Nos. 25A914 and 25A915

In the Supreme Court of the United States

NICOLE MALLIOTAKIS, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

PETER S. KOSINSKI, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPLICANTS

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

In the Supreme Court of the United States

No. 25A914

NICOLE MALLIOTAKIS, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

No. 25A915

PETER S. KOSINSKI, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF APPLICANTS

INTEREST OF THE UNITED STATES

The Solicitor General, on behalf of the United States, respectfully submits this brief as amicus curiae in support of the applications for a stay of the January 21, 2026, order of the Supreme Court of the State of New York for New York County. Applying an expressly race-predominant test, the New York court enjoined state officials from holding elections for New York's existing 11th Congressional District and directed the State to draw a new "crossover" district that would be more likely to favor a candidate preferred by black and Latino voters, even though those racial minorities will still comprise a numerical minority of the new district's voters. That new district will necessarily be an unconstitutional racial gerrymander, and the United States has a strong interest in protecting its citizens from racial discrimination in voting.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case does not present the thorny questions about the relationship between partisan and racial gerrymandering that have been raised in recent emergency applications, as States race to redraw their electoral maps before the 2026 midterms. See *Abbott* v. *League of United Latin American Citizens*, 146 S. Ct. 418 (2025); *Tangipa* v. *Newsom*, No. 25A839, 2026 WL 291659 (Feb. 4, 2026). Instead, the New York trial court here ordered an open and unabashed racial gerrymander, directing the State to replace a district where the candidate backed by white voters usually wins with one where the candidate backed by black and Latino voters usually wins—notwithstanding that those racial minorities will remain a numerical minority and that there is no race-neutral reason to manufacture a district where their preferred candidate nevertheless prevails. Such race-based government action, particularly with regards to voting, is "odious" to our democracy, *Shaw* v. *Reno*, 509 U.S. 630, 643 (1993), and warrants this Court's immediate intervention to ensure a constitutional congressional election.

The trial court ordered New York to create a "crossover" district—*i.e.*, a district in which racial minorities can usually elect their candidate of choice with the help of some majority-group voters who also support the minority-preferred candidate. See *Bartlett* v. *Strickland*, 556 U.S. 1, 6 (2009) (plurality opinion). As a plurality of this Court has warned, mandating crossover districts raises "serious constitutional concerns under the Equal Protection Clause." *Id.* at 21. In a democracy, candidates preferred by a minority of voters usually lose. So when a court mandates districts in which those candidates usually win, that gives the minority voters "an electoral advantage" at the expense of the majority. *Id.* at 20. And when the advantage is conferred on the minority *because of* its race, race predominates over traditional redis-

tricting criteria, triggering the "extraordinarily onerous" demands of strict scrutiny. *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 11 (2024).

This case offers an especially egregious illustration of the pathologies of mandatory crossover districts. The trial court acknowledged that black and Latino voters in New York's 11th Congressional District (CD11)—which covers Staten Island and part of Brooklyn—have achieved remarkable success, with their preferred candidates winning 25% of federal, state, and local elections in the district, even though they are only 28.5% of the population and even less of the eligible voters. See 1/21/2026 N.Y. Trial Ct. Op. (Op.) 4, 9. But according to the court, that success was "insufficient" under New York law, which the court read to incorporate a watered-down version of the federal standard for proving racial vote dilution articulated in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Op. 7, 12.

Under that standard, the court found a state-law violation based on the existence of racially polarized voting and a grab-bag of social and historical factors like a literacy test in the 1920s, racial gaps in higher education, and a fake Facebook page that allegedly played off racial stereotypes to criticize a local official. Op. 9-12; see Trial Ct. Doc. 61 ¶ 99 (Nov. 17, 2025).* The court accordingly ordered New York to add additional black and Latino voters to CD11 to ensure that, even though they will not be a numerical majority, they will be "decisive" in the Democratic primary and that the minority-preferred Democratic candidate will "usually" win the general election. Op. 15. In both purpose and effect, that order gives minorities a race-based "electoral advantage." *Bartlett*, 556 U.S. at 20 (plurality opinion). Despite still constituting a minority of CD11, black and Latino voters will see their preferred candi-

---

* State-court filings are available via the New York State Courts Electronic Filing system at https://iapps.courts.state.ny.us/nyscef/CaseSearch.

date usually win. And despite being in the majority, white voters will see their preferred candidates usually lose.

