said he did not think the governor's authority applied in this case, because the election was still undecided and in court.

The race between Spano and Stewart-Cousins has already run longer than several other long-running, disputed elections - including the 2000 presidential election. Democrat Al Gore conceded defeat on Dec. 13, 2000.

The race has gone longer than the 1998 contest between Elliot Spitzer and then-Attorney General Dennis Vacco, which was deemed to be the closest statewide election in at least four decades. Vacco conceded on Dec. 14, 1998.

The 35th Senate District contest also surpassed a 2000 state Senate race on Manhattan's Upper East Side between Democratic challenger Liz Krueger and another longtime Republican veteran, Sen. Roy Goodman. That contest was decided in the incumbent's favor on Dec. 21 of that year, though Krueger later won the Senate seat after Goodman stepped down to take another job.

As the legal battle continues, the race is attracting attention beyond district borders.

Robert and Nancy Hooley of Ossining are represented in the state Senate by Democrat Suzi Oppenheimer, who won re-election by a wide margin. So normally they wouldn't have given much thought to the outcome of a Senate race to the south.

Not so this year.

"This is our system, and I think it should play itself out," Robert Hooley said as he shared tea with his wife at the Silver Tips Tea Room on North Broadway in Tarrytown late last week. It's complicated in this case because the vote is so close, but, he said, "this is the American way." His wife added: "I don't ever recall (an election) being so close or hinging on something like paper ballots."

Senate likely to have empty seat

Staff writer Ken Valenti contributed to this report.

Reach Len Maniace at lmaniace@thejournalnews.com or 914-637-2244.

Timeline

Following the ups and downs of the 35th Senate District is a little like tracking a baseball pennant race in September - only it has lasted twice as long.

* Nov. 5: Spano leads Stewart-Cousins by 1,674 votes, an unofficial tally based on results from election night workers.

* Nov. 9: Stewart-Cousins trails by only five votes after most of the voting machines are opened and tallied, and the initial paper ballots are counted.

* Nov. 10: Spano's lead tops 100 votes.

* Nov. 20: Gradually adding votes, Spano's lead reaches 188 votes.

* Nov. 26: Stewart-Cousins begins a steady narrowing of Spano's lead and trails by 120.

* Dec. 21: Spano's lead is cut to 58 votes, where it remains.

* Dec. 23: State Supreme Court justice throws out as many as 500 paper ballots, but orders opening 170 others.

* Dec. 26: Appellate court judge grants a Republican request to hold off on opening the 170 ballots.

## Classification

**Language:** ENGLISH

**Subject:** LEGISLATIVE BODIES (92%); BALLOTS (90%); CAMPAIGNS & ELECTIONS (90%); ELECTIONS (90%); ELECTORAL DISTRICTS (90%); US STATE GOVERNMENT (90%); APPEALS (89%); APPELLATE DECISIONS (89%); POLITICAL PARTIES (89%); SUPREME COURTS (89%); US DEMOCRATIC PARTY (89%); US REPUBLICAN PARTY (89%); APPEALS COURTS (84%); LAW COURTS & TRIBUNALS (84%); LAWYERS (83%); COUNTIES (78%); COUNTY GOVERNMENT (78%); POLITICAL CANDIDATES (78%); GOVERNORS (73%); LAW & LEGAL SYSTEM (71%)

**Industry:** LAWYERS (83%)

**Geographic:** NEW YORK, USA (93%); New York; Northeast

**Load-Date:** January 4, 2005

End of Document

# Exhibit C

## Brian Pascus Article

*Hochul will rely on these longtime allies; State's first female governor pledges more consensus building and less combativeness*

# Hochul will rely on these longtime allies; State's first female governor pledges more consensus building and less combativeness

Crain's New York Business

August 30, 2021

Print Version



**Section:** Pg. 1; Vol. 37

**Length:** 1059 words

**Byline:** BRIAN PASCUS

## Body

Gov. Kathy Hochul has promised big changes to the way the Executive Chamber works. Aside from a more civil and consensus-oriented approach to government, she aims to apply her power in Albany through the lens of the local governments where she got her start in politics.

Hochul is expected to surround herself with a small band of longtime aides and close loyalists as she takes control of the state government. Here's a look at some of the close advisers who will help run New York.

JEFF LEWIS

Lewis can be considered Hochul's right-hand man. He is the new governor's chief of staff, a position he held in the office of lieutenant governor for the past five years. He was also Hochul's director of external affairs for nearly two years before that. Lewis has known Hochul for a decade. He managed campaign finance operations for her successful 2011 congressional campaign and worked in her congressional office as legislative correspondent.

MELISSA BOCHENSKI

As Hochul's deputy chief of staff, Bochenski has been seen at Hochul's side throughout her many public appearances. Bochenski, a Buffalo native like Hochul, began working for the governor during her brief tenure in Washington, when she served as then-Rep. Hochul's office manager and executive assistant for 18 months.

JOAN A. KESNER

Kesner, a fellow resident of Hamburg, New York-the Buffalo suburb Hochul calls home-is considered one of the new governor's closest friends and is the person who recruited her into politics in the 1990s. Kesner managed Hochul's first campaign for Hamburg Town Board. She also worked for Hochul in the county clerk's office in Eerie County and served on both her congressional transition team and as her office's district manager.

Kesner is expected to be named the director of the governor's office in Buffalo.

JEFFREY PEARLMAN

Hochul will rely on these longtime allies State's first female governor pledges more consensus building and less combativeness

Pearlman was Hochul's former chief of staff and counsel during her early years as lieutenant governor. For the past five years, he directed the New York State Authorities Budget Office, an independent state entity that provides oversight to New York's public-benefit corporations. Pearlman is a political operative with deep ties to Albany, where he was assistant counsel to former Gov. David A. Paterson. He spent six years as assistant general counsel to the Senate.

It is not clear what role he will have in the new administration.

MARISSA SHORENSTEIN

Shorenstein, a former press officer for Gov. Paterson and Gov. Andrew Cuomo, has directed corporate communications for the New York Jets and served as president of AT&T's New York office. Today she is director of the executive transition team and is helping Hochul pick her administration.

KAREN PERSICHILLI KEOGH

Keogh, among the first appointments Hochul made as she took office, is the new secretary to the governor, the highest unelected position in the state. She's a former Hillary Clinton senior staff member who served for seven years as Clinton's New York state director and 2006 Senate campaign manager. Keogh also advised Sen. Kirsten Gillibrand and former Mayor Michael Bloomberg. For the past decade, Keogh worked at JP Morgan Chase, managing the firm's $2 billion global philanthropy fund.

"She did a lot of great work on my staff," said Sal Albanese, a former city councilman who hired Keogh during his unsuccessful 1992 congressional campaign and later brought her on as his chief of staff.

ELIZABETH FINE

Fine is another early Hochul appointment. She is the new counsel to the governor. Fine leaves behind her position as executive vice president and general counsel at Empire State Development Corp., the state's public-private jobs and urban development organization.

Fine has a history in city politics, having served as general counsel to the City Council from 2006 to 2014. Before that she worked for seven years in the Justice Department and served as special counsel to President Bill Clinton's White House.

WILLIAM J. HOCHUL

No one will be closer to Hochul than her husband, William J. Hochul, a former U.S. attorney for the Western District of New York. "When it comes to any issues involving the criminal-justice system, I suspect that her husband might be her best counselor," former Rep. John J. LaFalce said.

The first gentleman's current role as Delaware North's general counsel and senior vice president drew scrutiny following his wife's ascension to the governor's chair. Delaware North is a Buffalo-based casino and hospitality conglomerate that relies on contracts and licenses from multiple state agencies. Delaware North said Hochul would recuse himself from any business involving the state.

HOWARD ZEMSKY

Zemsky, a Buffalo businessman and former head of Empire State Development, is valued by both Hochul and Cuomo. "She's very close with Howard and his wife, Leslie," said LaFalce. "They too helped raise money for her [2011 congressional race]. Both Howard and Leslie flew to Washington for her swearing-in."

Zemsky takes a less political view of his relationship with the governor. "We are first and foremost friends," Zemsky said, adding political strategy is not his forte.

Hochul will rely on these longtime allies State's first female governor pledges more consensus building and less combativeness

Zemsky was the Cuomo administration's point person for economic affairs in Western New York. Zemsky, who is retired from government, is the managing partner of a Buffalo real estate developer.

ABBY ERWIN

Erwin is considered Hochul's top fundraiser. Ervin is a senior adviser of Friends for Kathy Hochul, the governor's political action committee. Erwin also serves as Hochul's campaign representative and will head her reelection effort in 2022. Erwin led fundraising efforts for elected officials and candidates in the Chicago and D.C. areas before joining Hochul in 2018.

REP. CAROLYN MALONEY

Hochul will have a close ally in Washington in Maloney, a 14-term Manhattan congresswoman who let Hochul stay in her D.C. townhouse for a few months when she began her congressional term in 2011. Maloney represents the East Side of Manhattan, Long Island City in Queens, Roosevelt Island, and Greenpoint, Brooklyn. She is a senior Democrat in the House.

Although Hochul's relationships extend to Washington, LaFalce said he sees a common thread.

"She's going to try to find people who are bright, seasoned and can hit the ground running," LaFalce said. "But I also think she'll want people who have some of the personality traits that she has: that is, an openness to the perspectives of others."

## Classification

**Language:** ENGLISH

**Publication-Type:** Magazine

**Journal Code:** CN

**Subject:** GOVERNORS (95%); GOVERNMENT & PUBLIC ADMINISTRATION (90%); MANAGERS & SUPERVISORS (90%); REGIONAL & LOCAL GOVERNMENTS (90%); US STATE GOVERNMENT (90%); ELECTIONS & POLITICS (89%); INTERIM MANAGEMENT (89%); LEGISLATIVE BODIES (89%); POLITICS (89%); APPOINTMENTS (78%); CAMPAIGNS & ELECTIONS (78%); COMPANY ACTIVITIES & MANAGEMENT (78%); COUNTY GOVERNMENT (78%); OFFICE MANAGEMENT (74%); CAMPAIGN FINANCE (72%); LAWYERS (71%); ADMINISTRATIVE & CLERICAL WORKERS (70%); CORPORATE COUNSEL (61%)

**Industry:** BUDGETS (73%); LAWYERS (71%); CORPORATE COUNSEL (61%)

**Person:** DAVID PATERSON (89%); KATHY HOCHUL (79%); ANDREW CUOMO (59%)

**Geographic:** ALBANY, NY, USA (73%); NEW YORK, USA (96%); UNITED STATES (79%)

**Load-Date:** September 2, 2021

Hochul will rely on these longtime allies State's first female governor pledges more consensus building and less combativeness

End of Document

# Exhibit D

# Dana Rubinstein Article

## *New York Will Have Its First Female Governor*

# New York Will Have Its First Female Governor

The New York Times

August 11, 2021 Wednesday

Late Edition - Final



**Section:** Section A; Column 0; National Desk; Pg. 13

**Length:** 1119 words

**Byline:** By Dana Rubinstein

## Body

When she is sworn in, Ms. Hochul will become the first woman to serve as governor of New York. "I would say there's no one better suited to step in now than she," one ally said.

In two weeks, New York will get a new governor: Kathy Hochul, a daughter of western New York who has risen through public life on the strength of her geniality and work ethic, and amid the fallout of male politicians resigning in disgrace.

Gov. Andrew M. Cuomo announced on Tuesday that he would step down, following a state attorney general's report that found he had sexually harassed at least 11 women, many of them state employees.

He will formally leave office in 14 days, at which point his long-serving lieutenant governor, Ms. Hochul, 62, will take his place. Should she run in next year's election for a full term, as expected, she will have the benefit of being the incumbent candidate.

When she is sworn in, she will make history as the first woman to serve as New York's governor. That her ascension came by way of a man's downfall is a testament to the state's long history of male political dominance, and its equally long history of male misbehavior, something that has become a growing political liability amid shifting social mores around power and gender dynamics.

It is only recently that women have begun to assume the highest offices in the state, and as often as not, they have done so after the men who came before them resigned in disgrace.

"Why is it that these women are the second step? Why weren't they there in the first place?" said Christina Greer, an associate professor of political science at Fordham University, who argued that New Yorkers' reluctance to elect women to higher office showed that the state was not nearly as progressive as it purports to be.

Assemblywoman Amy Paulin, who represents a district in Westchester, noted that Andrea Stewart-Cousins became the first female majority leader of the State Senate only recently. Both Ms. Stewart-Cousins and Letitia James, the state's first female attorney general, took office in 2019.

"This is the next step, the grander step, the big step," she added, "but it's been an evolution in the last several years and a good one."

Ms. Hochul's political agenda and the composition of her cabinet remain in the planning stages. Ms. Hochul, a Democrat, said little to reporters on Tuesday, issuing a statement via a spokesman that asserted her readiness for office. She plans to hold a news conference on Wednesday afternoon.

"As someone who has served at all levels of government and is next in the line of succession, I am prepared to lead as New York State's 57th governor," she said.

Ms. Hochul (pronounced HOH-kuhl) grew up as one of six children in an Irish Catholic family in Hamburg, a town outside Buffalo. Her parents began their married life in a trailer while her father got his college degree. Her father ended up running an information technology company, while her mother co-founded a shelter for survivors of domestic abuse.

She would go on to graduate from Syracuse University, earn a law degree from Catholic University of America, and enter private practice. Before long, she started working for the government, first as an aide to Representative John J. LaFalce and then for Senator Daniel Patrick Moynihan.

She ultimately returned to western New York and jumped into local politics, first as a member of the Hamburg town board and then as Erie County clerk, where she gained national prominence for challenging Gov. Eliot Spitzer's bid to grant driver's licenses to undocumented immigrants.

In 2011, opportunity struck, in the form of a congressman named Christopher Lee, a Republican who resigned after he sent a woman a shirtless photo of himself that ended up on the internet.

Ms. Hochul won the ensuing special election in one of New York's most conservative districts, playing on fears that Republicans would eliminate Medicare. The next year, after reapportionment made her district even more conservative, she lost her seat to Chris Collins, a Republican who would also later resign in disgrace.

In 2014, Mr. Cuomo picked Ms. Hochul to be his running mate, in an apparent effort to bolster his support in western New York.

In the years that followed, she made a point of visiting each of New York's 62 counties -- to cut ribbons, attend rallies and promote business. Her dedication and friendly affect won her regard across the state, but not necessarily in the executive chamber, where her relationship with Mr. Cuomo remained largely transactional.

After the allegations against Mr. Cuomo began to pile up earlier this year, she distanced herself even further.

Once the attorney general's report found that Mr. Cuomo had harassed 11 women, making his political position untenable, he announced his resignation, and Ms. Hochul got her biggest opportunity yet.

During his resignation speech, Mr. Cuomo expressed confidence in Ms. Hochul's ability to govern.

"Kathy Hochul, my lieutenant governor, is smart and competent," Mr. Cuomo said. "This transition must be seamless. We have a lot going on. I'm very worried about the Delta variant, and so should you be, but she can come up to speed quickly."

Now, Ms. Hochul is tasked with rapidly assembling a cabinet, developing an agenda, and grappling with the remaining two weeks of Mr. Cuomo's tenure.

On Tuesday, before he resigned, Mr. Cuomo's office alerted Ms. Hochul to what was coming. After his speech, he called her personally, according to a senior official. It is unclear what they discussed.

In recent days, Ms. Hochul has been asking allies about their recommendations for positions in her cabinet. She is looking to create a cabinet that is diverse and geographically balanced between upstate and downstate, a person who has spoken with her said.

She has also brought on two seasoned national political hands as consultants, Meredith Kelly and Trey Nix. And she has been consulting with Jeffrey H. Pearlman, her former counsel and chief of staff, who served as counsel to David Paterson when he became governor after Mr. Spitzer resigned amid revelations that he had solicited prostitutes.

"Obviously we're still here at the tail end hopefully of a global pandemic, and I think that's her No. 1 priority," said Jeremy Zellner, the chair of the Erie County Democratic Committee, and a friend of Ms. Hochul's. Mr. Zellner added that Ms. Hochul faced a range of other challenges as well, from unemployment to gun violence.

"I think she's got her work cut out for her," he said. "But I would say there's no one better suited to step in now than she."

Kitty Bennett contributed research.Kitty Bennett contributed research.

https://www.nytimes.com/2021/08/10/nyregion/kathy-hochul-cuomo-ny-governor.html

## Graphic

PHOTO (PHOTOGRAPH BY SETH WENIG/ASSOCIATED PRESS)

## Classification

**Language:** ENGLISH

**Publication-Type:** Newspaper

**Subject:** GOVERNORS (95%); GOVERNMENT BODIES & OFFICES (91%); US STATE GOVERNMENT (90%); WOMEN (90%); POLITICS (89%); RESIGNATIONS (89%); ELECTIONS & POLITICS (78%); LEGISLATIVE BODIES (78%); MEN (75%); PRESS CONFERENCES (75%); CAMPAIGNS & ELECTIONS (74%); PLATFORMS & ISSUES (73%); POLITICAL PARTIES (73%); HUMANITIES & SOCIAL SCIENCE (72%); SOCIAL SCIENCE EDUCATION (72%); ETHICS (71%); LAWYERS (71%); ATTORNEYS GENERAL (70%); POLITICAL SCIENCE (70%); CIVIL SERVICES (69%); SEXUAL HARASSMENT (69%); COLLEGE & UNIVERSITY PROFESSORS (62%)

**Industry:** LAWYERS (71%); ATTORNEYS GENERAL (70%); COLLEGE & UNIVERSITY PROFESSORS (62%)

**Person:** KATHY HOCHUL (79%); ANDREW CUOMO (58%)

**Geographic:** NEW YORK, USA (96%)

**Load-Date:** August 11, 2021

End of Document

# Exhibit E

## Jim Fitzgerald Article

*GOP challenging voters' right to cast ballots in NY state Senate battleground*

# GOP challenging voters' right to cast ballots in NY state Senate battleground

The Associated Press

October 31, 2006 Tuesday 4:19 AM GMT



**Section:** POLITICAL NEWS

**Length:** 377 words

**Byline:** By JIM FITZGERALD, Associated Press Writer

**Dateline:** WHITE PLAINS N.Y.

## Body

Before Election Day has even arrived, Republicans in one New York state Senate district have started challenging the right of some registered voters to cast ballots.

The dispute is shaping up to be a replay of the last race between Republican Nicholas Spano and Democrat Andrea Stewart-Cousins. Two years ago, Spano won re-election over Stewart-Cousins by just 18 votes but not before a recount that took three months.

During the recount, GOP lawyers successfully challenged hundreds of paper ballots cast by likely Stewart-Cousins voters. This year, they have filed 5,929 challenges based on change-of-address cards received by the Postal Service.

GOP workers compared the change-of-address cards with the voting rolls and found thousands of discrepancies, said Republican lawyer John Ciampoli, who led the recount fight for Spano two years ago.

"My No. 1 goal here is to keep this election as absolutely free of fraud as I can," he said.

The Stewart-Cousins campaign said more than 5,000 of the challenges filed during this election were to Democrats mostly blacks, Hispanics and other minorities. Ciampoli said that the challenged voters were from every political party but that he did not know how many were Democrats.

Stewart-Cousins, who is black, set up a telephone hot line for any challenged voter to call. Spano is white.

"They cannot win in a fair fight, so they are trying to scare registered voters into staying away from the polls," Stewart-Cousins said.

Two deputy commissioners at the Westchester County Board of Elections, Republican Melissa Nacerino and Democrat Jeannie Palazola, said that the process of verifying all the challenged addresses could not be completed before Election Day, but that files would be kept and the votes could be challenged after the election.

To check an address, a first-class letter is sent to each person. If the letters come back undelivered, police are asked to visit the address and see whether the registered voter lives there.

Democratic lawyer Jeffrey Pearlman said it would be intimidating "to have police going to the houses of voters in mostly minority districts, knocking on the door, asking, 'What's your name? Is this really you?'"

"It's voter suppression," he said.

GOP challenging voters' right to cast ballots in NY state Senate battleground

Westchester County is just north of New York City.

## Classification

**Language:** ENGLISH

**Publication-Type:** Newswire

**Subject:** BALLOTS (90%); CAMPAIGNS & ELECTIONS (90%); ELECTIONS (90%); LEGISLATIVE BODIES (90%); POLITICAL PARTIES (90%); US DEMOCRATIC PARTY (90%); US REPUBLICAN PARTY (90%); US STATE GOVERNMENT (90%); VOTER REGISTRATION (90%); VOTERS & VOTING (90%); ELECTIONS & POLITICS (89%); ELECTORAL DISTRICTS (89%); GOVERNMENT & PUBLIC ADMINISTRATION (79%); RACE & ETHNICITY (79%); US POLITICAL PARTIES (79%); COUNTIES (78%); COUNTY GOVERNMENT (78%); ELECTION CRIME (78%); VOTER ROLLS (78%); VOTER SUPPRESSION (78%); MINORITY GROUPS (77%); ELECTION AUTHORITIES (73%); Recount Rematch (%)

**Industry:** POSTAL SERVICE (55%)

**Geographic:** NEW YORK, NY, USA (79%); NEW YORK, USA (93%)

**Load-Date:** October 31, 2006

End of Document

# Exhibit F

## Rebecca Lewis Article

*Judge Assigned to redistricting case has deep ties to Hochul, Stewart-Cousins*

# Judge assigned to redistricting case has deep ties to Hochul, Stewart-Cousins

Justice Jeffrey Pearlman served both state Senate Majority Leader Andrea Stewart-Cousins and Gov. Kathy Hochul before joining the bench

Gov. Kathy Hochul hosts Democratic Texas state lawmakers in the state Capitol on Aug. 4, 2025, to discuss Republican attempts to implement mid-decade redistricting. AIDIN BHARTI/OFFICE OF GOVERNOR KATHY HOCHUL

By **REBECCA C. LEWIS** | OCTOBER 28, 2025

The judge assigned to a new lawsuit aiming to redraw New York's 11th Congressional District previously represented state Senate Majority Leader Andrea Stewart-Cousins in her first two contentious elections and worked as special counsel to Gov. Kathy Hochul.

After four Staten Island residents sued New York officials, claiming the current 11th Congressional District illegally dilutes the voting power of Black and Latino residents, the case quickly was assigned to Justice Jeffrey Pearlman. Appointed to the Court of Claims by Hochul in 2024, Pearlman has served as an acting Supreme Court justice during his time on the bench so far.

Pearlman is an experienced election lawyer and has been assigned several election law cases in the past year. According to Jeff Wice, a professor at New York Law school and redistricting expert, said many judges who hear redistricting cases are not subject matter experts, which sets Pearlman apart. "It's actually good to know someone with expertise and knowledge is handling this case," Wice told City & State, expressing confidence in Pearlman's ability to hear the case.

But Pearlman's history with two of the named defendants in the new redistricting case could create the appearance of a conflict of interest and lead to calls for him to recuse himself from hearing the case.

Pearlman represented Stewart-Cousins in her first race against former state Sen. Nick Spano in 2004. The fight for the seat lasted weeks after Election Day as lawyers for both campaigns argued over ballots in the razor thin race. Spano won that year by just 18 votes. Pearlman returned as Stewart-Cousins' election lawyer two years later in her successful bid to unseat Spano.

transition. Pearlman remained with the governor for a year, departing in 2022. Two years after that, Hochul nominated him to serve on the Court of Claims, which hears lawsuits against the state, and the state Senate quickly confirmed him.

Democratic bias in the court when it comes to redistricting emerged as a key criticism during the earlier redistricting fights between 2021 and 2023. In particular, Republicans accused Democrats of tanking Hochul's original, more conservative nominee to lead the state's top court in favor of a liberal judge more likely to rule favorably in the case that ultimately allowed Democrats to draw new congressional lines in 2024.

This latest lawsuit is no less political. Republican-led states have begun to redraw their congressional lines mid-cycle in order to create more reliable GOP seats and protect their control of the House. Some Democrat-led states have responded in kind with attempts to draw districts more favorable to their party. But Democrats' hands are largely tied, with state law and the state constitution prohibiting redistricting in non-census years unless through court order. The lawsuit brought by the four Staten Island voters is Democrats' only shot to redraw at least one Republican district before next year's elections, as changing the state constitution to permit mid-decade redistricting would take several years.

Despite the obstacles, Hochul has emerged as a strong proponent of trying to redraw New York's congressional districts to combat efforts from Republicans, including by eliminating the bipartisan commission tasked with redistricting. "I'm tired of fighting this fight with my hand tied behind my back," she said over the summer when Democrats protesting Texas' redrawn map visited New York.

Jerrel Harvey, a spokesperson for Hochul, said that the governor "has full confidence that all proceedings will be handled independently through the legal process." A spokesperson for Stewart-Cousins did not immediately return requests for comment, nor did Pearlman's law clerk.

*This story has been updated with comment from the governor's spokesperson. This story has also been corrected to reflect that Spano won his 2004 race by 18 votes.*

# Exhibit G

## Grace Ashford and Nick Corasaniti Article

## *Lawsuit Plunges New York Into the National Gerrymandering Fight*

# *Lawsuit Plunges New York Into the National Gerrymandering Fight*

A suit filed by an election law firm contends that the state's 11th Congressional District, represented by a Republican, is drawn in a way that disenfranchises Black and Latino voters.

Listen to this article · 6:35 min Learn more

**By Grace Ashford and Nick Corasaniti**
Oct. 27, 2025

A lawsuit filed on Monday on behalf of four New Yorkers charges that the state's congressional map unconstitutionally dilutes Black and Latino votes in a district that covers Staten Island and part of southern Brooklyn, according to a copy of the lawsuit obtained by The New York Times.

The case marked New York's official entrance into the national gerrymandering arms race. Rewriting the state's existing congressional districts represents one of Democrats' best hopes of improving their chances in the 2026 midterm elections.

Filed in State Supreme Court in Manhattan, the lawsuit argues that the lines for the 11th Congressional District unfairly disenfranchise Black and Latino residents. The district is represented by Representative Nicole Malliotakis, the only Republican member of Congress in New York City.

The combined Black and Latino population on Staten Island has grown from 11 percent to 30 percent over the past 40 years, the suit notes, arguing that the current boundaries "confine Staten Island's growing Black and Latino communities in a district where they are routinely and systematically unable to influence elections."

Ms. Malliotakis decried the case, calling it “a frivolous lawsuit trying to upend our congressional district.”

This lawsuit was filed by Elias Law Group, a Washington, D.C.-based firm that has handled much of the party’s redistricting litigation.



Filing a lawsuit is a far less certain path to redistricting than having a partisan legislature simply draw new maps and pass them into law, which is what Texas did earlier this year. But New York placed its redistricting process in the hands of an independent commission years ago, in hopes of insulating it from partisan politics.

Redrawing legislative boundaries for Congress and state legislatures is typically done at the start of the decade following the census. But the Trump White House has upended that cycle, pushing Republican-controlled states to redraw their congressional maps ahead of the 2026 midterms in an effort to ensure the party maintains control of the House of Representatives.

Republicans have already redrawn maps in Texas, Missouri and North Carolina, netting their party as many as seven likely pickups before any votes have been cast.

Gov. Kathy Hochul of New York, the official head of the state Democratic Party, pledged to “fight fire with fire,” saying: “If they’re going to rig the system, I refuse to sit on the sidelines and let our democracy further erode any more than it already has under the Trump administration.”

But Democrats may face an uphill battle convincing a judge that the current lines are unacceptable: It was just last year that they drew and approved the map, which Representative Hakeem Jeffries, the House minority leader, himself blessed as a modest but meaningful improvement over the previous lines.

Democrats in Albany devised the current lines for New York's 26 congressional districts after the state's redistricting commission failed to come to a consensus and an unsuccessful attempt by the party to gerrymander to its advantage.

In addition to the states where maps have already been redrawn, the White House had mounted an aggressive push in Indiana to force the legislature to eliminate the state's two Democratic districts, with the president himself calling legislators earlier this month to persuade them to draw new maps.

On Monday, Gov. Mike Braun, a Republican, called a special legislative session to redraw congressional maps in his state. But immediately after his announcement, a spokeswoman for the state's Senate Republican leadership said that "the votes still aren't there for redistricting," adding to the uncertainty surrounding the effort.

Republican leaders in both Kansas and Nebraska have indicated that they are open to redrawing ahead of the midterms, though neither have yet taken formal steps to do so. And Florida Republicans are contemplating new maps as well.

Until this month, the only Democratic countermove ahead of the midterms was in California, where Gov. Gavin Newsom proposed a temporary suspension of the state's independent redistricting commission in order to draw five new Democratic seats. That effort will need to be approved by voters this November in order to move forward.

But last week, Virginia Democrats made the surprise announcement that they would also embark on an effort to redraw their maps should Democrats hold both chambers of the legislature this November, possibly netting two or three more seats for Democrats. The legislature is expected to meet on Monday to begin the process.


Gov. Kathy Hochul, right, pledged to "fight fire with fire" in response to Republican moves to redraw congressional maps. Cindy Schultz for The New York Times

Democrats are hamstrung by the fact that many Democratic-controlled states have passed redistricting reforms in recent years, with the legislatures yielding the power to draw legislative maps to independent commissions, in an attempt to remove politics from the process.

The few Democratic-controlled states where legislatures still draw maps — such as Illinois and Maryland — have already drawn aggressive Democratic gerrymanders that make it difficult to extract more seats.

This has left the courts as one of the last remaining avenues for a state like New York, which passed a law establishing the bipartisan commission to redraw its maps in 2014.

That commission was first responsible for drawing the state's congressional and legislative district maps ahead of the 2022 midterm elections. But after months of public hearings, the commission's Democratic and Republican members failed to

agree on a single set of maps, sending the job back to the Democratic majorities in the State Legislature.

Democrats there quickly passed a set of maps that would have favored their party in 22 of the state's 26 congressional seats — called "a master class" in gerrymandering by one elections expert. But those maps were thrown out by a judge, who appointed a special master to draw a new set of lines.

Republicans went on to capture four seats in 2022, a margin that was equal to the slim four-member majority the party won in the House of Representatives that year.

Democrats sued and ultimately won the opportunity to redraw the maps one more time. Leery of another protracted battle, they created maps last year that only slightly benefited their party.

Only three of the 26 districts were meaningfully changed: the 22nd District in Syracuse, the 19th District in the Hudson Valley and the 3rd on Long Island. Democrats won all three in the 2024 election.

**Grace Ashford** covers New York government and politics for The Times.

**Nick Corasaniti** is a Times reporter covering national politics, with a focus on voting and elections.

A version of this article appears in print on , Section A, Page 19 of the New York edition with the headline: New York Enters the Fray as National Gerrymandering Moves Expand

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

**MEMORANDUM OF LAW IN SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL**

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*Of Counsel:*
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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 support of their motion for recusal of the Honorable Jeffrey H. Pearlman, A.J.S.C.

This is a politically charged dispute. Petitioners ask Your Honor to redraw New York's Eleventh Congressional District mid-cycle, pairing Staten Island with lower Manhattan in a manner that will alter the district's partisan balance in favor of Democratic candidates. In a nationally watched redistricting matter, the appearance of strict neutrality is paramount.

But an appearance of impartiality cannot be achieved in this case. Your Honor disclosed recent and multifaceted professional, social, and political ties to six of the ten individual respondents. These connections are neither remote nor incidental. Your Honor represented Senate Majority Leader Andrea Stewart-Cousins in election law matters and worked as her Chief of Staff. Your Honor worked as Governor Hochul's Chief of Staff and represented the Governor as special counsel. These relationships are not only substantial, but also relevant given the political nature of this proceeding. Any observer would reasonably question Your Honor's impartiality in this context.

Under the Judiciary Law and the Rules Governing Judicial Conduct, a judge must avoid even the appearance of bias. Judges must step aside whenever their impartiality "might reasonably be questioned." Compliance with this standard is especially important where, as here, Your Honor will determine both facts and law in a political dispute with significant public scrutiny. The Court

of Appeals urges judges to err on the side of recusal in close cases to preserve public confidence in the judiciary. The circumstances here present more than a close question.

For these reasons, detailed below, Respondents respectfully submit that Your Honor should recuse and direct that this case be assigned to another Justice of the Supreme Court.

## STATEMENT OF FACTS

### I. This Proceeding

This proceeding seeks judicial redrawing of New York's Eleventh Congressional District (CD-11). Petitioners allege that the Legislature's 2024 congressional map unlawfully dilutes Black and Latino voting strength in CD-11, in violation of Article III, Section 4(c)(1) of the New York Constitution, and they invoke the New York Voting Rights Act ("NYVRA") to frame the applicable standards and remedies. The relief sought is fundamentally political: Petitioners ask the Court to declare the enacted map invalid and to order the Legislature to pair Staten Island with lower Manhattan, thereby transforming a long-standing Republican-held district into a minority influence district more favorable to the Democrat Party's coalition.

The petition situates the case in the turbulent, politically charged history of New York's redistricting over the past two election cycles, and alleges racially polarized voting and socio-economic disparities on Staten Island. It asserts that despite demographic change and the growth of Black and Latino communities, CD-11's boundaries remain aligned with a political compromise struck in the early 1980s to consolidate Republican advantage, and it asks the Court to impose a remedy that would reconfigure partisan control in a nationally watched battleground.

The other individual Respondents in this proceeding are political appointees and elected officials: (1) Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board

of Elections of the State of New York; (2) Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York; (3) Kathy Hochul, in her official capacity as Governor of New York; (4) Andrea Stewart-Cousins, in her official capacity as New York State Senate Majority Leader and President *Pro Tempore* of the Senate; (5) Carl E. Heastie, in his official capacity as the Speaker of the New York State Assembly; and (6) Letitia James, in her official capacity as Attorney General of New York.

## II. Your Honor's relationships with parties to this proceeding

During the November 7, 2025 conference, Your Honor disclosed substantial personal, professional, political, and legal relationships with numerous parties. Those disclosures included that Your Honor:

1. Represented Senator Stewart-Cousins as elections counsel in 2004[1];
2. Represented Senator Stewart-Cousins as elections counsel in 2006[2];
3. Worked as Chief of Staff to Senator Stewart-Cousins from 2014 to 2015[3];
4. Has known Brian Quail (counsel to Respondents Henry T. Berger, Essma Bagnuola, and Kristen Zebrowski Stavisky) since law school and "served in election capacity [together] over the years"[4];

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[1] Affirmation of Nicholas J. Faso, dated November 26, 2025 ("Faso Aff"), Ex. A (Transcript) ("Tr.") at 6:4-5. This representation concerned the validity of paper ballots in a close election (*see e.g.* *Matter of Panio v Sunderland*, 4 NY3d 123, 126 [2005]). The litigation was politically charged with partisan positions, including those taken by Your Honor. As just one example, during the litigation, Your Honor publicly stated that "I think that the Republicans have always looked at this provision of the state constitution [Article III, section 9] as an opportunity to seat their candidate if their candidate was ahead . . . . And they have worked tirelessly to maintain that through litigation" (Faso Aff Ex. B (Len Maniace, *Senate likely to have an empty seat*, THE JOURNAL NEWS, January 1, 2005, pg. 1B). All references to "Ex." refer to exhibits to the Faso Aff.

[2] Ex. A, Tr. at 6:5.

[3] Ex. A, Tr. at 6:8-9.

[4] Ex. A, Tr. at 7:11-16.

5. Has been acquainted with Respondent Anthony J. Casale since the 1990s[5];
6. Has professional ties and a "close social relationship" with Respondent Henry T. Berger, including weekend trips with family in 2007 and 2014 and annual dinners[6];
7. Worked as Chief of Staff to then-Lieutenant Governor Hochul[7];
8. Represented then-Lieutenant Governor Hochul as counsel from 2015 to 2016[8];
9. Represented Governor Hochul as special counsel in 2021 and 2022.[9]

In addition, though not part of the foregoing disclosures, in 2022, Governor Hochul appointed Your Honor as the Director of the Authorities Budget Office, an office within the Executive Branch. This appointment required "advice and consent of the senate," which was at that time controlled by Senator Stewart-Cousins as President *Pro Tempore* and Majority Leader (Public Authorities Law § 5).

Of particular relevance here, it appears that Your Honor represented Governor Hochul as counsel when, on June 20, 2022, she signed into law the NYVRA.[10] It is unclear from Your Honor's disclosures whether your representation included advice and counsel regarding the NYVRA, however, as counsel, you were necessarily affiliated with the other attorneys in the Governor's office.[11]

Your Honor's disclosures reveal deep ties to the parties to this proceeding and a history of partisan political activity at the highest levels in New York. When Governor Hochul appointed

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[5] Ex. A, Tr. at 7:20-8:2
[6] Ex. A, Tr. at 8:3-9:1.
[7] Ex. A, Tr. at 6:9.
[8] Ex. A, Tr. at 5:25-6:1.
[9] Ex. A, Tr. at 6:3.
[10] 2022 Sess. Law News of N.Y. Ch. 226 (S. 1046-E).
[11] Your Honor's disclosures did not address any advice or communications with Governor Hochul regarding the NYVRA.

Your Honor as counsel, Crain's New York Business described Your Honor as part of a "band of longtime aides and close loyalists."[12] Crain's further observed that Your Honor "is a political operative with deep ties to Albany."[13] Similarly, the New York Times identified Your Honor as one of Governor Hochul's closest confidants in the days leading up to her becoming Governor.[14] As far back as 2006, the Associated Press identified Your Honor as a "Democratic lawyer."[15]

Your Honor's extensive ties to Governor Hochul, Senator Stewart-Cousins, and New York State Democrats generally were recently reported by City & State New York in connection with this litigation. In an article headlined *Judge Assigned to redistricting case has deep ties to Hochul, Stewart-Cousins*, City & State observed that Your Honor's "history with two of the named defendants in the new redistricting case could create the appearance of a conflict of interest and lead to calls for him to recuse himself from hearing the case."[16] The article further observed that "Democratic bias in the court when it comes to redistricting emerged as a key criticism during the earlier redistricting fights between 2021 and 2023" and that "[t]his latest lawsuit is no less political."[17]

Significantly, Governor Hochul has publicly supported the Democratic Party's efforts to redistrict mid-cycle. The New York Times reported that "Gov. Kathy Hochul of New York, the official head of the state Democratic Party, pledged to 'fight fire with fire,' saying: 'If they're going

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[12] Ex. C, Brian Pascus, *Hochul will rely on these longtime allies; State's first female governor pledges more consensus building and less combativeness*, CRAIN'S NEW YORK BUSINESS, August 30, 2021, pg. 1; Vol. 37.
[13] *Id.*
[14] Ex. D, Dana Rubinstein, *New York Will Have Its First Female Governor*," THE NEW YORK TIMES, August 11, 2021, Section A, Column 0, National Desk, pg. 13.
[15] Ex. E, Jim Fitzgerald, *GOP challenging voters' right to cast ballots in NY state Senate battleground*, THE ASSOCIATED PRESS, October 31, 2006.
[16] Ex. F, Rebecca C. Lewis, *Judge Assigned to redistricting case has deep ties to Hochul, Stewart-Cousins*, CITY & STATE NEW YORK, October 28, 2025.
[17] *Id.*

to rig the system, I refuse to sit on the sidelines and let our democracy further erode any more than it already has under the Trump administration.'"[18]

## ARGUMENT

### I. Recusal is required based on the mere appearance of partiality.

Public confidence in the judiciary is the cornerstone of the courts' legitimacy. The Rules Governing Judicial Conduct (the "Rules") emphasize that "[a]n independent and honorable judiciary is indispensable to justice in our society" (22 NYCRR 100.1). To promote this end, the Rules direct individual judges to "participate in establishing, maintaining and enforcing high standards of conduct" and to "personally observe those standards so that the integrity and independence of the judiciary will be preserved" (*id.*).

Judges are held to the highest standards of conduct. As the Court of Appeals explained, "[a] judge's conduct is under a sterner microscope than other members of the public, as 'there is no higher order of fiduciary responsibility than that assumed by a Judge'" (*In re Feinberg*, 5 NY3d 206, 215-16 [2005], quoting *Matter of Spector v. State Commn. on Jud. Conduct*, 47 N.Y.2d 462, 469 [1979]; *see also Matter of Doyle v State Comm'n on Jud. Conduct*, 23 NY3d 656, 662 [2014] ["'Judges must be held to a higher standard of conduct than the public at large'"], quoting *Matter of Going*, 97 NY2d 121, 127 [2001]).

Judicial conduct standards are intended to safeguard the public's trust that judicial decisions are rendered with integrity and impartiality, not only in fact but also in appearance. As such, the Rules direct that a "judge shall avoid impropriety and *the appearance of impropriety* in

[18] Ex. G, Grace Ashford and Nick Corasaniti, *Lawsuit Plunges New York Into the National Gerrymandering Fight*, THE NEW YORK TIMES, October 27, 2025.

all of the judge's activities" and "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary" (22 NYCRR 100.2 [emphasis added]). When circumstances create a reasonable question about a judge's neutrality, recusal is required to preserve that confidence.

The Rules are designed to "purge actual bias and *the possibility of bias* from our courtrooms" (*People v Novak*, 30 NY3d 222, 227 [2017]). Thus, the recusal inquiry is not limited to actual bias. Rather, even when there is "no evidence of partiality [], due process must still safeguard the appearance of impartiality to promote public confidence in the courts (*Novak*, 30 NY3d 222, 227 [2017]; *see also People v Zappacosta*, 77 AD2d 928, 929 [2d Dept 1980] [ordering new trial before another Justice of the Supreme Court and noting that "we must be constantly vigilant to avoid even the appearance of bias which may erode public confidence in the judicial system as quickly as would the damage caused by actual bias"]).

Accordingly, judges "shall" disqualify themselves where their "impartiality might reasonably be questioned" including but not limited to specific enumerated circumstances (22 NYCRR 100.3 [E] [1]). Under this standard, self-disqualification is required where an objective observer could reasonably question the judge's neutrality (*Concord Assoc., L.P. v EPT Concord, LLC*, 130 AD3d 1404, 1406-07 [3d Dept 2015]).

Where, as here, there is any appearance of partiality, recusal is the prudent choice. The Court of Appeals urges judges to "err on the side of recusal in close cases" (*Matter of Murphy*, 82 NY2d 491, 495 [1993], quoting *Corradino v Corradino*, 48 NY2d 894, 895 [1979]; *see also People v Moreno*, 70 NY2d 403, 406 [1987] ["Yet, this court has noted that it may be the better practice in some situations for a court to disqualify itself in a special effort to maintain the appearance of impartiality."]). Likewise, the First Department cautioned that, even when not mandated, the

"'appearance of justice' might be better served" by recusal (*Johnson v Hornblass*, 93 AD2d 732, 733 [1st Dept 1983]).

Most judges heed this advice. For example, in *Ahmed v Brucha Mortgage Bankers Corp.*, the presiding judge recused himself, *sua sponte*, because he provided legal advice to a party's attorney over twenty years prior. The judge reasoned that, although he believed he could remain impartial, recusal was important to "maintain the appearance of impartiality . . . especially in the unique, special situation where one's involvement with a lawsuit party's attorney derived from a close political-client relationship" (*Ahmed v Brucha Mtge. Bankers Corp.*, 82 Misc 3d 1230(A), at *8 [Sup Ct, Kings County 2024]; *see also* *In re Milbauer*, 2015 N.Y. Slip Op. 31300[U] [Sur Ct, Nassau County 2015] ["I have concluded that the best interests of these proceedings will be furthered by my recusal from the matter, lest there be even the slightest question, even without a substantive basis, concerning the integrity of this Court."]).

While the decision to recuse lies within the judge's discretion, "that discretion is not unlimited, and 'judges must still recuse in cases where their impartiality 'might be reasonably questioned'" (*Minckler v D'Ella, Inc.*, 223 AD3d 980, 981 [3d Dept 2024], quoting Advisory Comm on Jud Ethics Op 19-76 [2019]; *see also* *Concord Assoc.*, 130 AD3d at 1406 [same]).

## II. Your Honor's extensive relationships and prior representations warrant recusal.

### A. An ordinary person would reasonably question Your Honor's impartiality

Your Honor's myriad contacts with parties to this action—as an employee, counsel, political operative, and political appointee—would lead any objective observer to reasonably question Your Honor's impartiality. Your Honor's relationships with Governor Hochul and Senator Stewart-Cousins are deep, recent, and relevant to the subject matter of this proceeding. Your Honor served as counsel to Senator Stewart-Cousins in multiple, politicized election law matters,

including at least one that, like here, involved partisan disputes arising under the New York State Constitution. Your Honor also served as counsel to Governor Hochul in matters which, like here, related to her official roles as Lieutenant Governor and Governor. And, critically, Your Honor represented Governor Hochul when the NYVRA, the statute at the center of this case of first impression, was signed into law.

These are not distant or fleeting associations—they are substantial and directly relevant to the partisan political issues and public officials before the Court. The cumulative effect of these connections creates an unavoidable appearance of impropriety that necessitates recusal (22 NYCRR 100.3 [E] [1]; *Concord Assoc., L.P.*, 130 AD3d at 1406-07 ["it seems to us that Acting Justice LaBuda should have recognized that this was a situation in which his 'impartiality might reasonably be questioned' (22 NYCRR 100.3 [E] [1]), and, therefore, we must conclude that his failure to recuse himself constituted a clear abuse of discretion"]; *Ahmed*, 82 Misc 3d at *8 [recusing based on "a close political-client relationship"]).