The result is an unconstitutional racial gerrymander—and an obvious one under settled precedent, without needing to reach any of the questions about the constitutional implications of *Gingles* that are currently pending in *Louisiana* v. *Callais*, No. 24-109 (argued Oct. 15, 2025). Race will clearly be "the overriding reason for choosing" the new district such that traditional redistricting criteria will be subordinated to race. *Cooper* v. *Harris*, 581 U.S. 285, 301 n.3 (2017). Without the trial court's race-based test, there would not be a new district at all. And the court's analysis turned only on ubiquitous racially polarized voting and long-ago voting discrimination or unrelated socioeconomic disparities—not traditional redistricting criteria. The court's order will thus compel New York to adopt a crossover district no matter how badly it would contort the State's race-neutral districting principles.

Worse, the trial court failed to grapple with the obvious constitutional problems with its approach. It did not even deign to respond to applicants' extensive briefing on why the state-law claim was on a collision course with the federal Constitution. And no conceivable compelling governmental interest could possibly justify this order granting racial minorities on Staten Island a race-based electoral advantage over their white neighbors.

This case manifestly warrants this Court's intervention. The trial court's order scrambles New York's congressional map heading into a midterm election year. At present, New York has *no* operative congressional map. And any remedial district that might be drawn would subject applicants and the public to the irreparable harm of a racial gerrymander. If that district functions as intended, it will ironically oust

the first Latino Member of Congress to ever represent CD11—applicant Nicole Malliotakis—whose irreparable harm is particularly clear.

Neither jurisdictional barriers nor the principle of *Purcell* v. *Gonzalez*, 549 U.S. 1 (2006) (per curiam), impedes this Court's intervention. This Court has authority under the All Writs Act, 28 U.S.C. 1651, to freeze the status quo in aid of its unquestionable jurisdiction over a final judgment by the State's highest court that could consider the issue. And given New York's election calendar, it is not too late for this Court to intervene, particularly when any perceived delay is entirely attributable to respondents and the lower courts. Time is of the essence, however, with candidate petitions set to begin circulation on February 24, 2026. Only this Court's swift intervention can give applicants and their fellow New Yorkers the relief they deserve from an obviously unconstitutional racial gerrymander.

STATEMENT

1. Staten Island, New York has a population of 495,000 and is too small for its own congressional district. Op. 12. Since the early 1980s, New York's congressional map has joined Staten Island to Brooklyn, following Staten Island's only road link to the rest of New York across the Verrazzano Narrows Bridge. Trial Ct. Doc. 112, at 18 (Dec. 8, 2025). No one contends that the district's original design had anything to do with race. In 1980, Staten Island was 85% white, Trial Ct. Doc. 1 ¶ 3 (Oct. 27, 2025), so even assuming racially polarized voting, racial minorities had no plausible opportunity or expectation to elect their preferred candidates, regardless of which portions of New York City were joined to Staten Island to create a district.

The Staten Island-based district—now numbered New York's 11th—has been largely "static" since the early 1980s. Trial Ct. Doc. 1 ¶ 53. The district has had its current borders since 2022 after the map adopted following the 2020 census was

struck down as a pro-Democrat partisan gerrymander in violation of state law. *Id.* ¶¶ 56-58; see *Harkenrider* v. *Hochul*, 197 N.E.3d 437, 519-520 (N.Y. 2022). Nicole Malliotakis, a Latino Republican, has represented CD11 since 2020 and is the first minority to hold that office. Trial Ct. Doc. 23 ¶¶ 2-3 (Oct. 31, 2025). To win election, Congresswoman Malliotakis defeated an incumbent white Democrat in a district with materially similar boundaries to the current CD11. See *New York Election Results: 11th Congressional District*, N.Y. Times (Dec. 4, 2020), https://perma.cc/8PAD-L555. Of the 13 members of Congress who represent portions of New York City, Congresswoman Malliotakis is the only Republican. Trial Ct. Doc. 111 (Dec. 8, 2025).