On top of Your Honor's longstanding, significant relationships with Senator Stewart-Cousins and Governor Hochul, Your Honor disclosed additional relationships or connections with four other respondents in this action; namely, Kristen Zebrowski Stavisky, Peter S. Kosinski, Henry T. Berger, and Anthony J. Casale.[19] Thus, Your Honor has relationships or connections with six of the ten individual respondents.

Under these overwhelming circumstances, it appears most judges would disqualify themselves *sua sponte*. Judges regularly recuse themselves based on far more attenuated relationships or connections to avoid any suggestion of impropriety or impartiality (*see e.g. Murphy v Three Vil. Cent.* [Sup Ct, Suffolk County 2014, Index No. 0645712013] [recusal on the

[19] Ex. A, Tr. at 6-9.

court's own initiative]; *Baker v Talbot* [Sup Ct, Suffolk County 2014, Index No. 250982013] [same]; *Wright v Sokoloff* [Sup Ct, Suffolk County 2014, Index No. 245192010] [same]; *Wodzenski v E. L.I. Hosp.* [Sup Ct, Suffolk County 2014, Index No. 00227382010] [same]; *Cummings v Joseph MD* [Sup Ct, Suffolk County 2014, Index No. 0239432012 ] [same]; *Estate of Roberts* [Sur Ct, Bronx County 2014, Index No. 2009-532/B] [same]).

For example, in *Christophe v Christophe* (Sup Ct, Kings County 2024, Index No. 512765/23), Justice Aaron D. Maslow recused himself "to avoid the appearance of impropriety" because he had "litigated election law matters *against* an attorney for one or more parties" (Order, dated November 13, 2024, 2024 WL 4816081 [emphasis added]). In *1347 Hancock St LLC v Palacious* (Sup Ct, Kings County 2025, Index No. 512329/2025), Justice Dwetnie Paul recused himself merely because he had "a familiar relationship with an expert" (Order, dated May 19, 2025, 2025 WL 1489867). And, in *Irizarry v Zelaya* (Sup Ct, New York County 2024, Index No. 160011/2021), Justice Mary V. Rosado recused herself due to mere "personal knowledge of several of the parties involved" (Order, dated October 21, 2022).

Each of these recusals involved relationships more tangential than the personal, political, social, and legal relationships disclosed by Your Honor. They demonstrate a consistent practice among the judiciary to err on the side of caution and recuse based on even remote relationships to avoid any question of bias.

This is not a close case. The totality of the circumstances compels the conclusion that an ordinary, objective observer would reasonably question Your Honor's impartiality. Respondents respectfully submit that Your Honor should recuse.

**B. Disqualification is required because Your Honor represented Governor Hochul during the enactment of the NYVRA**

Disqualification is required when "(i) the judge served as a lawyer in the matter in controversy; or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter" (22 NYCRR 100.3 [E] [1] [b]; *see also* Judiciary Law § 17). "Disqualification on this basis is permanent and not subject to remittal, 'regardless of whether the judge had actual knowledge of or involvement in a particular matter'" (Advisory Comm on Jud Ethics Op 24-168 [October 30, 2024] [citation omitted]).

Here, Governor Hochul signed the NYVRA into law while Your Honor served as her counsel. While it is unknown whether Your Honor specifically advised Governor Hochul or her staff on the NYVRA, the constitutionality of the NYVRA's standards will be at issue in this proceeding. Even if Governor Hochul's other counsel advised on the NYVRA, Your Honor practiced law with those counsel (22 NYCRR 100.3 [E] [1] [b] [ii]; *see also* Advisory Comm on Jud Ethics Op 24-168 [October 30, 2024]; Advisory Comm on Jud Ethics Op 17-169/17-170 [December 7, 2017]). This association, even in the absence of extra-judicial knowledge of the matter, is sufficient for disqualification (Advisory Comm on Jud Ethics Op 23-231 [February 1, 2024] [concluding that judge is disqualified from matter "in which the judge's former law partner previously served as counsel while in partnership with the judge"]).

At a minimum, Your Honor's representation of Governor Hochul at the time the NYVRA was signed into law creates an appearance of impropriety. Since the constitutionality of the NYVRA's standards will be at issue in this proceeding, an objective observer could reasonably question whether Your Honor would be predisposed to uphold a law enacted by a former client. This prior representation, regardless of Your Honor's actual involvement, further reinforces that recusal is warranted.

## CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant their motion for recusal, direct that this case be assigned to another Justice of the Supreme Court, and grant such other and further relief as this Court deems just and equitable.

Dated: November 26, 2025
Albany, New York

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies pursuant to Section 202.8-b of the Uniform Rules for the Supreme Court and the County Court that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 3,366 words, based on the calculation made by the word-processing system used to prepare this document.

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

Dated: November 26, 2025
Albany, New York

/s/ *Nicholas J. Faso*

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

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.*

**AT I.A.S PART 44 OF THE SUPREME COURT OF THE STATE OF NEW YORK, HELD IN AND FOR THE COUNTY OF NEW YORK AT THE COURTHOUSE LOCATED AT 60 CENTRE THOMAS STREET, NEW YORK NEW YORK ON THE 1st OF December, 2025.**

~~[PROPOSED]~~
**ORDER TO SHOW CAUSE**

Recuse

Index No.: 164002/2025

MS # 5

Hon. Jeffrey H. Pearlman

Upon the Affirmation of Nicholas J. Faso, Esq., dated November 26, 2025, the Memorandum of Law in Support of Respondents' Motion for Recusal, and upon all prior pleadings and proceedings, it is hereby

Let Part 44

~~ORDERED, that~~ the above named parties show cause before this Court on the 11th day of December at 12:00 ~~A.M.~~/P.M. or as soon thereafter as counsel may be heard, why the Honorable Jeffrey H. Pearlman, A.J.S.C., should not disqualify himself, pursuant to section 100.3 of the Rules Governing Judicial Conduct and Judiciary Law §§

14 and 17, and direct that this proceeding be assigned to another Justice of the Supreme Court; and it is further

ORDERED, that service of a copy of this order upon the parties' counsel on or before the 3rd day of December, 2025 via NYSCEF shall be deemed good and sufficient service thereof; and it is further

ORDERED, that opposing papers, if any, shall be served via NYSCEF on or before the 8th day of December, 2025; and it is further,

ORDERED, that reply papers, if any, shall be served via NYSCEF ~~on or~~ before the 11th day of December, 2025.

ENTER:

~~DATED~~: _____
~~New York, NY~~

HON. JEFFREY H. PEARLMAN
J.S.C.
Hon. Jeffrey H. Pearlman, A.J.S.C.

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. 005

**AFFIRMATION OF BENNET J. MOSKOWITZ IN SUPPORT OF INTERVENOR-RESPONDENTS' RESPONSE IN SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL**

I, Bennet J. Moskowitz, an attorney admitted to practice before the courts of the State of New York, affirm the truth of the following under penalty 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, (collectively, "Intervenor-Respondents") in this CPLR Article 4 Proceeding. I am fully familiar with the facts and circumstances set forth herein.

2. I submit this Affirmation solely to present to the Court information and materials relating to the Intervenor-Respondents' Response in Support of Respondents' Motion for Recusal, which materials are attached hereto as described below.

3. Attached hereto as Exhibit A is a true and correct copy of the Democracy Docket article, *Voters Challenge New York Congressional Map, Targeting GOP Seat*, written by Jen Rice, dated October 27, 2025, originally available at https://www.democracydocket.com/news-alerts/voters-challenge-new-york-congressional-map-targeting-gop-seat/, last accessed December 5, 2025.

4. Attached hereto as Exhibit B is a true and correct copy of the Politico article, *Democrats get aggressive on remapping congressional lines*, written by Liz Crampton, Shia Kapos, and Bill Mahoney, dated October 27, 2025, originally available at https://www.politico.com/news/2025/10/27/democrats-get-aggressive-on-remapping-congressional-lines-00624231, last accessed December 5, 2025.

5. Attached hereto as Exhibit C is a true and correct copy of the NBC News article, *New York Legislature OKs gerrymander that could net Democrats 3 more seats*, written by Jane C. Timm, dated February 2, 2022, originally available at

https://www.nbcnews.com/politics/elections/new%1eyork%1elegislature%1eoks%1egerrymander%1enet%1edemocrats-3-seats-rcna14526, last accessed December 5, 2025.

6. Attached hereto as Exhibit D is a true and correct copy of the New York Post article, *'Flawed from outset': Judge blasts NY Democrats for 'Hochul-mander' mess*, written by Carl Campanile and Bernadette Hogan, dated April 7, 2022, originally available at https://nypost.com/2022/04/07/judge-blasts-ny-democrats-for-hochul-mander-mess/, last accessed December 5, 2025.

7. Attached hereto as Exhibit E is a true and correct copy of the New York Times article, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, written by Nicholas Fandos, dated January 31, 2022, originally available at https://www.nytimes.com/2022/01/31/nyregion/nyc-congressional-district-nadler.html, last accessed December 5, 2025.

8. Attached hereto as Exhibit F is a true and correct copy of the transcript of the proceedings of *Clarke v. Town of Newburgh*, Index No. EF002460-2024, dated May 12, 2025.

9. Attached hereto as Exhibit G is a true and correct copy of the recusal form by Judge Michael J. Garcia in *Clarke v. Town of Newburgh*, Index No. APL-2025-110, dated September 11, 2025.

10. Attached hereto as Exhibit H is a true and correct copy of the letter from the New York State Court of Appeals noting Judge Michael J. Garcia's and Judge Caitlin J. Halligan's recusals in *Clarke v. Town of Newburgh*, Index No. APL-2025-110, dated September 4, 2025.

11. Attached hereto as Exhibit I is a true and correct copy of the Queens Daily Eagle article, *Court of Appeals judge recuses herself from redistricting case*, written by Ryan Schwach,

dated October 17, 2023, originally available at https://queenseagle.com/all/2023/10/17/court-of-appeals-judge-recuses-herself-from-redistricting-case, last accessed December 5, 2025.

12. Attached hereto as Exhibit J is a true and correct copy of the recusal form by Judge Caitlin J. Halligan in *Hoffma v. NY State Independent Redistricting Commission*, No.APL-2023-121, dated October 12, 2023.

13. I certify pursuant to Rule 18 of the Part 44 Rules that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within this submission.

14. No prior request for the relief sought herein has been made.

I affirm this 8th day of December 2025, 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.

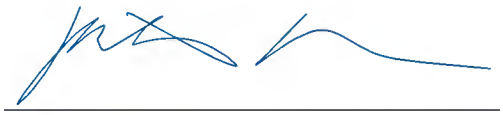
Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, NY 10022
(212) 704-6000
bennet.moskowitz@troutman.com

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

**WORD COUNT CERTIFICATION**

Pursuant to NYCRR 202.8-b, I hereby certify that this Affirmation contains 640 words, exclusive of the caption and signature blocks, and therefore complies with the word-count limit of 7,000 words.

Dated: December 8, 2025



Bennet J. Moskowitz

# Exhibit A

# Voters Challenge New York Congressional Map, Targeting GOP Seat

democracydocket.com/news-alerts/voters-challenge-new-york-congressional-map-targeting-gop-seat

October 27, 2025

New York Gov. Kathy Hochul speaks at a news conference, Feb. 20, 2025, in New York. (AP Photo/Julia Demaree Nikhinson)

A group of Staten Island voters* filed a lawsuit in state court Monday arguing New York's 2024 congressional map dilutes the voting power of Black and Latino residents in violation of state law.

They're seeking a redraw of New York's Congressional District 11, which includes all of Staten Island and parts of Brooklyn, and is currently held by Republicans. If successful, the legal effort could give Democrats an additional seat in Congress — helping to counter a slew of recent pro-Republican gerrymanders in GOP-controlled states.

New York Gov. Kathy Hochul (D) has signaled her support for Democratic redistricting in response to Trump's plan. The New York congressional delegation is currently made up of 19 Democratic seats and seven Republican seats.

New York's 11th congressional district is currently represented by Rep. Nicole Malliotakis, New York City's only Republican member of Congress.

Trump endorsed Malliotakis for re-election in a social media post over the weekend.



The plaintiffs argue the existing map provides Black and Latino Staten Islanders less opportunity than other members of the electorate to elect a representative of their choice, violating the state constitution's prohibition against racial vote dilution, as well as the New York Voting Rights Act's protection of coalition and minority influence districts.

"The racial demographics of Staten Island have changed significantly over the last several decades, but the 2024 Congressional Map does not reflect those changes," the plaintiffs said in their complaint.

They're also arguing that District 11's boundaries are "antiquated" when compared to the New York State Assembly map, which "links communities of interest in Staten Island's North Shore and southern Manhattan," according to the complaint.

The voters are asking the court to order the legislature to create a minority-influence district that pairs Staten Island with lower Manhattan.

*The Staten Island voters are represented by the Elias Law Group (ELG). ELG firm chair Marc Elias is the founder of Democracy Docket.*

## Related Links

- Right-Wing Legal Group Sues to Block California's Voter-Approved Congressional Map
- GOP Advances Bill Limiting Census Counts For Congressional Seats to Citizens
- Indiana Republicans Unveil Map to Eliminate Both Dem Congressional Seats
- Utah Judge Strikes Down GOP Gerrymander, Restores Voter-Approved Fair Map
- GOP Immediately Sues to Block California's Voter-Approved Congressional Map

# Exhibit B

# Democrats get aggressive on remapping congressional lines

politico.com/news/2025/10/27/democrats-get-aggressive-on-remapping-congressional-lines-00624231

Liz Crampton, Shia Kapos, Bill Mahoney October 27, 2025

The minority party is showing teeth in New York, Illinois and Virginia ahead of the 2026 midterms.

House Minority Leader Hakeem Jeffries (D-N.Y.) speaks with reporters at the U.S. Capitol on the 17th day of a government shutdown, Oct. 17, 2025. | Francis Chung/POLITICO

Democrats are launching a redistricting counteroffensive across the country as they try to keep pace with the GOP's aggressive gerrymandering ahead of next year's midterms.

Recent developments in Virginia, New York and Illinois mark an escalation among Democrats after months of internal deliberations and inaction on how to combat President Donald Trump's push to redraw congressional lines throughout the nation. He's eyeing up to 19 new GOP seats as his party looks to retain its slim House majority, according to a POLITICO analysis. The nascent Democratic rebuttal in recent days is the minority party's most aggressive set of moves yet outside of California, where voters will decide next week whether to create a new congressional map that would grant the state five blue seats.

House Minority Leader Hakeem Jeffries made stops in Chicago and Springfield, Ill., with state and federal legislative leaders Monday on his latest swing to convince local lawmakers to redraw their maps. Democrats could pick up one seat in the Prairie State.

Virginia lawmakers on Monday began to amend the state's constitution to enable drawing new lines ahead of the 2026 midterms. And in New York, a prominent Democratic election lawyer's firm filed suit Monday challenging the constitutionality of a Republican-held congressional district and opening the door to another potential redraw.

It all amounts to a new tenor for a party grasping for victory after devastating losses last year.

"This is unprecedented stuff to undermine the ability of the American people to participate in the free and fair election, which is why Democrats, on behalf of the American people, need to respond decisively," Jeffries told reporters after Monday's high-stakes meeting in Chicago with Black leaders.

He said that it's essential to counter Trump's push that's underway in Texas, North Carolina and Missouri. The White House is also pressuring the Republican-led states of Indiana and Kansas to redesign their congressional maps, with Indiana Gov. Mike Braun calling a special session Monday to consider redrawing its congressional districts. The GOP's effort threatens to put Democrats at a steep disadvantage and has been raising pressure on party leaders to respond.

Virginia Democrats could swing as many as three of the state's 11 congressional seats away from Republicans.

Democrats are working against a tight timeline to present voters with a new map. Under the state's constitution, a new amendment to create the lines has to be approved by consecutive sessions of the state legislature, with an election occurring in between the votes. That sets up a statewide referendum, which can't take place until at least 90 days after the amendment is passed, just two months before the state's primaries next year.

The action in the Virginia General Assembly has scrambled the final days of the state's off-year election, topped with the high-profile gubernatorial contest. All members in the House of Delegates are on the ballot, and are being yanked off the campaign trail the week before the election as they head to Richmond to approve the amendment.

Virginia Republicans have blasted their rivals' surprise push as undermining the will of voters.

"Democrats in our General Assembly are calling this special session not to serve the people but to serve themselves," Winsome Earle-Sears, the Republican nominee for governor, said in a press conference ahead of the special session. As lieutenant governor, Earle-Sears serves as presiding officer of the state Senate.

In New York, the lawsuit filed on behalf of a group of residents argues the state's congressional map illegally dilutes Black and Latino voters. The district in question, which encompasses Staten Island and parts of Brooklyn, is represented by GOP Rep. Nicole Malliotakis, who has been the focus of Democratic mapmakers since the start of the last redistricting cycle. The suit, brought by Elias Law Group, asks for a judge to chop off the moderate Brooklyn portion of the district, replacing it with deep blue portions of Lower Manhattan.

A Democratic court victory leading to changes before 2026 would require quick movement. The trial level court has two months to issue a decision, said New York Law School's Jeff Wice. "And then it would go through the appellate division

challenge and then the Court of Appeals. So the clock is ticking on this case," he added.

New York GOP Chair Ed Cox said in a statement that the lawsuit "is seeking a blatant racial gerrymander," and the current district "is compact, respected communities of interest, and has been approved by both the courts and the State Legislature."

Jeffries' visit to Illinois coincided with the state General Assembly's fall session, which could take up the issue in the coming days. Those efforts face opposition from some of the state's Black leaders over concerns that a new map would dilute their influence across congressional districts.

State Sen. Willie Preston, head of the Senate Black Caucus, said he would oppose any map that reduces Black political power. "We understand what's at stake, but if Black representation is going to be diluted, that's not a map I can support," he said.

And in Colorado, Democrats may have another state to add to their gameplan.

Colorado Attorney General Phil Weiser, who is running for governor, is calling for Democrats to put forward a "break glass in case of emergency" ballot initiative in 2026 that would give the state Legislature the power to redraw its congressional map for 2028 and then return the reins to the Colorado's independent redistricting commission. While Democratic Gov. Jared Polis, who is term-limited, has shown no appetite for circumventing the commission, Weiser insisted there's a groundswell of support for doing so as more red states redistrict.

"I remain open and even modestly hopeful that other states will see the handwriting on the wall and we won't have to go down this road," he said. "But if that's not the case, we can't deny reality. We have to be prepared to do our part."

*Lisa Kashinsky contributed reporting*

68:39

Economy & Education: U.S. trade rep. Greer and teacher's union head Weingarten | The Conversation

Filed Under:

- New York
- Illinois
- Donald Trump
- Redistricting
- Virginia
- Maryland
- Hakeem Jeffries
- Donald Trump 2024

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SPONSORED CONTENT

# Exhibit C

# New York Legislature OKs gerrymander that could net Democrats 3 more seats

nbcnews.com/politics/elections/newyorklegislatureoksgerrymandernetdemocrats-3-seats-rcna14526

Jane C. Timm February 2, 2022

New York state Democrats advanced a gerrymandered congressional map Wednesday afternoon, paving the way for Democrats to net as many as three new seats in the U.S. House in November.

The state Assembly passed the bill first, followed by a Senate vote Wednesday afternoon. The new map draws 22 Democratic-leaning districts and four Republican-leaning districts, cutting the number of Republican-leaning districts in half. The state lost one congressional seat because of population losses in the last decade.

Republicans condemned the maps and slammed Democrats for rushing the plan through the Legislature without a single public hearing. The party has suggested that it might challenge the map's legality.

“This is a land grab gerrymander, where Democrats are taking out Republican incumbents,” said Michael Li, a redistricting expert at the Brennan Center for Justice at New York University School of Law.

Republican Rep. Nicole Malliotakis’ 11th District will become significantly more liberal after her conservative district in and around Staten Island was paired with the more liberal Park Slope area.

“It’s the people that should be deciding who their representatives are, not the other way around,” she said Wednesday afternoon.

Rep. Jerry Nadler's 10th District extends more than 15 miles from Manhattan's Upper West Side through parts of Brooklyn and down to Borough Park and Bensonhurst. Some on Twitter have criticized the district as "jerrymandering." The new political lines mirror Nadler's current district — which extends from Manhattan into Borough Park — but the new map adds the meandering path through Brooklyn, seemingly to accommodate the new 11th District.

State Sen. Michael Gianaris, a top Democrat, defended the map as fair and legal, dismissing criticism as inaccurate.

“We’re very confident this adheres to the current requirements,” Gianaris told City & State. And if it ends up in court, he added, "we’ll make our case why we believe it does.”

Democrats in Congress spent much of last year fighting for federal voting legislation that would have made attempts at partisan gerrymandering illegal. Republicans blocked the legislation in the Senate, with many of them characterizing the legislation as an overreach designed to benefit Democrats.

But when it comes to New York, some on the left have embraced gerrymandering. Rep. Sean Patrick Maloney of New York, the chairman of the Democratic Congressional Campaign Committee, urged lawmakers to draw 23 Democratic-leaning districts in a memo last week.

The seats aren’t absolute guarantees for Democrats, who face a tough midterm election in November with President Joe Biden’s popularity dropping.

While Republicans have drawn safe seats for themselves in gerrymandered states like Texas, Li said, Democrats in New York have drawn districts with slimmer majorities.

“Democrats have chosen to maximize the number of seats they have, which has meant in places spreading their voters out a little bit more, and that potentially creates some vulnerability in a Republican wave year,” Li said.

The map next heads to the desk of Gov. Kathy Hochul, a Democrat, for her signature.
Sahil Kapur contributed.

# Exhibit D

# Judge blasts NY Democrats for Hochul-mander mess

nypost.com/2022/04/07/judge-blasts-ny-democrats-for-hochul-mander-mess

Carl Campanile, Bernadette Hogan April 8, 2022

## Explore More

A state appellate judge ripped New York's legislature Thursday for creating a redistricting panel that lawmakers knew was "flawed from the outset" — resulting in a messy, partisan "stalemate" over disputed congressional district maps that have ended up in court.

The 10-member "independent redistricting commission" formed in 2014 to redraw congressional and state Senate and Assembly maps following the decennial census was not independent at all, Appellate Judge Stephen Lindley said during a virtual hearing Thursday.

The appointments to the panel were equally split between Democrats and Republicans, resulting in bipartisan gridlock.

The redistricting process "was flawed from the outset" and "everyone knew it," Lindley said.

"It's no surprise. It wasn't independent."

Because of the impasse with the redistricting panel, the Democrat-run Legislature redrew the congressional maps that an upstate Supreme Court Judge Patrick McAllister last week shot down as unconstitutional, concluding the new districts were "gerrymandered" to diminish Republican representation.

The number of GOP House members could be cut in half, from 8 to 4.

Honor Stephen K. Lindley called out the panel for not being independent. nycourts.gov

"It's not just a gerrymander, we're calling it a Hochulmander," state Republican Party Chairman Nick Langworthy said last week, blaming the gerrymandering on Hochul and saying she wanted to try to preserve the Democrats' razor-thin majority in the House of Representatives.

For example, the current 11th congressional district of Republican Rep. Nicole Malliotakis includes all of Staten Island as well as moderate-to-conservative neighborhoods in southern Brooklyn closest to the island across the Verrazano-Narrows Bridge, including Dyker Heights and Bath Beach.

The newly drawn district skips over those neighborhoods and instead snakes along the northwest Brooklyn waterfront to take in the heavily liberal Democratic areas of Sunset Park and Park Slope, giving a Democratic candidate a much better shot at stealing the seat from Malliotakis.

Rep. Nicole Malliotakis speaks at a news conference on the steps of the Capitol. Andrew Harnik/AP

Lindley leveled his criticism during a hearing on whether to continue a temporary stay on the lower court ruling pending an appeal on the merits of the case.

He said he would likely issue a decision on Friday on the temporary stay.

The Appellate Division Fourth Department is expected to hear arguments on the merits of the appeal on April 20.

“We remain very hopeful on the judge’s decision which could come as early as tomorrow,” said former GOP Rep. John Faso, one of the plaintiffs in the redistricting lawsuit.

# Exhibit E

# How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map

The New York Times

January 31, 2022 Monday 11:25 EST



**Section:** NYREGION

**Length:** 1423 words

**Byline:** Nicholas Fandos

**Highlight:** The peculiar redrawing of Representative Jerrold Nadler's district led to the joke that it was "jerrymandered." The reasons for the new lines were politically complicated.

## Body

The peculiar redrawing of Representative Jerrold Nadler's district led to the joke that it was "jerrymandered." The reasons for the new lines were politically complicated.

New York's new congressional map, redrawn by ruling Democrats, gives the party's candidates a clear leg up in nearly every corner of the state and could knock out as many as five Republican seats.

But when party leaders in Albany *introduced the proposed lines* on Sunday, many onlookers quickly seized on what seemed to be a singular example of mapmakers' partisan excess: a freshly drawn district now held by Representative Jerrold Nadler, a powerful Manhattan Democrat.

Indeed, with its serpentine shape, Mr. Nadler's reimagined district — New York's 10th — is almost comically contorted and overwhelmingly favors Democrats. It stretches 15 miles through 15 different State Assembly districts from Mr. Nadler's home on Manhattan's Upper West Side to Brooklyn, jumping over New York Harbor and making three sharp turns to take in small strips of Carroll Gardens and Boerum Hill, before broadening out to encompass all of Prospect Park, Borough Park and Bensonhurst.

Baffled onlookers and partisans alike quickly *dubbed it a "Jerrymander,"* playing off Mr. Nadler's name and the term long given to the practice of politicians drawing favorable political lines for their party's advantage.

Republicans, known for their own gerrymanders in other states, gleefully shared screen shots of the district to accuse Democrats of hypocrisy.

They were not alone. "This is why people don't trust politicians," wrote Pat Kiernan, a local morning news anchor on NY1, *on Twitter*. "And the Democrats have given up any high ground they had over Republicans on gerrymandering."

But if Mr. Nadler's new lines help tell a story about the state of redistricting in New York and across the country this year, it is far more complicated than those critics may imagine — illustrating how lawmakers carving up the state's map from Albany tried to balance a complex set of political goals, legal requirements to protect racial minorities and the whims of each incumbent Democrat.

Politics are clearly involved, though not exactly for the gain of Mr. Nadler, a 15-term Democrat synonymous with his liberal Upper West Side base of support. Rather, some of the clearest beneficiaries of Mr. Nadler's unsightly district lines may be his congressional neighbors in Manhattan and Brooklyn, as well as New York's sizable Jewish population.

They included Representative Carolyn Maloney, a Democrat who traditionally represents Manhattan's East Side; and whichever Democrat runs against Representative Nicole Malliotakis, a Republican whose district includes Staten Island and a swath of South Brooklyn.

"Shapes can be deceptive," said Richard Briffault, a law professor who studies gerrymandering at Columbia University, which falls inside Mr. Nadler's district. "A district may look strangely shaped, but it may be a way of holding together people with a similar economic background or ethnic backgrounds."

Mr. Briffault said that mapmakers — whether politicians, independent commissions or the courts — are always trying to balance competing imperatives that go well beyond geography. Districts should be as compact as possible, and they must be contiguous. But communities with common interests should be kept whole to maintain their voice, especially racial minorities.

In a state like New York, where politicians from a single party control the process, they will also try to eke out as much partisan political gain as they can.

So it is in Mr. Nadler's new district.

Its broad outlines — stretching from the Upper West Side to Borough Park — have been in place for decades. In 2012, a nonpartisan court-appointed special master gave her stamp of approval.

While it will soon include a huge range of economic and racial groups, including Chinese populations in Manhattan's Chinatown and Brooklyn's Sunset Park, mapmakers have long used the district to unite some of the city's most robust Jewish communities rooted on the Upper West Side and in Brooklyn's Borough Park neighborhood. No district in the country has more Jewish voters, and Mr. Nadler, who was educated in a yeshiva, is the last remaining Jewish House member from New York City.

And Jewish leaders have repeatedly given public testimony over the years calling for the two areas to remain stitched together.

"In the city with the largest Jewish population in the world, it's important and meaningful for the Jewish community in New York across the spectrum to have a district like this one that brings us together," said Matt Nosanchuk, the president of New York Jewish Agenda and a former White House liaison to the American Jewish Community.

The difficulty has long rested in how to connect the two areas. The congressional map that has been in place since 2012 does so by taking the district down the West Side of Manhattan and making a clean cut through Bay Ridge in Brooklyn to reach Borough Park, a relatively straightforward solution.

But it turns out that path stood smack in the way of Democrats' political ambitions to capture the 11th District, the only Republican-held seat in New York City and a top target nationwide this cycle. To do so, they propose extending the Staten Island-centered seat further northward into Brooklyn through Bay Ridge, Sunset Park and Park Slope, an overwhelmingly liberal enclave.

As a result, Mr. Nadler's interborough connection was pushed sharply north and rerouted to meander its way much less directly around the new 11th District, as well as Democratic districts held by Representatives Nydia Velazquez and Hakeem Jeffries in Red Hook, Fort Greene and Prospect Heights. (A spokesman for Ms. Malliotakis, who represents the 11th, accused Democrats of "a blatant attempt by the Democrat leadership in Albany to steal this seat.")

At the same time, Mr. Nadler's district needed to grow in Brooklyn this cycle because he handed over turf he had long represented on the Upper West Side near Central Park and around Greenwich Village to help Ms. Maloney, his neighbor in the 12th District.

Ms. Maloney is facing her third primary challenge from the left in three election cycles. By shifting her district farther west, the mapmakers removed parts of progressive hotbeds in Brooklyn and Queens that have supported her

challengers, theoretically easing Ms. Maloney's path to re-election in the safely Democratic seat. Ms. Maloney's primary challenger Rana Abdelhamid said on Monday that she was undeterred.

Sophia Brown, Ms. Maloney's campaign manager, said on Monday that the campaign respected the Legislature's proposal and pointed out that the district still includes smaller parts of Brooklyn and Queens.

"Congresswoman Maloney is proud to represent all parts of her district, and looks forward to running a strong campaign focused on her progressive record and rooted in the communities she is proud to represent," Ms. Brown said in a statement.

The whole process of reshuffling lines is made more complicated by the presence of large, well-organized groups of African American, Latino and Asian Voters, whose interests are protected by civil rights law.

Some of the areas bordering Mr. Nadler's district are home to legally protected Black populations. To add the Jewish community in Borough Park to a neighboring Brooklyn district, for instance, would dilute the percentage of racial minorities, a legally and politically dubious proposition.

Adding Borough Park to a Staten Island-based district might be more feasible legally, but the areas would not be united by a common religion, nor would it accomplish Democrats' political goals, since Orthodox Jewish voters in the area are less reliably Democratic.

In his own statement, Mr. Nadler dismissed the gerrymandering charge as recycled, pointing out that his district has always included "a diverse and culturally rich collection of communities of interest that stretches from the Upper West Side south to Brooklyn."

"Prognosticators and pundits claim every redistricting cycle that this district is the product of partisan gerrymandering. But no matter who has drawn the New York congressional lines over the years — be it the N.Y. State Legislature or the federal courts — the results have always been strikingly similar for the district I have been honored to represent."

PHOTO: Representative Jerrold Nadler would cede part of the Upper West Side to his House colleague, Carolyn Maloney. (PHOTOGRAPH BY Dave Sanders for The New York Times FOR THE NEW YORK TIMES)

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How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map

**Industry:** PARKS & PLAYGROUNDS (77%); LAW SCHOOLS (66%); COLLEGE & UNIVERSITY PROFESSORS (60%)

**Person:** JERROLD NADLER (90%); CAROLYN MALONEY (79%); NICOLE MALLIOTAKIS (79%); Nadler, Jerrold

**Geographic:** NEW YORK, NY, USA (99%); ALBANY, NY, USA (88%); NEW YORK, USA (94%); UNITED STATES (79%)

**Load-Date:** February 1, 2022

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End of Document

# Exhibit F

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE
----------X
ORAL CLARKE, ROMANCE REED, GRACE PEREZ, PETER RAMON, ERNEST TIRADO, and DOROTHY FLOURNOY,

Plaintiffs,

-against- INDEX NO. EF002460-2024

TOWN OF NEWBURGH and TOWN BOARD OF THE TOWN OF NEWBURGH,

Defendants.
----------X

ORANGE COUNTY COURTHOUSE
285 MAIN STREET
GOSHEN, NEW YORK
May 12, 2025
BENCH TRIAL

B E F O R E: HON. MARIA VAZQUEZ-DOLES
Supreme Court Justice

A P P E A R A N C E S:

ABRAMS FENSTERMAN LLP
Attorneys for Plaintiffs
BY: AMY MARION, ESQ.
DAVID IMAMURA, ESQ.
JEFFREY COHEN, ESQ.

HARVARD LAW SCHOOL ELECTION LAW CLINIC
Attorneys for Plaintiffs
BY: RUTH GREENWOOD, ESQ.
DANIEL HESSELL, ESQ.

TROUTMAN PEPPER LOCKE LLP
Attorneys for Defendants
BY: BENNETT J. MOSKOWITZ, ESQ.
MISHA TSEYTLIN, ESQ.
MOLLY DIRAGO, ESQ.
PARIS KENT, ESQ.
ANAIS JACCARD, ESQ.

Karen Flemmig
Senior Court Reporter

- PROCEEDINGS -

(Whereupon, Defendants' Exhibit A was received in evidence.)

(Whereupon, Defendants' Exhibit B was received in evidence.)

(Whereupon, Defendants' Exhibit DDD was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 10 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 12 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 13 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 39 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 102 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 103 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 105 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 131 was received in evidence.)

(Whereupon, Plaintiffs' Exhibit 132 was received in evidence.)

LAW CLERK: Good morning. This is the case

- PROCEEDINGS -

of Oral Clarke versus the Town of Newburgh, EF002460-2024, for May 12, 2025.

THE COURT: Appearances, please.

MS. MARION: Amy Marion on behalf of Abrams Fensterman for plaintiffs. Good morning, Your Honor.

THE COURT: Good morning.

MS. GREENWOOD: Ruth Greenwood from the Election Law Clinic at Harvard Law School on behalf of plaintiffs. Good morning.

THE COURT: Good morning.

MR. IMAMURA: Good morning, Your Honor. David Imamura, Abrams Fensterman, for plaintiffs, Your Honor.

MR. COHEN: Good morning, Your Honor. Jeffrey Cohen, Abrams Fensterman, for the plaintiff.

MS. BRUSSO: Good morning, Your Honor. Zoe Brusso, technician, for the plaintiff.

MR. MOSKOWITZ: Good morning, Your Honor. Bennett Moskowitz, Troutman Pepper Locke, for the defendants.

MR. TSEYTLIN: Good morning. Misha Tseytlin, Troutman Pepper Locke, for the defendants.

MS. DIRAGO: Good morning, Your Honor. Molly Dirago from Troutman Pepper Locke for defendants.

- PROCEEDINGS -

MR. PEALER: Good morning, Your Honor. I'm Robert Pealer. I'm just the technician for the defendants.

MS. JACCARD: Good morning. Anais Jaccard from Troutman Pepper, A-N-A-I-S, J-A-C-C-A-R-D.

MS. KENT: Good morning, Your Honor. Paris Kent from Troutman Pepper Locke also for the defendants.

MR. MOSKOWITZ: I'll just add for good measure, Your Honor, the gentleman sitting behind us is the Town supervisor of the Town of Newburgh, Gil Piaquadio.

MR. IMAMURA: Similar, Your Honor, behind us we have three of our plaintiffs; Dorothy Flournoy, Grace Perez, and Ernest Tirado.

THE COURT: Good morning. Off the record for some procedure.

(Whereupon, an off-the-record discussion was held.)

THE COURT: We had a discussion with regard to the procedure as to how we would go with five attorneys on one side and approximately the same on the other side. It seems as though they have it organized where it's one person from each side that's going to do the opening. And as each witness gets

called, that there is one attorney on each side that is doing the direct and one on the other side that is doing cross-examinations.

That attorney that is doing the direct and the cross-examination is the only attorney that will be doing objections. Okay? All right. Let's begin.

MS. MARION: Understood, Your Honor.

THE COURT: Plaintiff, are you ready for your opening remarks?

MS. MARION: Yes, we are.

THE COURT: When you're ready.

MR. IMAMURA: Your Honor, would you like us to use the podium, or would you like us at the table?

THE COURT: Whatever makes you feel most comfortable. Let me just give you the option. I will put one on each side.

MR. IMAMURA: Good morning, Your Honor.

THE COURT: Good morning.

MR. IMAMURA: My name is David Imamura. I am joined by my colleagues from Abrams Fensterman, Jeffrey Cohen and Amy Marion, as well as our co-counsel from the Harvard Law -- the Election Law Clinic at Harvard Law School, Professor Ruth Greenwood, Instructor Dan Hessell, and their students.

We represent plaintiffs Oral Clarke, Romance

- PROCEEDINGS -

Reed, Grace Perez, Peter Ramon, Ernest Tirado, and Dorothy Flournoy in this case.

Representation. That is what plaintiffs seek, and that is what plaintiffs are entitled to under the New York State Voting Rights Act. This is a case about the Town of Newburgh. More specifically, this is a case about whether the 40 percent of the Town of Newburgh that is Black or Hispanic deserve any representation whatsoever in their Town government.

Not once in living memory has candidates supported by the Black and Hispanic communities been elected to Town office. Not once in at least 20 years has any candidate of color been elected to Town office. This is because of the structure of the Town's elections which relies on at-large voting where the entire Town votes on every Town council seat.

In the absence of districts or other methods of election, the voices of Black and Hispanic voters are drowned out by the White majority. Black and Hispanic voters consistently support the same candidates. But, just as consistently, the White majority opposes those candidates, and those candidates always prevail because of the White majority's greater size.

The result is a system where the White

community makes up less than 60 percent of the population but has 100 percent of the power. The Town council elected by the White majority do not represent minority interests because they don't have to. They are elected by the White majority, and they work for that same White majority.

This is a case about the Black and Hispanic community and their inability to obtain a seat at the table. In 2023, the State Legislature adopted the John R. Lewis New York State Voting Rights Act. As the statute puts it, the purpose of the New York State Voting Rights Act is to expand on the voting protections afforded -- provided by the State because protections afforded by the constitution of the State of New York substantially exceed the protections provided by the United States Constitution.

This case presents the very circumstances that the New York State Voting Rights Act prohibits; at-large elections under conditions of racially polarized voting that deny minority voters any representation whatsoever. This is the quintessential pattern of vote dilution. The New York State Voting Rights Act prohibits a local government from using a method of election that has, quote, 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. The statute provides that at-large methods of election, which is what the Town of Newburgh uses, violates the prohibition against vote dilution if either voting patterns are racially polarized, or, 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 the election is impaired. The either, the either is important.

Under the NYVRA, there are two paths to proving vote dilution; either demonstrating racially polarized voting, or demonstrating a violation under the totality of the circumstances. Proving either is sufficient.

Under either path, the plaintiffs must also show that there exists a reasonable alternative policy that would, if adopted, enable the protected class to elect its preferred candidate. Racial polarization is defined in the statute as a divergence between the electoral choices of the protected class and the rest of the electorate. This is analyzed using widely accepted statistical methods for determining whether the Black and Hispanic voters of the Town vote

differently from the White majority.

The evidence will show that racially polarized voting exists in the Town of Newburgh and that there is a viable alternative system under which Black and Hispanic voters will be able to elect their preferred candidate.

Dr. Matthew Barreto who pioneered many of the statistical techniques used to analyze voting behaviors and patterns will provide this evidence. The evidence will show that there is, quote, clear, consistent, and statistically significant racially polarized voting in the Town of Newburgh. The evidence will show that the voting of Black and Hispanic voters is cohesive in local elections with the Town Board but that the candidates that they mutually support typically receive very low rates of support from White voters and are thus blocked from winning office.

The evidence will show that not once has a candidate supported by the Black and Hispanic communities been elected to the Town Board even though those communities make up 40 percent of the Town's population. The evidence will show that this has been the case regardless of whether Town council elections are held in even or odd years, and that time after

time, the candidates supported by the Black and Hispanic communities have been blocked from Town office by the White majority.

Critically, defendants' expert, Dr. Brad Lockerbie, does not dispute the existence of racially polarized voting in the Town of Newburgh. Nor does he contest Dr. Barreto's opinion that there is racially polarized voting. In fact, Dr. Lockerbie has not provided any opinion or reached any conclusion about whether there is racially polarized voting in the Town of Newburgh at all.

The evidence will show that there are viable alternative election systems that would provide a reasonable opportunity for Black and Hispanic voters to elect candidates of their choice, including single member districts, rank choice voting, or cumulative voting. As an example, Dr. Barreto provided four potential district maps for the Town of Newburgh, all of which included at least one district that would reliably elect a candidate supported by the Black and Hispanic communities.

All of these district maps would be lawful, and all of them would be a vast improvement over the status quo under which Black and Hispanic voters are denied any representation whatsoever.

- PROCEEDINGS -

Defendants' expert, Dr. Lockerbie, does not contest Dr. Barreto's conclusion that alternative systems of election exist that would allow the Black and Hispanic communities to elect a candidate of their choice to the Town council. He does not address Dr. Barreto's discussion of rank choice voting or cumulative voting at all. Nor does he address Dr. Barreto's conclusion that the proposed maps drawn by Dr. Barreto are viable alternatives that would enable the election of candidates supported by the Black and Hispanic communities.

It is anticipated that Dr. Lockerbie will say that the Town's elections are already competitive. But competitiveness is a concept that is alien to this area of law. The New York State Voting Rights Act does not use the term, nor do court decisions, scholarly articles, or other expert reports about vote dilution. What matters here is performance for black and Hispanic voters, not some abstract notion of competitiveness. And in this respect, the Town's at-large elections have never performed for Black and Hispanic voters, while numerous alternative systems would indeed enable those voters to gain representation of their own.

Behind all of these numbers and statistics

are people, the people of the Town of Newburgh. In addition to showing that there is rationally polarized voting, the statute provides a separate path to finding liability. Specifically, if there is a demonstration that under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or to influence the outcome of elections is impaired.

The statute provides a list of factors that the Court may consider including among others the history of racial discrimination in the Town, the extent to which racial minorities are or have been disadvantaged in the Town, and a lack of responsiveness of the Town to the needs of the protected class.

The evidence will show that there is a history of racial discrimination in the Town of Newburgh from 100 years ago to the present day. Professor Sandoval-Strausz, a national expert in Latino and urban studies, will testify that African-Americans and Hispanics were repeatedly excluded from the housing market through restrictive covenants, repeatedly prevented from participating in the political process through literacy tests. And that this repeated discrimination against Black and

- PROCEEDINGS -

Hispanic residents of the Town resulted in substantially worse economic outcomes for them relative to their White neighbors.

Professor Sandoval-Strausz will testify that in 1992, there was a Ku Klux Klan rally in the Town of Newburgh. And that while there was a counter protest in the City of Newburgh, there was no response from the government of the Town of Newburgh. He will testify that in 2023, just two years ago, a story appeared in the New York Post alleging that homeless veterans in the Town of Newburgh were being displaced by migrants from Latin America. This story quickly became a national firestorm. Fox News ran the story over a dozen times. Local elected officials quickly ran to catch their 15 minutes of fame on national television by decrying the displacement of veterans. The Town of Newburgh filed a lawsuit seeking an injunction to prevent the housing of migrants in the town. The owner of the hotel allegedly housing the migrants was threatened multiple times. However, the story was later found to be completely false. There were no veterans being displaced. Only men paid to claim to the press that they were veterans. The person who originated the story was later indicted.

However, despite the fact that this entire

story was false, despite the fact that there had even been threats of violence, the Town continued its lawsuit seeking to prevent migrants from being housed in the town.

No statement was issued from the Town concerning the false story, no statement condemning the false story or reassuring that one-quarter of the Town that has Hispanic heritage of their safety.

But what about the residents of the Town of Newburgh? You will hear from Dorothy Flournoy, a former NYPD inspector who served in the military for 30 years. She will testify about helping her African-American neighbor after the Town of Newburgh Police would not leave his home until he produced identification and a deed proving that he lived in and owned his own home. You will hear from Ernest Tirado, a former lieutenant in the New York City Fire Department, who will testify that he spoke before the Town council and urged them to seriously confront police reform in the wake of the murder of George Floyd. You will hear from Councilman Scott Manley how the State of New York issued a state-wide mandate to every municipality requiring that they create a task force to examine their policing policies. And that the Town not only failed to adhere to the important

process delineated by the State, but that the Town failed to include required members of the community as dictated by the State. Stakeholders were required to be included in the process to make real reform. Instead of this being a process where all members of the community have input, the Town of Newburgh simply left the task of reforming its police department solely to its chief of police in direct contradiction of the State's executive order issued based upon bias and discrimination in policing that is recognized by the State itself.

You will hear how Mr. Tirado advocated against Danskammer Power Plant in part because of the impact of increased emissions on people of color and how the Town ignored their concerns. And Newburgh Town Supervisor Gil Piaquadio came out in favor of the expansion. You will hear from Grace Perez, the former executive director of Violence Intervention Program, and her constant trips to Town Hall to translate for Newburgh residents when employees of Town Hall did not know Spanish, and the Town's refusal to accommodate her request for the Town to provide translated forms.

The evidence will show that in a Town that is one-quarter Hispanic, there is no effort to provide language access or to provide Town forms or

communications translated into Spanish.

You will hear about Ms. Perez and Mr. Tirado's horror when the Town became the focus of the national news and their anger when the Town not only failed to take action to combat the entirely false story of migrants displacing veterans, but continued to use their taxpayer dollars to prevent migrants from coming to the town.

And from all the plaintiffs you will hear about their frustration. That no matter how many doors they knock on, no matter how many voters they come to, no matter the credentials of the candidates they support, they have never been able to elect a candidate of their choice to the Town council.

It is a truism in politics that if you're not at the table, you are what's for lunch. Nowhere is that more true than in the Town of Newburgh for the 40 percent of the Town that has no voice in this Town government, that has seen their demands for police reform dismissed, that has seen their Town become a poster child for false claims regarding migrants, and has seen their Town fail to stand up for them on issues ranging from language access to emissions. Nowhere is that more true than in a place where 40 percent of the Town has never been able to elect a

candidate of their choice and for at least 20 years has never seen someone that looks like them behind the wooden dais in the council chamber in Town Hall.

A seat at the table. That is what plaintiffs seek, and that is what they are entitled to under the New York State Voting Rights Act. Thank you, Your Honor.

THE COURT: Thank you. I'd like to have all counsel come in chambers for five minutes.

(Off the record sidebar held.)

THE COURT: Good morning. We're back on the record with Clarke versus Town of Newburgh, Index No. EF002460 of 2024. The Court halted the continuation of the trial after plaintiffs' opening. The Court noticed one of the plaintiffs in the back after plaintiffs' counsel moved away from the podium because you were covering him completely. And when you moved aside after your opening, I saw Ernest Tirado.

I know it's been a long time that I've seen you. I am going to say it's possibly -- I've been on the bench since 2013, here 2014, but I then became Town judge. This was as supreme court judge, I was elected in 2013 to the present, which is 12 years. Prior to that, I was elected to Town Court of Monroe in 2009. I was chair of the Latino Democratic

- PROCEEDINGS -

Committee of Orange County from 2007 to 2009 when I was then elected as Town judge for the Town of Monroe then.

After the six months, my window closed, and I've had no communication with the Latino Democratic Committee of Orange County until I came up for election again. And I was in my window in 2012 to 2013. My mother landed in a coma in 2012, and I pulled out of the race in 2012 and had no communication with the Democratic party again until 2013 for which I then became active again, and I ran for the second seat that was available in the Orange County Supreme Court. And in 2012, Judge Sandra Sciortino was elected that year.

Since then, my window closed in May of 2014. And I had no communication with any members of the Democratic committee for the County or the Latino Democratic Committee of Orange County because I am not allowed, pursuant to the judicial rules.

Those relationships have been very separate. My husband was Town councilman in the Town of Monroe since 2005. He became Town supervisor in 2014. And during that election, the only ones that could walk for his petitions were Town residents. The only time that my husband ran an election outside of the Town

- PROCEEDINGS -

was in 2010 when he ran for New York State Senate against Bill Larkin, the late Bill Larkin. That's when he ran, and he needed County people from the different seats, the committee members in each of the Towns to be able to walk petitions for him.

Since 2010, he didn't get elected. Bill Larkin got reelected. And my husband, since his death on July 6th of 2018, obviously he hasn't been active in politics. We're talking six and a half years, almost seven years this July. His last election was in 2011 to 2012. My last election was in 2012 to 2013. And when my window closed in May of 2014, I was no longer politically active. My husband lasted an extra four years, and he passed. Mr. Tirado I remember fondly from that time period where his wife was very active with the Latino Democratic Committee of Orange County. So was he. The time we broke bread was political engagements where the Latinos, they had their maracas and they had their drums. And at that time, Sonia Ayala and her husband would come, and we would have barbecues, which would bring people to the Latino Democratic Committee of Orange County. I have never been to Mr. Tirado's house. He has never been to my house. Neither has Vanessa ever been to my house. Now, if any other members have been to my

house, it was without me being there because I was a judge, and I couldn't be politically active.

So with that said, I can still sit on this case. Normally, I would have to reveal if it's five years or less. But I'm one that if there is even any remote time frame where I've had a connection with someone, I would disclose because my obligation is to disclose, so that we are all on the same page, and we know what relationships I've had even though they were far in the distance in my past.

With that said, I'll hear from plaintiff.

MS. MARION: Thank you, Your Honor.

THE COURT: Why don't we hear from defendants first. It's plaintiff's side that technically there would be a remote distant relationship.

MR. MOSKOWITZ: Correct. And thank you, Your Honor.

THE COURT: Sorry I didn't let you do your closing. I wanted to put that in.

MR. MOSKOWITZ: Thank you, Your Honor. Defendants are absolutely prepared to go forward with Your Honor based on what's been disclosed today, not just by Your Honor, but also additional facts from plaintiffs' counsel. However, we understand that

- PROCEEDINGS -

plaintiffs seek some kind of promise or waiver from us. And we're certainly not prepared to grant whatever that is, nor do we think it's necessary or appropriate. But all that said, we are prepared to go forward.

THE COURT: I'll hear from plaintiff.

MS. MARION: Thank you, Judge. Your Honor, we've consulted with our clients. And our clients do have recollection of breaking bread with Your Honor.

Additionally, what we were seeking from the defendants was -- let me back up. We have no problem going forward with Your Honor either, and we are glad that Your Honor told us this. However, and I'm saying we as counsel, after conferring with our clients, our clients did, in fact, raise issues such as breaking bread with Your Honor, whether or not that was at a Latino Democratic Committee gathering. One or two clients said that they did have dinner or ate at Your Honor's house, was at Your Honor's house. And also, that the plaintiffs did raise the issue that they did carry petitions for Your Honor's husband.

After finding out this information and disclosing it to Your Honor and to defense, we then asked, we would be willing to go forward if there was a guarantee that defendants would not seek to raise

this issue in any sort of appellate forum for review. If that was the case, that they would not -- there would be this waiver, then we would be willing to go forward. We understand that the defendants are not inclined to do that. So based upon that, we have an issue.

THE COURT: This is an election case, and it takes priority over my other cases. I told you in correspondence as well as in person during our conferences that I was going to try to move certain cases around as they came available, and that the Court was very busy until the end of the year. There were certain cases that settled. I grabbed that time period and then finally was able to move the last one to give you a full week.

It was only last year when you were finishing discovery that I then found out that it may spill into another week. I started making moves with regard to that to see if I could at least get it to Monday.

You're here before me, and as I mentioned off the record, I need the parties to feel comfortable that I am moving forward. I don't know what persons or plaintiffs told you that they broke bread in my home. We can find out afterwards. I don't know any

of you except Mr. Tirado. I do know you, but I don't remember you being in my house. But, nonetheless, if plaintiff does not feel comfortable with me moving forward because plaintiff wants a guarantee by defendant, I have not heard from defendant that they are not going to give that guarantee. But maybe I will hear defendant now and hear that so that that way I can make my determination. It seems a bit harsh to require someone to give a guarantee on an appellate view. But plaintiff has to feel comfortable with her case going forward. And I would never restrict that. So I will hear from defendant now.

MR. MOSKOWITZ: Sure. To cut right to the chase, though we don't think it's appropriate and therefore will not give a guarantee, whatever that means, for an appellate issue, again, just to reiterate, it speaks for itself that we heard the disclosures, and we are prepared to go forward.

THE COURT: Okay. So they are not going to guarantee any waiver. So, plaintiff, do you stay with your position?

MS. MARION: We do, Your Honor. We do, Your Honor.

THE COURT: In order for there to be no appearance of impropriety, not even a vague one, the

- PROCEEDINGS -

Court is going to grant my recusal from this case, although I believe I can sit blind like lady justice and continue to the end. But, as I stated earlier, both parties have to feel comfortable going forward. And I'm going to get it on the wheel immediately to get it wheeled out to someone else here in Orange County, or is there an application to move it to another county?

MR. IMAMURA: Yes, Your Honor. Under the Election Law forum for this case, it would be appropriate in Westchester County. We would ask that the case be reassigned there.

MR. MOSKOWITZ: We strongly object to that.

THE COURT: I'm going to get it wheeled out to another court because I have already stated that I would recuse myself. So any decisions from me right now may be seen as being biased, and I don't want to get caught up in that. So we are going to send it back to my clerk's office to be reassigned expeditiously, and you can make any applications to any judge at that point. If it would have been a want on consent, I would have continued. But it's not on consent, so I am going to wheel it out. Do you understand my ruling?

MS. MARION: Understood, Your Honor.

- PROCEEDINGS -

MR. MOSKOWITZ: Yes, understood, Your Honor.

THE COURT: I will wheel it out.

MR. MOSKOWITZ: Thank you.

MS. MARION: Thank you, Your Honor. And thank you, Your Honor, for -- this doesn't have to be on the record, but we understand that you moved mountains, as did your law secretary, and I think all parties appreciate that very much.

THE COURT: Thank you.

(Proceedings concluded.)

C E R T I F I C A T I O N

I, KAREN M. FLEMMIG, certify that I am a Court Reporter and a Notary Public within and for the State of New York, and that the transcript to which this certification is annexed is a true, accurate and complete record of the proceedings to the best of my knowledge and belief.

Karen M. Flemmig

Karen M. Flemmig
Senior Court Reporter

DATED: MAY 14, 2025

# Exhibit G

# State of New York
# Court of Appeals

Reason for Recusal (Judiciary Law § 9)

APL-2025-110
Oral Clarke, et al.,
Respondents,
v.
Town of Newburgh, et al.,
Appellants;
Letitia James, &c.,
Intervenor-Respondent.

I hereby recuse myself in the above-entitled appeal. In accordance with section 9 of the Judiciary Law (check as appropriate):

☐ I decline to provide a reason for this recusal because: (i) pursuant to the exception prescribed in section 9, provision of a reason may result in embarrassment, or is of a personal nature, affecting me or a person related to me within the sixth degree by consanguinity or affinity; or (ii) pursuant to statute or caselaw, the reason for my recusal must be kept confidential.

☐ I am recusing myself because:

☐ A. I wish to avoid any potential appearance of impropriety that my impartiality might be questioned because:

☐ _____.

☐ I participated as a judge or justice of another court in that court's consideration of this or a related proceeding.

☒ I have or had a close professional or personal relationship with a party or lawyer involved in this matter.

☐ B. I have a personal bias or prejudice concerning a party to the proceeding.

☐ C. I have personal knowledge of disputed evidentiary facts concerning the proceeding.

☐ D. I served as a lawyer in the matter in controversy in this proceeding.

☐ E. A lawyer with whom I previously practiced law served, during my association with him or her, as a lawyer concerning the matter in controversy in this proceeding.

□ F. I have been a material witness concerning the matter in controversy in this proceeding.

□ G. I (or my spouse or minor child residing in my household) may have an economic interest in the subject matter in controversy in this proceeding or in a party to the proceeding, or I may have any other interest that could be substantially affected by the proceeding.

□ H. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am a party in this proceeding.

□ I. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am an officer, director, or trustee of a party in this proceeding.

□ J. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) have an interest that could be substantially affected by the proceeding.

□ K. I (or my spouse or a person I know to be within the fourth degree of relationship of either myself or my spouse or the spouse of such person) am acting as a lawyer in this proceeding or am likely to be a material witness in this proceeding.

□ L. While a candidate for judicial office, I made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or, at any time, I have made a public statement not in my adjudicative capacity that commits me with respect to an issue in the proceeding or to the parties or controversy in the proceeding.

□ M. I am otherwise required by law (identify statute _____) to recuse myself.

□ N. I am recusing myself for a reason other than one listed in B through L hereof of the basis of an advisory opinion issued to me by the Advisory Committee on Judicial Ethics pursuant to section 212(2)(l) of the Judiciary Law.

Hon. Michael J. Garcia, Associate Judge

9-11-2025
Date

# Exhibit H

State of New York
Court of Appeals

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

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September 4, 2025

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Hon. Letitia James
New York State Attorney General
Attn: Judith Vale, Esq.
The Capitol
Albany, NY 12224-0341

Re: Clarke v Town of Newburgh

Dear Counselors:

Please be advised that Hon. Cynthia S. Kern and Hon.Tanya R. Kennedy, Associate Justices of the Appellate Division, First Judicial Department, have been vouched in as Associate Judges of the Court of Appeals for the hearing and determination of this matter. Judges Garcia and Halligan will not be participating in this matter.

Questions may be directed to Edward Ohanian at 518-455-7701 or Krysten Kenny at 518-455-7702.

Very truly yours,

H Davis

Heather Davis

HD/EO/ks
cc: Nicholas Stephanopoulos, Esq.

# Exhibit I

# Court of Appeals judge recuses herself from redistricting case — Queens Daily Eagle

queenseagle.com/all/2023/10/17/court-of-appeals-judge-recuses-herself-from-redistricting-case

Ryan Schwach October 17, 2023

Court of Appeals Judge Caitlin Halligan (center) recused herself from an upcoming case concerning the state's redistricting process. Governor Kathy Hochul, who appointed Halligan earlier this year, is a party to the case. File photo by Don Pollard/Office of Governor Kathy Hochul

The Court of Appeals judge who was previously considered the potential tiebreaker in the major redistricting case coming before the court next month has recused herself from the case.

Judge Caitlin Halligan, who ascended to the Court of Appeals bench in April, has recused herself from the case which sees the court deciding if new congressional district lines should be drawn in the Empire State. She will be replaced in the case by the presiding justice of the Appellate Division, First Department, Dianne Renwick.

The Court of Appeals had no comment on Halligan's recusal, but told the Eagle that she reported to the court that she is taking herself off the case because "[she] wish[es] to avoid any potential appearance of impropriety" because "[she] ha[s] or had a close professional or personal relationship with a party or lawyer involved in this matter."

The case, Hoffman v. Independent Redistricting Commission, could have major, national implications for either the Democratic or Republican parties. The case was brought after a previous ruling made by the Court of Appeals in a separate case found that district lines drawn by lawmakers last year after the New York Independent Redistricting Commission failed to submit a final set of maps were unconstitutional.

The ruling resulted in the appointment of a special master, who drew new congressional lines. Using those lines, Republican candidates were able to pick up several seats in the U.S. House of Representatives, helping them secure a majority there.

In turn, the Democratic petitioners in the previous case, which included Governor Kathy Hochul and State Attorney General Letitia James, argued that the state's constitution would be violated should the court appointed special master's maps be used for any election beyond the 2022 election. They argue that the special master and his subsequent district lines did not appropriately take into account public input or the democratic process.

Recently, the Court of Appeals ordered a stay in the case, which means the redistricting commission has been unable to begin drawing new lines until the court rules on the case. However, the stay isn't ironclad – they can start to redraw lines in an unofficial capacity, if they choose to do so.

Before Halligan's recusal, she was considered the potential tie breaker in the case as the only current member of the Court of Appeals who had not previously ruled on a recent redistricting case.

The court, now led by Chief Judge Rowan Wilson, is considered to have a more liberal tilt than its previous iteration, led by Chief Judge Janet DiFiore, which ruled in favor of the then-Republican petitioners.

Last year, Wilson wrote the dissenting opinion in the previous redistricting case, and argued that he believed the legislature's drawing of the maps after the IRC had failed to submit a final version was constitutional.

Judges Shirley Troutman and Jenny Rivera also dissented from that majority opinion, supported by DiFiore and current Judges Madeline Singas, Michael Garcia and Anthony Cannataro.

Should each of the judges rule the same way they did in that case, Halligan was the only tiebreaker.

Jeff Wice, a professor at New York Law School who leads the school's N.Y. Census & Redistricting Institute, believed that Halagan's replacement should be a welcome sign to the Democrats hoping the appeal gets shot down.

"It's good news for the [Democrats]," Wice told the Eagle. "They should look favorably on [Renwick]."

Wice says that Renwick previously was part of a ruling which sent state Assembly lines back for another draft, giving him the indication she has no issues with sending lines back to be redrawn.

Renwick was previously a staff attorney for the Legal Aid Society, and a Civil Court judge in New York City prior to her current role. Renwick's husband, Robert Johnson, was the Bronx district attorney from 1989 to 2015, and currently serves as a Supreme Court judge in the brough.

The Court of Appeals is scheduled to hear the case on Nov. 15 in Buffalo.

Should they choose to uphold the decision, a new redistricting process would kick off, which would likely include a period in which the commission collects public testimony.

news
Caitlin Halligan, Redistricting, Court of Appeals, Diane Renwick, Kathy Hochul, Letitia James
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# Exhibit J

# State of New York
# Court of Appeals

Reason for Recusal (Judiciary Law § 9)

APL-2023-121
In the Matter of Anthony S. Hoffmann, et al.,
Respondents,
v.
New York State Independent Redistricting Commission, et al.,
Respondents,
Independent Redistricting Commissioner Ross Brady, et al.,
Appellants,
Tim Harkenrider, et al.,
Appellants.

I hereby recuse myself in the above-entitled proceeding. In accordance with section 9 of the Judiciary Law (check as appropriate):

☐ I decline to provide a reason for this recusal because: (i) pursuant to the exception prescribed in section 9, provision of a reason may result in embarrassment, or is of a personal nature, affecting me or a person related to me within the sixth degree by consanguinity or affinity; or (ii) pursuant to statute or caselaw, the reason for my recusal must be kept confidential.

☒ I am recusing myself because:

☒ A. I wish to avoid any potential appearance of impropriety that my impartiality might be questioned because:

☐ _____.

☐ I participated as a judge or justice of another court in that court's consideration of this or a related proceeding.

☒ I have or had a close professional or personal relationship with a party or lawyer involved in this matter.

☐ B. I have a personal bias or prejudice concerning a party to the proceeding.

☐ C. I have personal knowledge of disputed evidentiary facts concerning the proceeding.

□ D. I served as a lawyer in the matter in controversy in this proceeding.

□ E. A lawyer with whom I previously practiced law served, during my association with him or her, as a lawyer concerning the matter in controversy in this proceeding.

□ F. I have been a material witness concerning the matter in controversy in this proceeding.

□ G. I (or my spouse or minor child residing in my household) may have an economic interest in the subject matter in controversy in this proceeding or in a party to the proceeding, or I may have any other interest that could be substantially affected by the proceeding.

□ H. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am a party in this proceeding.

□ I. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) am an officer, director, or trustee of a party in this proceeding.

□ J. I (or my spouse or a person I know to be within the sixth degree of relationship of either myself or my spouse or the spouse of such person) have an interest that could be substantially affected by the proceeding.

□ K. I (or my spouse or a person I know to be within the fourth degree of relationship of either myself or my spouse or the spouse of such person) am acting as a lawyer in this proceeding or am likely to be a material witness in this proceeding.

□ L. While a candidate for judicial office, I made a pledge or promise of conduct in office that is inconsistent with the impartial performance of the adjudicative duties of the office or, at any time, I have made a public statement not in my adjudicative capacity that commits me with respect to an issue in the proceeding or to the parties or controversy in the proceeding.

□ M. I am otherwise required by law (identify statute _____) to recuse myself.

□ N. I am recusing myself for a reason other than one listed in B through L hereof of the basis of an advisory opinion issued to me by the Advisory Committee on Judicial Ethics pursuant to section 212(2)(l) of the Judiciary Law.

Hon. Caitlin J. Halligan, Associate Judge

October 12, 2023
Date

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. 005

**RESPONSE IN SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL**

(*Counsel for Intervenor-Respondents' listed on the following page*)

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Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba agree with Respondents' Motion to Recuse ("Mot.") for the reasons set forth in that Motion. Intervenor-Respondents submit this Response to emphasize some additional considerations that support recusal in this manner. Namely, given the Court's substantial relationships with several Respondents who have targeted Representative Malliotakis' district in the past and have pledged to continue their gerrymandering efforts presently, the "better practice" for a court is "to disqualify itself in a special effort to maintain the appearance of impartiality." *People v. Moreno*, 70 N.Y.2d 403, 407 (1987). Intervenor-Respondents also submit this Response to note that, in undersigned counsel's experience, judges in New York have recently recused themselves to avoid any suggestion of partiality in cases involving redistricting over far less extensive relationships with counsel and parties than those disclosed here.

The conduct of Respondents with whom the Court appears to have had close professional relationships in the recent past heightens the need for recusal "to avoid even the appearance of bias which may erode public confidence in the judicial system as quickly as would the damage caused by actual bias." *People v. Zappacosta*, 77 A.D.2d 928, 929 (2d Dep't 1980). Most problematically, Respondent Governor Hochul announced that she is "on board" with efforts to redraw New York's districts. NBC News, *Hochul says New York will consider redistricting at meeting with Texas Democrats* (Aug. 4, 2025).[1] In response to Texas' redistricting efforts, Respondent Hochul stated "[a]ll's fair in love and war" and that she and other legislative "leaders"—including, presumably, Respondent Senator Stewart-Cousins—were exploring "every

[1] Available at https://www.nbcnews.com/video/hochul-says-new-york-will-consider-redistricting-in-response-to-texas-244309573737.

option to redraw our state congressional lines as soon as possible." *Id.* Respondent Hochul also promised to "fight fire with fire," saying that she "refuse[s] to sit on the sidelines" while Republicans allegedly redraw boundaries in other States. Dkt.73 at 3. These statements did not escape notice as Democracy Docket (founded by Marc Elias, solely named partner of Petitioners' chosen law firm) cited Respondent Hochul's press conference as "signal[ing] her support for Democratic redistricting in response to Trump's plan." Affirmation of Bennet J. Moskowitz, dated December 8, 2025 ("Moskowitz Aff."), Ex.A.

Notably, Respondents with whom the Court appears to have had close professional relationships in the recent past have targeted Representative Malliotakis' district, in just the manner Petitioners seek to repeat through this lawsuit. Representative Malliotakis "has been the focus of Democratic mapmakers since the start of the last redistricting cycle." Moskowitz Aff., Ex.B. In 2022, the congressional districting map resulted in "a land grab gerrymander, where Democrats took out Republican incumbents" noting that "Malliotakis' 11th District [would] become significantly more liberal after her conservative district in and around Staten Island was paired with the more liberal Park Slope area." Moskowitz Aff., Ex.C. This gerrymander's targeting of the 11th Congressional District skipped over (previously included) moderate-to-conservative neighborhoods and "snake[d] along the northwest Brooklyn waterfront to take in the heavily liberal Democratic areas of Sunset Park and Park Slope." Moskowitz Aff., Ex.D. Respondents Stewart-Cousins and Heastie led their respective chambers to approve, and Respondent Hochul signed, the map to further their "political ambitions to capture the 11th District, the only Republican-held seat in New York City and a top target nationwide this cycle." Moskowitz Aff., Ex.E. The Court of Appeals struck the whole map down because it was "drawn with an unconstitutional partisan intent." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 502 (2022). The

unlawful map's revisions to the 11th Congressional District's boundaries made similar changes as to those that Petitioners have requested in this case. *See* Pet. ¶¶ 101–02.

Respondents Hochul and Stewart-Cousins' actions, combined with this Court's longstanding relationships with those Respondents, Mot.4–5, further support recusal here. At that time that these Respondents engaged in unconstitutional and partisan gerrymandering, including by targeting Representative Malliotakis' district in a similar way as Petitioners are attempting to accomplish here, this Court apparently served as Special Counsel to Respondent Governor Hochul. Dkt.67, Tr.5:24–6:3. This Court's close relationship with these Respondents significantly increases concerns that the public will believe the Court is "influenced by any personal interest in the case." *People v. McDonald*, 167 N.Y.S.2d 394, 396–97 (Co. Ct. 1957).

Further, in undersigned counsel's recent experience litigating redistricting cases, New York judges routinely recuse as a matter of discretion in cases involving redistricting in much less clear-cut circumstances. For example, in *Clarke v. Town of Newburgh*, Index No.EF002460-2024 (Orange Cnty.), a case challenging the Town of Newburgh's use of an at-large voting system under the New York Voting Rights Act ("NYVRA"), Justice Maria S. Vasquez-Doles recognized one of the plaintiffs that she had not seen for years during opening arguments of trial and recused herself even though she could "still sit on this case." Moskowitz Aff., Ex.F, Tr.20:3–4. Her Honor explained that she had broken bread with members of the Latino Democratic Committee of Orange County (including the plaintiff and his wife) nearly a decade ago and before she became a Supreme Court Justice. *Id.* Tr.19:14–20:2. Thus, "[i]n order for there to be no appearance of impropriety, not even a vague one," Justice Vasquez-Doles recused so that the parties would "feel comfortable going forward." *Id.* Tr.23:24–24:4. On appeal in the same matter, Judge Michael J. Garcia and Judge Caitlin J. Halligan of the Court of Appeals also recused due to a personal relationship with

some parties. Moskowitz Aff., Exs.G & H. Judge Halligan similarly recused in another redistricting case, *Hoffmann v. New York State Independent. Redistricting Commission*, APL-2023-00121 (N.Y.), because she wished "to avoid any potential appearance of impropriety" as she "ha[s] or had a close professional or personal relationship with a party or lawyer involved in this matter." Moskowitz Aff., Exs.I & J.

Similarly, in *New York Communities for Changes v. County of Nassau*, Index No.602316/2024 (Nassau Cnty.), which also involved a redistricting challenge under the NYVRA, multiple justices recused themselves due to relationships with the parties or lawyers in the case. Justice Prager, for example, *sua sponte* recused herself "to avoid any potential appearance of impropriety based upon conflicts with certain practitioners and parties" to the case. Order, *N.Y. Cmtys. for Change*, No.602316/2024, Dkt.22 (Nassau Cnty. Feb. 23, 2024). Justice Muraca likewise recused "on [her] own motion" because of "multiple conflicts with parties, practitioners, and witnesses." Order, *N.Y. Cmtys. for Change*, No.602316/2024, Dkt.21 (Nassau Cnty. Feb. 23, 2024). These *sua sponte* recusals demonstrate the "special effort" New York courts put into "maintain[ing] the appearance of impartiality," *Moreno*, 70 N.Y.2d at 201–02, which is especially important in cases that garner the most public attention.

This Court disclosed substantial relationships with several Respondents and counsel. The Court agreed that it had one close social relationship that it had "the most concern with," Dkt.67, Tr.8:3–11, but the recent representation of Respondent Hochul, and the Court's longstanding relationships as Chief of Staff to then-Lieutenant Governor Hochul and Senator Stewart-Cousins raise even more concern. These kinds of relationships are certainly more direct and more recent than those that led Judge Vasquez-Doles to recuse in *Newburgh*. And even though the previously discussed jurists used standard recusal language, it is not probable that they had relationships that

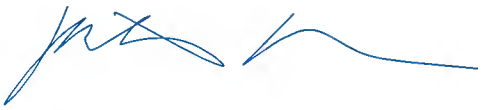
were greater in-kind than what this Court has disclosed here. Although Intervenor-Respondents have no indication that the Court harbors actual bias in this matter, maintaining the appearance of impartiality of the judiciary is critical, and particularly so in a case of this public importance and attention. *See Zappacosta*, 77 A.D.2d at 929; *see also* Mot.9–10.

## CONCLUSION

Intervenor-Respondents respectfully request that this Court should grant the Motion for Recusal.

Dated: New York, New York
December 8, 2025

TROUTMAN PEPPER LOCKE LLP

By: 

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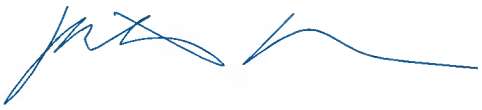
**CERTIFICATION**

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 1,271 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: 

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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.

----------X

Index No. 164002/2025

**Opposition to Respondents Kosinski, Casale, and Rileys' Motion to Recuse**

*[Signature block on the following page]*

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## PRELIMINARY STATEMENT

In New York, a "judge has an affirmative duty not to recuse himself but to preside over a case." *Loreto v. Wells Fargo Bank, N.A.*, 62 Misc. 3d 1202(A), 107 N.Y.S.3d 810, 2016 WL 11531367, at *3 (Sup. Ct. Monroe Cnty. Sep. 27, 2016). Recusal is warranted only when the judge is "satisfied that he [] is unable to serve with complete impartiality, in fact or appearance." *Trimarco v. Data Treasury Corp.*, 146 A.D.3d 1004, 1008, 46 N.Y.S.3d 134, 139 (2017) (internal citation omitted) (cleaned up). At the November 7 scheduling conference in this matter, Your Honor disclosed certain prior relationships with some of the Respondents in this case, most of which are quite dated and all of which are unrelated to this case. Your Honor explained that Your Honor had diligently "read the law," "the regulations," and "the advisory opinions," and "consulted with counsel" regarding these relationships. NYSCEF Doc. No. 67 (Transcript of Nov. 7, 2025 conference), 8:6-8 ("Tr."). Your Honor made clear that Your Honor will remain impartial in this case, and there has been no indication that Your Honor believes recusal is warranted here. *See generally* Tr. 8:6-11.

Nevertheless, *three weeks after* that scheduling conference in these time-sensitive proceedings, Respondents Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III's ("Respondents") moved to recuse Your Honor from this proceeding. Nothing in that motion provides any reason why this Court should change its well-founded conclusion that recusal is not warranted. The Court should thus deny the motion and proceed with the case as scheduled.

*First*, Respondents' purported basis for mandatory recusal—that Your Honor or one of Your Honor's former colleagues advised Governor Hochul on the constitutionality of the John R. Lewis Voting Rights Act of New York (the "NY VRA")—is based on pure speculation. Even if true, however, it would not support recusal; mandatory recusal is warranted only if such advice amounted to work on the same "matter" as the constitutional vote dilution claim Petitioners bring

here. Because generalized counsel on the constitutionality of pending legislation (here, the NY VRA), is not the same "matter" as litigation that later invokes the enacted legislation—in a case that both Petitioners and Respondents agree presents a "matter of first impression"—there is no legal basis for mandatory recusal.

*Second*, Respondents fail to establish that discretionary recusal is warranted. Your Honor's prior work as Respondent Majority Leader Stewart-Cousins' chief of staff ended more than a decade ago, and Your Honor served as counsel to Respondent Majority Leader Stewart-Cousins in a voluntary capacity nearly *two* decades ago. Your Honor's role as counsel to Respondent Governor Hochul ended more than two years ago, as New York ethics rules require, and there is no indication that any of Your Honor's work in these roles is in any way related to this action. Nor would Your Honor's past engagements with any other Respondent cause a reasonable person to question the Court's impartiality in this suit. Those engagements were predominantly fleeting and insubstantial. Moreover, all Respondents in this case are sued only in their official capacities, which generally makes recusal unnecessary even when a judge maintains a close social relationship with the named official. *Cheney v. U.S. Dist. Ct. for D.C.*, 541 U.S. 913, 916 (2004) (Scalia, J., sitting as a single justice).

Finally, recusal at this stage in the litigation is likely to be highly prejudicial to Petitioners, who seek relief ahead of the 2026 primary elections. To ensure that state elections are not "conducted pursuant to an unconstitutional []apportionment," the "State Constitution [] requires expedited judicial review of redistricting challenges." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 522, 197 N.E.3d 437, 454, 497 (2022). Despite acknowledging at the November 7 scheduling conference that they should file their motion to recuse expeditiously, Respondents waited *three weeks* to do so and then filed on the eve of the Thanksgiving holiday, which meant that a briefing

schedule could not be set until the following week. In addition to the fact that there is no reason to reassign this case to another judge, doing so at this stage of these expedited proceedings would inevitably cause delay and could severely prejudice Petitioners' ability to obtain relief ahead of the 2026 primary elections.

For these reasons and others set forth herein, the Court should deny Respondents' motion to recuse.

## BACKGROUND

On October 27, 2025, Petitioners filed this action, which alleges that the current configuration of Congressional District 11 fails to account for recent changes in Staten Island's demographic makeup and dilutes the voting strength of Black and Latino voters, in violation of Article III, Section 4(c)(1) of the New York Constitution.[1] Petitioners ask the Court to order the Legislature to remedy this constitutional violation by redrawing CD-11 to unite Staten Island with lower Manhattan in a district that would allow Black and Latino residents to have an equal opportunity as other members of the electorate to influence elections and elect representatives of their choice. Petitioners filed this suit against several state entities and state officers in their official capacities, including the State Board of Elections and all of its commissioners, as well as the New York Attorney General, the President *Pro Tempore* of the Senate, the Speaker of the Assembly, and the Governor.

Pursuant to Article III, Section 5 of the Constitution, this redistricting case must be given

[1] Petitioners do not bring any claims under the recently enacted NY VRA, which does not, on its own terms, apply to congressional districts. Petitioners' single claim is brought under the New York Constitution, and Petitioners contend that the NY VRA supplies the appropriate legal framework to evaluate Petitioners' constitutional claim. But the constitutionality of the NY VRA is not directly at issue here, and in any event, the Court of Appeals recently rejected a facial challenge to constitutionality of the NY VRA in *Clarke v. Town of Newburgh*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025).

precedence over all other causes and proceedings and decided expeditiously. As such, this case has already progressed well beyond the initial stages. Your Honor was assigned to this case on October 28, 2025. Less than two weeks after Petitioners filed this action, on November 7, the parties appeared before the Court to establish a briefing schedule for dispositive motions and set the date for a two-day hearing. *See* NYSCEF Doc. No. 31; NYSCEF Doc. No. 67 (Tr.). On November 17, Petitioners filed their Memorandum of Law in Support of their Petition, which is supported by three expert reports. NYSCEF Doc. Nos. 60–63. Respondents' and Intervenor-Respondents' motions are due today, December 8. Petitioners' reply briefs are due in ten days, on December 18. In just over two weeks, on December 23, briefing on the merits of Petitioners' claim will be complete. A hearing is set before the Court on January 6 and 7, 2026. NYSCEF Doc. No. 56. Your Honor indicated at the November 7 scheduling conference that he understood the need for an expedited decision in this matter and that the Court would issue a decision very soon after the January hearing.

During the scheduling conference, Your Honor also made a series of disclosures regarding Your Honor's previous engagements with certain Respondents or their counsel, most of which dated back many years and were professional in nature. These include:

- Serving in a volunteer capacity as counsel to Majority Leader Stewart-Cousins in election contests in 2004 and 2006, and serving as her chief of staff from 2014–2015;[2]

[2] Tr. 6:4-9.

- Serving as chief of staff and then counsel to then-Lieutenant Governor Hochul from 2015–2016, and later as special counsel to Governor Hochul in a "transitional role" when she became governor;[3]
- A casual acquaintance with Respondent Anthony J. Casale in the 1990s;[4]
- Attending the same functions as Respondent Kristen Zebrowski Stavisky and "serving as counsel in the State Senate with her mother-in-law";[5] and
- A social relationship with Respondent Henry T. Berger.[6]

Your Honor explained that you had "read the law," "the regulations," and "the advisory opinions," and "consulted with counsel" regarding these relationships. Tr. 8:6–8. Your Honor noted your 37-year experience as a public officer who "taught government ethics," and believed you "put everything on the record that's necessary." Tr. 10:3–6. Your Honor did not provide any indication that Your Honor believed recusal was warranted.

Following these disclosures, counsel for Respondents Kosinski, Casale, and Riley indicated their intent to file a motion for disqualification. Counsel stated that Respondents intended to make the motion "on an expedited basis, understanding it is a threshold issue that should be resolved at the outset before any subsequent proceedings." Tr. at 10:11–14. But for nearly three weeks, that motion did not come. It was not until November 26, on the eve of the Thanksgiving holiday—more than four weeks after Your Honor was assigned to this case, more than three weeks after Petitioners filed their Memorandum of Law, and less than a month until briefing in this matter

[3] Tr. 5:24-6:3.
[4] Tr. 7:20-8:2.
[5] Tr. 7:5-10.
[6] Tr. 8:20-9:1. Your Honor also described attending law school with counsel for certain respondents, Mr. Quail, as well as "serv[ing] [with him] in election capacity over the years." *See* Tr. 7:11-16. But Your Honor has not had any interaction with Mr. Quail in the last decade. *See id.*

will conclude—that Respondents filed their motion to recuse. Because of this delay, briefing on this "threshold issue" will not conclude until *after* Respondents have filed their opposing memoranda and cross-motions to dismiss, and it will require a hearing during the ten-day period Petitioners have to submit their reply brief. NYSCEF Doc. Nos. 56, 75.

**ARGUMENT**

New York law provides different standards for mandatory and discretionary recusal. The bases for mandatory recusal are narrowly drawn and enumerated in Judiciary Law § 14 and 22 NYCRR § 100.3[E][1]. Respondents invoke only one basis for mandatory recusal: that recusal is required where the judge "served as a lawyer in the matter in controversy" or a lawyer with whom the judge worked served as a "lawyer concerning the matter." Mot. at 11 (quoting 22 NYCRR § 100.3[E][1][b]). But Respondents' argument that Your Honor previously represented Governor Hochul in this "matter" is based on pure speculation, and it misunderstands the applicable rules by conflating prior legal advice as to the constitutionality of pending legislation (the NY VRA) with this "matter" currently before the Court.

Respondents' arguments for discretionary recusal likewise fail. The default rule in New York courts is that a "judge has an obligation not to recuse himself or herself . . . unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance." *Wilson v. Brown*, 162 A.D.3d 1054, 1056, 80 N.Y.S.3d 343, 344 (2018) (quoting *Trimarco*, 146 A.D.3d at 1008). The decision whether to recuse lies within the Court's sound discretion, *see People v. Moreno*, 70 N.Y.2d 403, 405 (1987), and it is appropriate to recuse only where the appearance of impropriety genuinely threatens the integrity of the judiciary. To that end, recusal is warranted only where "the judge's impartiality might reasonably be questioned." 22 NYCRR § 100.3[E][1]. That is not the case here. Your Honor's prior relationships with Respondents are unrelated to this litigation, quite dated (some based on work done over a decade ago and others

based on interactions that date back 20 years or more), and largely brief. For these reasons, and as discussed in further detail below, Respondents' motion for recusal should be denied.

## I. Respondents have not provided any basis for mandatory recusal.

Tellingly, Respondents devote only a single page of argument to their speculative theory that disqualification is required because "Your Honor represented Governor Hochul during the enactment of the NYVRA," and "the constitutionality of the NYVRA's standards will be at issue in this proceeding." Mot. at 11. As an initial matter, Respondents' arguments are replete with speculation: first they assume that Governor Hochul's counsel advised her on the constitutionality of the NY VRA; then they speculate that Your Honor may have provided such counsel; and then they argue that even if Your Honor did not advise the Governor, recusal would still be required because Governor Hochul's other counsel *may have* advised on the constitutionality of the NY VRA and Your Honor *may have* practiced law with those counsel. Respondents offer no facts to support these hypotheticals.[7] But even if they were true, they would not require disqualification because neither Your Honor nor Your Honor's former colleagues have served as a lawyer in or advised on this case, which Respondents agree is a matter of first impression. *See* Mot. at 9.

As relevant here, disqualification is required only (1) when the judge "served as a lawyer *in the matter in controversy*," 22 NYCRR § 100.3[E][1][b] (emphasis added), or was an attorney or counsel in the "an action, claim, matter, motion or proceeding," N.Y. Jud. Law art. II, § 14

[7] Several facts suggest that these speculative claims are unsupported. For example, it is not clear whether Governor Hochul would have received counsel on the constitutionality of the NY VRA from anyone, as the bill was first proposed before Governor Hochul assumed office. Even if Governor Hochul was counseled on the constitutionality of the NY VRA, it is far from clear that Your Honor would have provided such counsel. Your Honor did not serve as Governor Hochul's *general counsel*, but rather as special counsel in a "transitional role." *See* Anna Gronewold, *Hochul's rocky rollout roils fellow Democrats*, Politico (Feb. 1, 2023), https://www.politico.com/news/2023/02/01/new-york-rocky-rollout-kathy-hochul-00080540.

("Judiciary Law § 14"); or (2) when "a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter," 22 NYCRR § 100.3[E][1][b]. None of those circumstances are present here. Even if Your Honor or Your Honor's former colleagues advised on the constitutionality of the NY VRA in the past—and there are no facts in Respondents' briefing to support that speculative claim—any such analysis would not have been part of the same "action, claim, matter, motion or proceeding," Judiciary Law § 14[8]—or "matter in controversy," 22 NYCRR 100.3[E][1][b]—as *this* case, and thus would not require recusal.

As the text of the rules makes clear, recusal is contemplated as a result of the judge's work in a concrete legal dispute, not as a product of generalized legal advice the judge may have provided in the past. *See* Judiciary Law § 14; 22 NYCRR 100.3[E][1][b]. Accordingly, New York law does not support the argument that advice as to the NY VRA's constitutionality would constitute a prior "matter" for which recusal would be required. Indeed, Respondents have pointed to no authority that stands for the proposition that an attorney's opinion on the constitutionality of pending legislation, separate and apart from any litigation that may bear on the legislation if it is enacted into law, constitutes a "matter" or "matter in controversy" for purposes of Judiciary Law § 14 and 22 NYCRR 100.3[E][1][b]. Although there is a dearth of case law on the meaning of a "matter" under Judiciary Law § 14 as presently enacted, the terms that surround it—"action, claim, . . . motion or proceeding"—all contemplate recusal as the result of a real and present dispute, not abstract legal advice. "[M]atter" is thus best read as limited to the same. *See Certain Underwriters at Lloyd's, London v. Forty Seventh Fifth Company LLC*, 172 N.Y.S.3d 323, 75 Misc. 3d 1232(A), at *3 (Sup. Ct. N.Y. Cnty. Apr. 22, 2022) ("[T]he meaning of a word in a series of words is

[8] This case presents no reason to address Judiciary Law § 17, *see* Mot. at 11 (citing the same), which concerns a judge's obligations after leaving the bench.

determined by the company it keeps." (quoting *Lend Lease (US) Constr. LMB Inc. v. Zurich Am. Ins. Co.*, 136 A.D.3d 52, 57 (App. 2015))).

The definition of "matter" under New York's Rules of Professional Conduct supports the same conclusion. "Matter" means "litigation, judicial or administrative proceeding, case, claim, application, request for a ruling or other determination, contract, controversy, investigation, charge, accusation, arrest, negotiation, arbitration, mediation or any other representation involving a specific party or parties." N.Y. Comp. Codes R. & Regs. tit. 22, § 1200.0. Again, the general clause—"any other representation involving a specific party"—cannot be so broad as to include *any* legal opinion, lest it render the list that precedes it superfluous. *See Miranda v. Norstar Bldg. Corp.*, 79 A.D.3d 42, 47 (App. Div. 3d Dept. 2010) ("Where, as here, the language to be construed is a general catchall term that follows a list of more specific words, . . . words constituting general language . . . are not to be given the most expansive meaning possible, but are held to apply only to the same general kind or class as those specifically mentioned." (quotation omitted)).

But even if a hypothetical legal opinion on the NY VRA's constitutionality is *a* "matter" for purposes of the mandatory disqualification rules, it is not *this* matter. Disqualification is not mandatory "unless [the judge] had been the attorney or couns[el] in the *identical action or special proceeding brought before him as a judge*." *See Davis v. Seaward*, 146 N.Y.S. 981, 985 (Sup. Ct. Kings Cnty. 1914) (emphasis added) (discussing a predecessor to Judiciary Law § 14).[9] That is

[9] Federal authority under 28 U.S.C. § 455(b), which likewise requires disqualification only if the judge "served as lawyer in the matter in controversy," is consistent with this reading. *See Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 839 F.2d 1296, 1301–02 (8th Cir. 1988) (rejecting argument that "the 'matter in controversy' contemplated by the recusal statute may extend beyond the litigation conducted under the same docket number where the issues in dispute are sufficiently related" as "precluded" by precedent); *Blue Cross & Blue Shield of R.I. v. Delta Dental of R.I.*, 248 F. Supp. 2d 39, 46 (D.R.I. 2003) ("This Court holds that the term 'matter in controversy' as set forth in § 455(b)(2) should be given a restrictive reading; that is, it should be

quite plainly not the case here. As Respondents themselves recognize, this is a "case of first impression," Mot. at 9, which, by definition, could not have come before Your Honor or Your Honor's former colleagues in the past. This matter was brought by individual petitioners asserting their right against unconstitutional racial vote dilution under the New York Constitution. It does not even assert a claim under the NY VRA directly. *See* NYSCEF Doc. No. 1 ("Petition") ¶¶ 96–102. And insofar as Petitioners urge the Court to apply the NY VRA's standards here, the Court must evaluate those standards—and Respondents' constitutional defenses—in light of the specific factual context raised herein; that is, whether the configuration of CD-11 under the 2024 Congressional Map dilutes Black and Latino voting strength, and whether that dilution can be remedied by redrawing CD-11 to combine Staten Island and lower Manhattan.

In the end, Respondents' theory proves far too much. Under their approach, no judge could ever preside over a case involving a statute or rule they once challenged as a litigant in *any* factual setting because, in challenging the statute or rule, the judge (as litigant) would necessarily have had to provide legal advice and analysis regarding the statute or rule. Respondents' theory would mean that such legal advice would constitute the same "matter" as any case in which the statute or rule was invoked, and the judge would be required to recuse. Such a rule is not only unworkable, but runs contrary to the plain text of Judiciary Law § 14.[10] *See Keefe v. Third Nat'l Bank*, 177 N.Y. 305, 312 (1904) ("The statute prohibits a judge from sitting in a case in which he has been attorney or counsel, but does not prohibit him from presiding upon the trial of an action, although

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read as applying only to the case that is before the Court as defined by the docket number attached to that case and the pleadings contained therein.").

[10] It is certainly not the case, for example, that every judge who was once a federal prosecutor and defended the felon-in-possession statute as consistent with the Second Amendment can never preside over a case involving 18 U.S.C. § 922(g) charges.

its general purpose may be similar or the same as in some case where he has acted as attorney or counsel."); *cf. Abrams Fensterman, LLP v. People by James*, No. 453019/2024, 2025 WL 3166466 (Sup. Ct. N.Y. Cnty. Nov. 6, 2025) (in the context of the rule governing a lawyer's obligation to a former client, "the obligation to a former client does not attach 'to all substantive issues on which the lawyer worked'" (quoting Rule 1.11, Comment [4])).

## II. Discretionary recusal is not warranted.

Respondents press two primary arguments that Your Honor's continued involvement in this case risks creating an appearance of impropriety: (1) Your Honor previously represented and worked with Respondents Governor Hochul and Majority Leader Stewart-Cousins in various capacities; and (2) at different points over the last twenty years, Your Honor has had professional and/or social relationships with certain other Respondents. Thus far, Your Honor has not concluded that these relationships (and former relationships) warrant recusal or risk creating an appearance of impartiality. That decision should stand.

### A. Your Honor's previous work for Respondents Governor Hochul and Majority Leader Stewart-Cousins does not support recusal.

Respondents' motion largely focuses on Your Honor's prior work and former role as counsel to Governor Hochul and Majority Leader Stewart-Cousins as a basis for discretionary recusal. But it is well established that judges are not automatically disqualified from a case merely because one of the parties is a former client (or former adversary). *See, e.g.*, Advisory Comm. On Jud. Ethics Op. ("Opinion") 15-51; *Nat'l Auto Brokers Corp. v. Gen. Motors Corp.*, 572 F.2d 953, 958 (2d Cir. 1978) ("The prior representation of a party by a judge or his firm with regard to a matter unrelated to litigation before him does not automatically require recusal."); *People v. Standsblack*, 162 A.D.3d 1523, 1527 (App. Div. 4th Dep't 2018) ("[T]he mere fact that a Judge previously prosecuted a defendant on an unrelated predicate felony does not require recusal.").

New York judges must recuse from cases involving former clients for two years following the end of the representation. *See* Opinion 15-51 ("[A] judge should disqualify him/herself, subject to remittal, where a party before the judge was a client of the judge's law firm on another matter and the representation ended fewer than two years before the appearance date."); *see also* Opinion 17-150 (same); Opinion 15-126 (same). After that two-year period has expired, there is no need for recusal – mandatory or otherwise. Here, Your Honor has not served as counsel to Respondent Majority Leader Stewart-Cousins for nearly twenty years and has not worked for her in any capacity for nearly ten years. *See* Tr. at 6. And Your Honor's role as special counsel to Governor Hochul ended over three years ago, midway through 2022.[11] Under clearly established ethics standards, more than enough time has passed for Your Honor to preside over a case in which Respondents Governor Hochul and Majority Leader Stewart-Cousins have been sued in their official capacities.

Respondents do not identify any concrete reason why Your Honor should depart from the default rule and recuse despite the significant amount of time that has passed since Your Honor represented or worked with Respondents Governor Hochul and Majority Leader Stewart-Cousins. At most, they contend that an appearance of impropriety might arise because they seem to believe this case is similar to those in which Your Honor represented Governor Hochul and Majority Leader Stewart-Cousins. But that is simply incorrect. Your Honor represented Respondent Majority Leader Stewart-Cousins in matters involving the 2004 and 2006 elections for New York Senate District 35. Those cases have nothing in common with this redistricting case beyond generally involving the subjects of voting and elections. Tr. 6:4–7. Those previous engagements

[11] Gronewold, *supra* n.7.

did not even involve the subject of redistricting much less the specific map or congressional district at issue in this litigation.

Your Honor's role as special counsel to Governor Hochul is even further removed. Respondents claim, without citation, that "Your Honor [] served as counsel to Governor Hochul in matters which, like here, related to her official roles as Lieutenant Governor and Governor." Mot. at 9. In reality, however, Your Honor served as special counsel to Governor Hochul in a "transitional role," which does not appear to be related to any substantive election law or redistricting issues. Tr. 6:2–3.[12] And even assuming Respondents are right that the Court once "served as counsel to Governor Hochul in matters . . . related to her official roles as Lieutenant Governor," Mot. at 9, that further underscores why recusal is *not* warranted here. Recusal based on a prior relationship with a party is generally inappropriate when the party is sued in their official capacity only. *Cheney*, 541 U.S. at 916.

Finally, to the extent that Respondents contend that Your Honor should recuse because certain Respondents are Democrats or affiliated with the Democratic Party, they are wrong. As a threshold matter, the Petitioners in this case are New York voters who are invoking their right to live in a congressional district that complies with the New York Constitution's prohibition against racial vote dilution. Petition ¶¶ 15–18. And the remedy Petitioners seek is not a Democratic-leaning district, *contra* Mot. at 9, but rather a district that, consistent with the New York Constitution, offers Black and Latino Staten Islanders an equal opportunity to influence elections and elect their candidate of choice. Petition ¶ 13. Indeed, Petitioners do not ask the Court to "redraw" the map at all (*contra* Mot. at 1); they instead ask the Court to *order the Legislature to* redraw the map to remedy the unconstitutional vote dilution in CD-11. *See* Petition at 28.

[12] Gronewold, *supra* n.7.

"Absent [] a mandatory basis for recusal, the judge himself, subject to his own conscience and discretion, [i]s the sole arbiter of whether to recuse himself." *Rochester Cmty. Individual Prac. Ass'n, Inc. v. Excellus Health Plan, Inc.*, 305 A.D.2d 1007, 1008, 758 N.Y.S.2d 576, 577 (2003). Your Honor is well-versed in legal ethics and made clear before Respondents' motion that Your Honor reviewed the relevant rules and will remain impartial in this case. *See generally* Tr. 8:6–11. Beyond the simple fact that Your Honor has previously represented Democrats in New York,[13] there is no evidence that Your Honor harbors any prejudice toward any party or has prejudged (or even considered) the merits here. *See T.E.G. v. G.T.G.*, 986 N.Y.S.2d 313, 317 (Sup. Ct. Monroe Cnty. May 8, 2014) ("[T]he rules of judicial conduct suggest recusal if the judge has personal knowledge of disputed evidentiary facts concerning the proceeding and prejudges it."). Respondents substitute actual evidence of bias with news reports speculating that such bias might exist. *See* NYSCEF Doc. Nos. 72–73. But these articles are "not evidence of [Your Honor's] behavior or conduct," *In re Disqualification of Skaggs*, 2024-Ohio-6174, ¶ 40, 258 N.E.3d 418, 425, and as Your Honor noted, "there was no one actually quoted in [these] reports calling [Your Honor's impartiality] into question," Tr. 10:17–19. "[A] judge's bias is not presumed from others' dissemination of . . . publicity attacking the judge." 2024-Ohio-6174, ¶ 40 (quoting 8 Federal Procedure, L.Ed., § 20:96 (2024)); *see also, e.g.*, *In re Marshall*, 291 B.R. 855, 860 (C.D. Cal. 2003) ("The characterizations of newspaper articles and journalists are not grounds for recusal."); *In re City of Detroit*, 828 F.2d 1160, 1168 (6th Cir. 1987) ("[A]rticles cited by [a party] do not necessarily mean that the public believes [the] Judge . . . is biased").

[13] Your Honor has not exclusively represented Democrats. As Your Honor stated on the record, you and Mr. Berger "represented both [D]emocrat and [R]epublican candidates in election matters up until . . . 2010." Tr. 8:21-23.

**B. Your Honor's former professional and social relationships with other Respondents do not support recusal.**

Respondents also gesture toward Your Honor's professional and occasionally social interactions with Respondents Stavisky, Kosinski, Berger, and Casale, to support their view that Your Honor's impartiality may be questioned in this case. But the interactions Your Honor disclosed with Respondents Stavisky, Kosinski, and Casale were professional, not social, and mostly date back 20 years or more. *See* Tr. 6–7. Your Honor has already considered these prior relationships and has not determined that they warrant recusal. *See* Tr. 6:16–20. Respondents have provided no authority that would support changing course at this late stage; they unsurprisingly identify no authority suggesting that such fleeting interactions warrant recusal. And the case law supports Your Honor continuing to preside over this case. *See, e.g.*, *Ahmed v. Brucha Mortg. Bankers Corp.*, 208 N.Y.S.3d 485, 2024 WL 1667267, at *6 (Sup. Ct. Kings Cnty. Apr. 16, 2024) ("Generally, where a judge is acquainted with or casually socializes with an attorney in situations that are unplanned or coincidental, without more, neither disclosure nor disqualification is required." (quoting Opinion 11-125)).

The only relationship Your Honor described as social is that with Mr. Berger, with whom Your Honor has dinner once a year and vacationed more than a decade ago. Tr. 8:20–9:1. "In general, a judge is in the best position to assess whether their impartiality might reasonably be questioned in matters involving an attorney the judge knows socially." Opinion 21-06. Your Honor explained that your relationship with Mr. Berger for the last decade has consisted only of annual dinners. Tr. 8:25–9:1. Such "occasional associations" between a party and a decisionmaker do "not warrant disqualification" on the ground of "the appearance of bias or partiality." *Kaygreen Realty Co., LLC v. IG Second Generation Partners, L.P.*, 116 A.D.3d 667, 668, 983 N.Y.S.2d 293,

294 (2014) (discussing standards for disqualification of arbitrators).[14] In addition, recusal is unnecessary because Petitioners have sued Mr. Berger in his official capacity only. *Cheney*, 541 U.S. at 916 ("While friendship is a ground for recusal . . . where the personal fortune or the personal freedom of the friend is at issue, it has traditionally not been a ground for recusal where official action is at issue, no matter how important the official action was to the ambitions or the reputation of the Government officer."). Finally, recusal would also be inappropriate given the baseline presumption that a "judge has an obligation not to recuse himself or herself," *Wilson*, 162 A.D.3d at 1056 (quoting *Trimarco*, 146 A.D.3d at 1008), and the prejudice to Petitioners that would result from recusal at this stage in this expedited proceeding.

The consequences of Respondents' position here—that Your Honor's previous occasional social and professional interactions with some of the state officials who serve as Respondents in this case would require recusal—are simply untenable. As Justice Scalia identified in *Cheney*, countless judges join the bench following—or even *because of*—longstanding employment in or other connections to the government and government officials. *See Cheney*, 541 U.S. at 916; *cf. Anonymous v. Anonymous*, 63 Misc.3d 1219, 2019 WL 1782373, at *4 (Sup. Ct. N.Y. Cnty. Apr. 23, 2019) ("As candidates [judges] are thrust into the political arena, where they are often required to vie for support from elected officials and other politically influential people. Nevertheless, this intersection between judicial and political spheres in no way translates to judges becoming the obedient servants to those who may have played a role in their elections."); *id.* at *4 n.2 (noting

[14] Similarly, in the analogous context of a judge's casual social relationship with a party's attorney or a witness to the proceeding, New York "case law [does not] mandate recusal merely due to a judge's acquaintanceship with [such] attorney or a witness." *Id.* at *2 (citing *Mugas v Mugas*, 210 AD2d 1994 [4th Dept 1994] in which the judge and his wife "met with plaintiff's counsel and counsel's wife *every two or three months*") (emphasis added)); *see also id.* at *4 (A "judge need not disclose that [an] attorney appearing in [the] judge's court attended [the] judge's annual holiday party." (citing Joint Opinion 05-89/05-90)).

the same "holds true in many instances for judges who are appointed rather than elected," because "[a]ppointments are not made in a political vacuum, and those doing the appointing are often politicians themselves or else subject to lobbying from politicians"). "A rule that required [judges] to remove themselves from cases in which the official actions of" political associates or friends "were at issue would be utterly disabling." *Cheney*, 541 U.S. at 916.

## CONCLUSION

For the foregoing reasons, the Court should deny Respondents' Motion for Recusal, Doc. 74, and preside over this case as scheduled.

Dated: December 8, 2025

Respectfully submitted,

**EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP**

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## CERTIFICATIONS

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in Rule 202.8-b(a). This memorandum of law contains 5,465 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*

**Office of the New York State Attorney General**

**Letitia James Attorney General**

**MOTION SEQUENCE 005**

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. State Respondents respectfully submit this letter as their response to the Order to Show Cause (NYSCEF No. 75) setting forth a briefing schedule on the motion for recusal filed by Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("SBOE"), Anthony J. Casale, in his official capacity as a Commissioner of the SBOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the SBOE (collectively, "Movants") (NYSCEF Nos. 65-74).

State Respondents take no position with respect to Movant's motion for recusal.

The undersigned certifies that no generative artificial intelligence program was used in the creation of this document.

Respectfully submitted,

/s/ *Seth J. Farber*
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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. 005

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL**

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35307300

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## State Cases



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## PRELIMINARY STATEMENT[1]

Respondents respectfully submit this reply memorandum of law in further support of their motion for recusal.

Petitioners—the only parties opposing recusal—fail to credibly explain how Your Honor's myriad relationships with *six of ten* respondents do not give rise to reasonable questions regarding impartiality. Their position willfully ignores the reality that Your Honor recently served as a top advisor and legal counsel to the very state leaders whose actions are being challenged in this case.

Compounding these concerns, the partisan connections here place the appearance of impartiality and perceptions of the Court's integrity squarely at risk. Your Honor has deep political connections with high-ranking Democratic officials, including as counsel to former Lt. Governor and now Governor Kathy Hochul and to Senate Majority Leader Andrea Stewart-Cousins. In this case, Your Honor must decide whether to invalidate the long-standing configuration of CD-11 on Staten Island in favor of one that, through tortured logic and partisan machinations, imports Democratic precincts from lower Manhattan to artificially generate a toss-up district. Since the public undoubtedly will view the outcome of this litigation through the prism of Your Honor's connections to the high-ranking Democratic officials, the best practice here is for this case to be decided by a judge without those connections.[2]

Finally, Petitioners' claim that this motion is untimely is as desperate as it is disingenuous. Respondents filed this motion *less than* three weeks after Your Honor made the disclosures.

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[1] All terms used but not defined herein shall have the meaning ascribed in Respondents Memorandum of Law in Support of Recusal (NYSCEF Doc. No. 74) ("Respondents' Mem.").

[2] To be clear, Respondents neither contend nor suggest that a judge's political affiliation alone is a basis for recusal in any case, including an election case. Rather, it is the decades-long relationships with partisan politicians directly involved in this partisan redistricting litigation that will, fairly or unfairly, taint the Court's decisions in this litigation and irrevocably impair the public's confidence in the judiciary.

Respondents did so before any determinations have been made in this litigation, thereby protecting the outcome of the litigation from claims of partiality. Petitioners have identified no cognizable prejudice, nor can they since this proceeding enjoys a preference and its record has not been fully developed. Any incoming judge will step in Your Honor's shoes and decide the case in accordance with the expedited schedule.

Accordingly, as discussed below, Your Honor should recuse and direct that this case be immediately reassigned to another Justice of the Supreme Court.

## ARGUMENT

### I. Recusal is required based on the mere appearance of partiality.

Petitioners do not contest the governing premise of Respondents' motion: New York law *requires* recusal where a judge's "impartiality might reasonably be questioned" (22 NYCRR 100.3 [E] [1]). Instead, Petitioners incredibly attempt to minimize the cumulative weight, recency, and subject-matter of Your Honor's own, extensive disclosures.

As detailed in Respondents' moving papers, Your Honor disclosed substantial, multi-faceted relationships with *six of the ten* individual Respondents, including serving as a top aide and counsel to Governor Hochul and Senate Majority Leader Stewart-Cousins, professional relationships with other parties, and a "close social relationship" with Commissioner Berger, which Your Honor noted was of the "most concern."[3] Petitioners' opposition neither disputes those facts nor offers an objective account of why their aggregation does not, at minimum, cross the "might reasonably be questioned" line.

It is obvious why these facts would lead an objective observer to reasonably question Your Honor's impartiality. Your Honor's recent, high-ranking service to two central parties (the

[3] Ex. A (Transcript) at 8.

Governor and the Senate Majority Leader, who happen to have enacted the statute at issue here), additional professional and legal ties to multiple other respondents, and Your Honor's acknowledged "close social relationship" with Commissioner Berger—including family trips and annual dinners—collectively present a concentration of connections that naturally prompts objective doubt about neutrality. That doubt is exacerbated here because these connections are present in a partisan redistricting case that will be decided on the law or through a nonjury trial where Your Honor is the sole arbiter of facts and law.[4]

The appearance inquiry necessarily asks what a reasonable member of the public would think, not how finely Petitioners' counsel can isolate each relationship, as they attempt to do here. Viewed holistically and in context—a political redistricting dispute effectively supported by the precise partisans Your Honor previously represented in a political capacity[5]—these undisputed relationships more than suffice to make a reasonable person question Your Honor's impartiality.

New York's authorities confirm this common-sense conclusion. The Court of Appeals has emphasized that our rules not only "purge actual bias" but also the mere "*possibility of bias*," and that courts safeguard the appearance of impartiality to promote public confidence in the courts (*People v Novak*, 30 NY3d 222, 226 [2017] [emphasis added]).

Most recently, in *Wallach v Rothschild*, the Second Department reversed the denial of a recusal motion where, even absent a finding of abuse of discretion, much less the direct

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[4] Respondents' Memorandum of Law in Opposition to the Petition and in Support of Motion to Dismiss (NYSCEF Doc. No. 122) at 12-26 (explaining why the Petition should be dismissed as a matter of law and without a trial).

[5] Tellingly, counsel to Governor Hochul and Senate Majority Leader and President *Pro Tempore* of the New York State Senate, Andrea Stewart-Cousins, through their counsel, the Attorney General of the State of New York (all Democrats) have essentially abdicated their duty to defend the constitutionality of an enacted statute by "tak[ing] no position" on Petitioners' constitutional challenge to New York's congressional district map, Senate Bill S8653A, codified at New York State Law §§ 110-112 (NYSCEF Doc. No. 95).

relationships present here, the judge's *law clerk* was married to a named partner at a firm appearing in the case. The court concluded that "it would have been 'better practice' for the trial judge to recuse herself 'in a special effort to maintain the appearance of impartiality'" (*Wallach v Rothschild*, 241 AD3d 600, 601 [2d Dept 2025], quoting *Matter of Indep. Party State Comm. of State of New York v Berman*, 20 AD3d 423, 424 [2d Dept 2005] ["*Berman*"]).

*Wallach* illustrates the core principle that the mere "appearance" of potential bias requires recusal to preserve public confidence. Under the same rationale, the appearance created by Your Honor's own recent, high-level service to Governor Hochul and Majority Leader Stewart-Cousins, multiple additional professional ties to other respondents, and an acknowledged "close social relationship" with Commissioner Berger confirms that the better practice is recusal and preservation of the appearance of impartiality and the public's perception of the judiciary's integrity. Petitioners' opposition simply does not refute that recusal is the better practice.

The Second Department's decision in *Berman* further underscores why recusal is warranted here. In that case, an Election Law article 16 dispute, the Appellate Division reversed and granted recusal—not because of any mandatory ground or explicit finding of abuse of discretion—but simply because the "better practice" of recusal required it where the judge's *former* law clerk publicly lauded a representative of one faction at her judicial induction (*Berman*, 20 AD3d at 425). The court concluded those public remarks called the judge's impartiality into question and that the trial court "improperly declined to recuse."

The parallels here are even more compelling. This is also a politically charged and partisan election law proceeding, but instead of a concern arising from a *former* clerk's public remarks, the concern arises from Your Honor's *own* recent, deep and high-ranking political and legal ties to two principal respondents—the Governor and the Senate Majority Leader. Simply put, since *Berman*

required recusal to safeguard appearances on materially less direct connections, the appearance of partiality to an objective observer is far more evident here.

Moreover, the appearance of partiality analysis is reinforced by the fact that Governor Hochul and Senate Majority Leader Stewart-Cousins "take no position" in this litigation seeking to invalidate their own enactment and compel them to adopt Petitioners' preferred map. As elected officials, the Governor and Majority Leader exercise discretion over legislative matters. They certainly did so in enacting the challenged maps and, presumably, did not enact the maps under a belief that they were unconstitutional. Nevertheless, before your Court, Your Honor's former clients shockingly "take no position" as to the legitimacy of their exercise of legislative discretion.[6] While this is inexplicable on its own, in the context of Your Honor's prior relationships and representations of the Governor and Senate Majority Leader, their unwillingness to defend their own official acts signals to Your Honor that they do not oppose this Court striking those acts in service of their publicly professed partisan ends. Under these extraordinary circumstances, where Your Honor's prior clients are unwilling to defend their own official acts, it blinks at reality to suggest that Your Honor's impartiality would not be reasonably questioned.

## II. Your Honor's representation of Governor Hochul at the enactment of the NYVRA is disqualifying

Respondents' motion also argues that recusal is required because Your Honor represented Governor Hochul at the time she signed the NYVRA into law. This is disqualifying on two grounds: *first*, it adds to the litany of reasons why Your Honor's impartiality might reasonably be questioned by an objective observer; and, *second*, if Your Honor or another attorney in the

[6] This position is particularly questionable given their counsel's admission that the NYVRA—the central premise of Petitioners' lawsuit—is "wholly inapplicable to apportionment challenges brought against Congressional . . . Districts" (Dkt. 95 at 2).

Governor's office advised the Governor on the constitutionality of the NYVRA at the time it was enacted, then, as Petitioners concede,[7] recusal is mandatory (*see* Judiciary Law § 14; 22 NYCRR 100.3 [E] [1] [b]).

Petitioners' contention that these are mere "hypotheticals" ignores the statutory duties of the Governor's counsel. Under Executive Law § 4, it "*shall* be the duty" of the Governor's counsel "to advise the governor in regard to the *constitutionality*, *consistency and legal effect of bills* presented to the governor" (Executive Law § 4 [emphasis added]). Given this duty, it is far from speculative to assume that Governor Hochul's counsel advised her on the NYVRA's "constitutionality, consistency, and legal effect" (*id.*). In fact, the law "*presumes* that no official or person acting under an oath of office will do anything contrary to his official duty, or omit anything which his official duty requires to be done" (*People v Dominique*, 90 NY2d 880, 881 [1997] [emphasis added]).

Of course, under the unique circumstances of this recusal issue, only Your Honor, the Governor, and her other counsel know the extent to which the Governor was counseled on the NYVRA. Significantly, however, the Governor had an opportunity to dispute this fact and elected not to, taking no position on this motion.[8]

Petitioners' cramped construction of the term "matter" as encompassing only "a concrete legal dispute" cannot be squared with the text of Judiciary Law § 14 and the plain meaning of the term.[9] The Legislature included "action, claim, matter, motion or proceeding" as distinct grounds, not synonyms. Petitioners' contention that the other terms limit the meaning of "matter" to a "real

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[7] Petitioners' Opposition to Respondents' Motion To Recuse (NYSCEF Doc. No. 94) ("Petitioners' Mem.") at 7.
[8] Letter to the Court from the Office of the Attorney General, dated December 8, 2025 (NYSCEF Doc. No. 96).
[9] Petitioner's Mem. at 8.

and present dispute" runs contrary to settled canons of construction.[10] In construing a statute, the "starting point must be the text" and courts should "give to the language used its ordinary meaning" (*Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [internal citation and punctuation omitted]). "[A]ll parts of a statute are intended to be given effect and a statutory construction which renders one part meaningless should be avoided" (*Anonymous v Molik*, 32 NY3d 30, 37 [2018] [internal citation and punctuation omitted]). To construe "matter" as coextensive with "action, "motion or proceeding," as Petitioners suggest, would impermissibly render the term as surplusage.

Petitioners' reliance on *Certain Underwriters at Lloyd's, London v Forty Seventh Fifth Co. LLC* (75 Misc 3d 1232(A) [Sup Ct, NY County 2022]) is misplaced. There, the court applied "the rule of contract construction *ejusdem generis*" which provides that when specific and general words are combined in a series, the scope of the general terms is limited by the specific terms. In *Certain Underwriters*, the court held that a contract provision referring generally to "customers and/or persons" did not refer to "*any* persons or companies," but rather, the specific categories of "customers" and "persons" identified in the provision (*id.* at *2 [emphasis in original]). By contrast here, Judiciary Law § 14 does not contain a general term followed or preceded by specific examples. None of "action, claim, matter, motion or proceeding" is a general term—each has its own specific meaning, without reference to the other.

Contrary to Petitioners' argument,[11] this interpretation is supported by the NY Rules of Professional Conduct, which define "matter" broadly. A "matter" includes "any litigation, judicial or administrative proceeding, case, [or] claim," but also any "request for a . . . determination, contract, . . . or *any other representation involving a specific party or parties*" (Rule 1.0 [l]

[10] *Id.* at 8.
[11] Petitioners' Mem. at 9.

[emphasis added]). Petitioners' attempt to shrink the definition's catch-all clause as not including a "legal opinion" to a client is surprising. It would contravene the clear rule that an attorney may not provide legal advice to a client and then represent a party adverse to the client on a related matter (*see* Rule 1.9 [a] ["A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client . . . ."]). According to Petitioners, however, "matter" must be construed in a manner that would permit such an adverse representation, because the prior "legal opinion" would not constitute a "matter." Petitioners' contorted interpretation violates both the letter and spirit of the Judiciary Law and the Rules of Professional Conduct.

Petitioners also mistakenly suggest that this means "no judge could ever preside over a case involving a statute or rule they once challenged as a litigant."[12] That is not the situation presented here. The rules do not disqualify a judge because, at some point in prior life, the judge held views about—or even litigated over—the legality of a statute. They disqualify only where the judge "has been attorney or counsel"[13] in a "matter" (Judiciary Law § 14; *see also* 22 NYCRR 100.3 [E] [1] [b]). That language targets a judge's prior client-specific legal representation on the very subject now before the court, not the mere fact of having litigated about the same statute in a different case, for a different client, at a different time. The key distinction is that Your Honor's

[12] Petitioners' Mem. at 10.

[13] Significantly, "counsel" is defined as "[a]n attorney retained merely to give advice on a particular matter, as distinguished from one (such as trial counsel) actively participating in a case" (COUNSEL, Black's Law Dictionary [12th ed. 2024]). The statute's use of "counsel" in addition to "attorney" further reflects its intent to encompass matters in which an attorney provides a "legal opinion" (*see* Petitioners' Mem. at 9).

prior representation was not of a litigant challenging a statute or rule, but counseling a client who signed a statute into law.

In sum, Petitioners' construction of "matter" is textually incorrect and practically unworkable. The Judiciary Law, the Rules of Judicial Conduct, and the Rules of Professional Conduct all recognize that lawyers serve clients in matters outside of "a concrete legal dispute,"[14] and those representations can require judicial recusal when the same subject later returns to court. Because New York law mandates that governors' counsel advise on the constitutionality and legal effect of bills presented for approval, it is reasonable—and indeed expected—that counsel advised Governor Hochul regarding the NYVRA during enactment. If Your Honor provided that advice, or worked with a counsel who did, recusal is required (Judiciary Law § 14; 22 NYCRR 100.3 [E] [1] [b]).

## III. Respondents timely filed this motion

Petitioners complain about a purported delay in filing this motion but neither 22 NYCRR 100.3 nor Judiciary Law § 17 impose any time limitation on seeking recusal. For that reason, Petitioners were unable to cite any authority holding that a recusal motion may be denied as untimely when made less than three weeks after a judge's disclosures.

More importantly, Respondents expeditiously filed this motion before the Court made *any* determinations, let alone substantive determinations, in this litigation (*but see Glatzer v Bear, Stearns & Co., Inc.*, 95 AD3d 707, 707 [1st Dept 2012] ["[W]here, as here, a party inexplicably withholds an allegation of bias *until after the court adversely rules against it*, denial of the recusal motion is generally warranted . . . ."] [emphasis added]).

[14] Petitioner's Mem. at 8.

In doing so, Respondents have preserved the integrity of this proceeding and ensured that the Court's determinations, whether made by Your Honor or a newly assigned judge, are untainted by questions of partiality.

Petitioners' claim of supposed prejudice fares no better. If Your Honor recuses now, the incoming judge will be in the same judicial position as Your Honor—presiding over a litigation with a preference and for which there will not be a fully-briefed record until December 23, 2025. Therefore, there should be no delay attributable to the transition of the proceeding to a new judge.

## CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant their motion for recusal, direct that this case be assigned to another Justice of the Supreme Court, and grant such other and further relief as this Court deems just and equitable.

Dated: December 10, 2025
Albany, New York

CULLEN AND DYKMAN LLP

By: */s/ Nicholas J. Faso*

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**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies pursuant to Section 202.8-b of the Uniform Rules for the Supreme Court and the County Court that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 2,965 words, based on the calculation made by the word-processing system used to prepare this document.

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

Dated: December 10, 2025
Albany, New York

/s/ *Nicholas J. Faso*

ELIAS LAW GROUP

250 Massachusetts Ave NW, Suite 400 | Washington, DC 20001

December 10, 2025

**VIA 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:

Intervenor-Respondents filed a Response in Support of Respondents' Motion for Recusal, NYSCEF Doc. No. 92, after the close of business on December 8, which was the same day Petitioners' opposition to the Motion for Recusal was due. This belated filing left Petitioners with no opportunity to respond to Intervenors' arguments in their principal opposition.

Petitioners therefore respectfully seek leave to file the enclosed Proposed Response to Intervenor-Respondents' Response in Support of Respondents' Motion for Recusal.

Respectfully submitted,

ARIA C. BRANCH
*Counsel for Petitioners*

ANDREW G. CELLI, JR.
*Counsel for Petitioners*

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

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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

**[PROPOSED] Response to Intervenor-Respondents' Response in Support of Respondents' Motion for Recusal**

*[Signature block on the following page]*

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## PRELIMINARY STATEMENT

Petitioners respectfully submit this proposed response to address new arguments raised in Intervenor-Respondents' Response in Support of Respondents Kosinski, Casale, and Rileys' Motion for Recusal (the "Motion"). Intervenors' belated response was filed after the close of business on the day Petitioners' opposition to the Motion was due, which left Petitioners with no opportunity to respond to Intervenors' arguments before their own deadline.

Intervenors' response does not move the needle in favor of recusal. Intervenors *first* invoke certain statements Governor Hochul has made to the press about redistricting generally—but these statements have nothing to do with *this* case, where the Governor's office has expressly declined to take any position on whether the current configuration of Congressional District 11 violates state law. They next try to draw a line between this case and the version of CD-11 invalidated during the *Harkenrider* litigation. But that comparison comes up short, as well, for the expert analysis Petitioners put forward in this case was not before the legislature in 2022, and the illustrative map Petitioners offer does not remotely resemble the map the *Harkenrider* court invalidated. And *third*, Intervenors try to compare this case to other redistricting cases involving discretionary recusals. But, for the most part, they do not offer any evidence about the relationships that prompted these judges to recuse themselves, so there is simply nothing from which this Court can derive any guidance.

In sum, Intervenors' response fails to offer a persuasive reason for Your Honor to recuse from this case.

## ARGUMENT

Intervenors do not specifically argue that mandatory recusal is required under Judiciary Law § 14 (or otherwise), instead focusing on discretionary recusal under 22 NYCRR § 100.3[E][1]. As Petitioners explained in their principal opposition, a "judge has an obligation

not to recuse himself or herself . . . unless he or she is satisfied that he or she is unable to serve with complete impartiality, in fact or appearance." NYSCEF Doc. No. 94 at 6 (quoting *Wilson v. Brown*, 162 A.D.3d 1054, 1056, 80 N.Y.S.3d 343, 344 (2018)). Intervenors advance three additional grounds for recusal on top of those advanced by Respondents: (1) Governor Hochul has made public statements about mid-decade redistricting; (2) the map the legislature adopted in 2022 also made changes to CD-11; and (3) other judges have recused themselves from other redistricting cases for largely unknown reasons. None of these arguments justifies recusal.

***First,*** Governor Hochul's public statements about mid-decade redistricting in New York and elsewhere have no bearing on Your Honor, or Your Honor's ability to fairly preside over this case. For the reasons Petitioners explain in their principal brief (at 11–14), Your Honor's prior representation of Governor Hochul and Majority Leader Stewart-Cousins are sufficiently far back in time, and too far removed from the subject of this lawsuit, for a reasonable person to question whether Your Honor would be partial toward their purported views. The political commentary Intervenors rely upon does not change that fact; it was entirely divorced from *this case*, which alleges unlawful dilution of Black and Latino voting power in Congressional District 11, and in which the Governor appears in her official capacity only. *Cf. Clarke v. Wis. Elections Comm'n*, 2023 WI 66, ¶ 80–86, 409 Wis. 2d 249, 288–90, 995 N.W.2d 735, 754–55 (2023); *id.* at 2023 WI at ¶ 60–61, 409 Wis. 2d at 279, 995 N.W.2d at 749–750 (denying motion to recuse in redistricting case based on judge's statements during campaign expressing personal view that legislative maps were "gerrymandered," "rigged," and "unfair," because judge offered "repeated assurances that [she] would follow the law where it leads [her]").

Moreover, the Governor, in her official capacity, has declined to take a position on the merits of this case. Intervenors' concerns that Governor Hochul's statements might generate an

appearance of impropriety thus fall particularly flat. To wit, in her letter brief filed on December 8, 2025, Respondents Governor Hochul, Majority Leader Stewart-Cousins, and others made clear they "take no position on the specific claims raised by Petitioners." NYSCEF Doc. No. 95 at 1. More specifically, they "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," or "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." *Id.* at 2, 3 n.2.

***Second,*** Intervenors layer additional speculation about Your Honor's role as special counsel on top of that put forth by Respondents. Intervenors contend that Governor Hochul and Majority Leader Stewart-Cousins "have targeted Representative Malliotakis' district" in the past, and "in just the manner Petitioners seek to repeat through this lawsuit," while Your Honor "apparently served as Special Counsel to Respondent Governor Hochul." NYSCEF Doc. No. 92 at 3–5. But as Petitioners explained in their principal brief (at 7 & n.7) there is no evidence—or any reason to believe—that Your Honor's "transitional" role for Governor Hochul following her ascension to the governorship involved advising on substantive election law matters.

Intervenors are also wrong that this lawsuit "target[s]" CD-11 "in just the manner" Intervenors allege it was targeted in 2022. Again, Petitioners allege that Black and Latino New Yorkers in CD-11 are unconstitutionally deprived of an equal opportunity to influence elections and elect their candidates of choice. As the State Respondents point out in their letter brief, the legislature "did not have the evidence now submitted by Petitioners' experts . . . at the time the current Congressional District maps, including CD-11, were enacted," and it is not at all clear how "members of the State Senate and State Assembly . . . would have responded had such evidence

been provided prior to the time of enactment." NYSCEF Doc. No. 95 at 3 n.2. Moreover, the version of CD-11 the legislature adopted in 2022 does not remotely resemble the illustrative map Petitioners present here, which joins Staten Island with a compact portion of southern Manhattan. *See* NYSCEF Doc. No. 63 at 31–32; *contra* Intervenors' Resp. Supp. Resp't Mot. Recusal, Ex. D at 2. (explaining that, in the legislature's 2022 map, CD-11 "snake[d] along the northwest Brooklyn waterfront to take in the heavily liberal Democratic areas of Sunset Park and Park Slope").

***Third***, Intervenors point to other judges' decisions to recuse themselves from other recent redistricting cases, including *Clarke v. Town of Newburgh*, Index No. EF002460-2024 (Orange Cnty.), *Hoffmann v. New York State Independent Redistricting Commission*, APL2023-00121 (N.Y.), and *New York Communities for Changes v. County of Nassau*, Index No. 602316/2024 (Nassau Cnty.). None of these orders should have any bearing on Your Honor's decision here. For the most part, these decisions do not contain any detail about the relationships that prompted the judges in these matters to recuse themselves. *See* NYSCEF Doc. Nos. 92 at 3–4, 88–89, 91. It is thus unclear how those relationships compare to Your Honor's past employment with Governor Hochul and Majority Leader Stewart-Cousins or prior relationships with other Respondents.

Ultimately, recusal is "subject to [the judge's] own conscience and discretion." *Rochester Cmty. Individual Prac. Ass'n, Inc. v. Excellus Health Plan, Inc.*, 305 A.D.2d 1007, 1008, 758 N.Y.S.2d 576, 577 (2003). But it is only warranted when the judge is "satisfied that he . . . is unable to serve with complete impartiality, in fact or appearance." *Trimarco v. Data Treasury Corp.*, 146 A.D.3d 1004, 1008, 46 N.Y.S.3d 134, 139 (2017) (citation modified). Your Honor has made clear that the Court will judge this case on an impartial basis, and Intervenors do not provide any credible

reason to believe that is not possible or that Your Honor continuing to preside over this case creates an appearance of partiality.

## CONCLUSION

For the foregoing reasons and the reasons set forth in Petitioners' principal opposition, Doc. 94, the Court should deny Respondents' Motion for Recusal, Doc. 74, and preside over this case as scheduled.

Dated: December 10, 2025

Respectfully submitted,

**EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP**

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**Admitted pro hac vice*

## CERTIFICATIONS

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in Rule 202.8-b(a). This memorandum of law contains 1,335 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*

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

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

***Justice***

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

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** 11/26/2025

**MOTION SEQ. NO.** 005

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 005) 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for REFER TO ANOTHER JUDGE.

On November 26, 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, in his official capacity as Co-Executive Director of the BOE (collectively, "Respondents"), filed an Order to Show Cause requesting that this case be referred to another judge, pursuant to section 100.3 of the Rules Governing Judicial Conduct and Judiciary Law §§ 14 and 17. *NYSCEF Doc. No. 65*. Under 22 NYCRR § 100.3, a "judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities" and "shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." Under 22 NYCRR §§ 100.3 (E)(1)(a)(i), (b), "a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned" including where "the judge has a personal bias or

prejudice concerning a party" and where "the judge knows that: (i) the judge served as a lawyer in the matter in controversy; or (ii) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter." Under Judiciary Law § 14, "[a] judge shall not sit as such in, or take any part in the decision of, an action, claim, matter, motion or proceeding to which he is a party, or in which he has been attorney or counsel, or in which he is interested." Under Judiciary Law § 17, "[a] judge or surrogate or former judge or surrogate shall not act as attorney or counsellor in any action, claim, matter, motion or proceeding, which has been before him in his official character." At the same time, "a "judge has an affirmative duty not to recuse himself but to preside over a case." *Loreto v. Wells Fargo Bank, N.A.*, 107 N.Y.S.3d 810 (Sup. Ct. Monroe Cnty. Sep. 27, 2016).

The New York State Advisory Committee on Judicial Ethics Opinion 11-125 states that "the presiding judge is ordinarily in the best position to assess whether his/her impartiality might reasonably be questioned when an attorney whom the judge knows socially, with whom the judge is acquainted, or whom the judge considers a friend appears before him/her," but provides guidance as to how judges should navigate different relationships with those who may appear before them in a case. The Committee delineates three types of relationships, acquaintances, close social relationships, and close personal relationships, along with ethical obligations that come with each relationship. *Id.* A person is an acquaintance when "interactions outside court result from happenstance or some coincidental circumstance such as being members of the same profession, religion, civic or professional organization, etc." or when "situations that initially may appear to be personal or close but are in fact instances of ordinary social hospitality." *Id.* When an acquaintance appears in front of a judge, "neither disqualification nor disclosure is required." *Id.* A close social relationship, which must be disclosed "even if the judge believes

he/she can be fair and impartial" include more intimate social connections that do not rise to closer levels of friendship. *Id.* The Committee provides the following example: "an attorney worked for several years in the judge's law firm while the attorney attended high school and college; worked for one year after graduating law school at a firm where the judge was a partner; subsequently maintained his/her own law practice in office space shared with the same law firm for two years; and for the last several years has maintained a personal relationship with the judge, during which time the judge's children were members of the attorney's wedding party; the judge, the attorney, and their spouses have dined together once a year; and the judge's children cared for the attorney's children, the judge and the attorney have a close social relationship." *Id.* Finally, a close personal relationship, which compels recusal, is "is one where the judge and the attorney share intimate aspects of their personal lives" such as regular socialization or vacations, celebrating birthdays or holidays together, and confiding in one another. *Id.*

Judicial Ethics Opinion 08-133 states that a judge may preside over a case in which a former client is a party, so long as more than two years have passed since the representation ended, the judge was not involved in the case being litigated before them, and the judge "believes that he/she can be impartial, but only after disclosing the former attorney-client relationship, and in the absence of a meritorious objection." Judicial Ethics Opinion 01-71 provides factors for evaluating the merits of an objection, "the amount of time elapsed since the last representation, the nature and duration of the representation, the nature of the instant proceeding, and whether there are any special circumstances creating a likely appearance of impropriety."

At a hearing on November 7, 2025, in accordance with the ethics rules described above, the undersigned disclosed a series of professional connections that the undersigned had with

Respondents during his thirty-year career in Albany, as well as one close social relationship. These disclosures were made specifically for the purpose of making clear that the undersigned had not represented any party in the last two years and that no relationship between a party and the undersigned would interfere with the impartial adjudication of this action. Respondents later filed this recusal motion.[1]

Addressing the substance of the motion, the undersigned is not compelled to recuse on either statutory or discretionary grounds. Recusal is mandatory where a judge has worked on case or controversy at issue or where "a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter." Judiciary Law §§ 14, 17; 22 NYCRR §§ 100.3(E)(1)(b). Here, neither standard is met. The undersigned never advised Respondent Governor Hochul, nor any other party on any issue being litigated in this case and the two-year period demanding recusal has passed, including several cases in which a decade or multiple decades has elapsed. It is also important to note that while Respondents assert that Respondent Governor Hochul appointed the undersigned as Director of the Authorities Budget Office, this is not the case. The undersigned was serving in that capacity in 2021 when former Governor Cuomo resigned. The undersigned was asked to take leave from that position to serve as Special Counsel in Respondent Governor Hochul's gubernatorial transition; in 2022, the undersigned merely returned to the Authorities Budget Office in an acting capacity until departing the agency to become a judge. Respondent Governor Hochul never officially appointed the undersigned to the Director position.

[1] While Respondents counsel indicated that a motion for recusal would be made expeditiously given the time-sensitive nature of this matter, this motion was filed on November 26, 2025, at 4:34 pm, less than an hour before close of business on the evening before the Thanksgiving holiday. This prevented the motion from being processed until Monday, December 1, 2025, nearly a month after the first hearing in this matter.

Additionally, that the undersigned worked in the Executive Chamber at the time of the passage of the bill at issue cannot be reasonably construed as serving with an attorney who worked on the matter at issue under NYCRR §§ 100.3(E)(1)(b) for three reasons. First, the passage of the New York John R. Lewis Voting Rights Act is not at issue in this case, a particular application of the law is. Second, it is a mistake to assert that because an attorney has engaged with a law in any capacity, that, should the attorney become a judge, they should never be able to adjudicate a claim involving said law. *See Keeffe v. Third Nat'l Bank*, 177 N.Y. 305, 312 (1904). Third, the notion that serving as counsel in the Executive Chamber should bar a judge from *all* issues that were worked on during their service would have far-reaching implications. As stated on the record, hundreds of bills cross a governor's desk each year, the vast majority of which may never have been seen by a given member of that governor's legal team. While there are, of course, occasions where recusal is appropriate, to treat Executive Chamber employment as a bar to adjudication due to mere association is untenably sweeping. Further, the undersigned, while previously connected to several Respondents, these relationships have no bearing on the undersigned's approach to this matter, satisfying the requirements of 22 NYCRR §§ 100.3.

Discretionary recusal is also unnecessary. While a close personal relationship demands recusal according to Judicial Ethics Opinion 11-125, no relationship between the undersigned and any party in this case rises to that level, as explained on the record in the November 7, 2025 and December 11, 2025 hearings.

It is also important to make note of the fact that Article III, § 5 of the New York State Constitution requires the judiciary to decide matters related to redistricting expediently. *See Harkenrider v. Hochul,* 38 N.Y.3d 494 (2022). In addition to the undersigned's belief that

recusal is unnecessary on the merits, the Court's affirmative duty to preside over the case, its constitutional obligation to hear this case expeditiously, and the undersigned's role as election judge for New York County collectively lead the Court to believe that when balancing its various responsibilities, holding this case is the proper course of action. *Loreto v. Wells Fargo Bank, N.A.*, 107 N.Y.S.3d 810 (Sup. Ct. Monroe Cnty. Sep. 27, 2016)

Based on the reasoning above, it is hereby **ORDERED** that Respondent's motion is denied.

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

12/15/2025
DATE

JEFFREY H. PEARLMAN, J.S.C.

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