2. In October 2025, over three years after CD11's current lines were adopted, a group of voters (respondents) sued the members of New York's Board of Elections (including applicants in No. 25A915) and other state officials in the Supreme Court of New York for New York County. Op. 2-3. Respondents alleged that CD11's lines dilute the votes of black and Latino voters in violation of Article III, § 4(c)(1) of the New York Constitution. Op. 2. That provision instructs New York's Independent Redistricting Commission to draw lines "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). Respondents alleged that CD11's current boundaries deprive black and Latino residents—who make up around 28.5% of CD11's population and only 22.7% of the citizen voting-age population—of the equal opportunity to elect a representative of their choice. Op. 3; Trial Ct. Doc. 187 ¶ 50 (Jan. 2, 2026). As a remedy, respondents asked the court to redraw CD11 to connect Staten Island with lower Manhattan, instead of Brooklyn. Op. 4.

Congresswoman Malliotakis and five other New York voters (applicants in No. 25A914) intervened in defense of the existing map. Op. 2-3. Among other arguments, they asserted that redrawing CD11 as respondents urged would compel a racial gerrymander in violation of the federal Equal Protection Clause. Trial Ct. Doc. 115, at 32-39 (Dec. 8, 2025).

On January 21, 2026, after a trial, the trial court held that the existing CD11 diluted minority votes in violation of Article III, § 4(c)(1) and enjoined the state officials from conducting any election using the existing map. Op. 1, 18. The court implicitly recognized that respondents would flunk the federal-law standard for proving vote dilution. See Op. 13. But the court held that the New York Constitution "provides greater protections against racial vote dilution." Op. 5. To identify when a "totality of the circumstances" shows that a minority group has "'less opportunity to participate in the political process,'" the court treated as "instructive" case law interpreting Section 2 of the federal Voting Rights Act of 1965 (VRA), 52 U.S.C. 10301—specifically *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). Op. 7 (quoting N.Y. Const. Art. III, § 4(c)(1)) (emphasis omitted). The court read New York law as "more sweeping" than Section 2, so the Court altered *Gingles* to impose less of "a high bar." Op. 13.

Applying that watered-down version of *Gingles*, the trial court treated the existence of "racially polarized voting" as "[f]undamental." Op. 8. The court observed that black voters and Latino voters in CD11 vote for the same candidate 91% and 88% of the time, respectively, while white voters vote for other candidates 74% of the time. *Ibid.* The court acknowledged that black and Latino-preferred candidates have won 25% of recent races despite making up less than 30% of the population, but dismissed that success as not dispositive. Op. 9.

The trial court also emphasized "the history of discrimination against minority voters in CD-11." Op. 9. The court noted the history of "intense redlining" on Staten Island that had resulted in "long-term health issues for residents over time." *Ibid.* The court observed that New York adopted a literacy test in the 1920s. Op. 10. And the court pointed to racial disparities in higher education, per capita income, poverty, home ownership, and voter turnout. Op. 10-11. The court also asserted that "overt and subtle racial appeals are common in campaigns in CD-11," such as a political cartoon in the 1960s that used the word "'ghetto'" and a 2017 Facebook page criticizing a black local official for supporting a "'welfare hotel of criminals and addicts.'" Op. 11-12. The court acknowledged that black and Latino voters had shown "some political power" on Staten Island but declared that power "insufficient" and found that the totality of circumstances demonstrated vote dilution. *Ibid.*

Critically, the trial court interpreted state law to reject this Court's holding that there is no federal-law mandate to create "'crossover' districts, where 'members of the majority help a "large enough" minority to elect its candidate of choice.'" Op. 14 (discussing *Bartlett* v. *Strickland*, 556 U.S. 1, 13 (2009) (plurality opinion)). In the court's view, *Gingles* imposes a too "high bar" by requiring federal Section 2 plaintiffs to show that a minority group is "'sufficiently large and geographically compact to constitute a *majority* in a single-member district.'" Op. 13 (quoting *Gingles*, 478 U.S. at 50) (emphasis added). Instead, the court adopted a standard proposed by law-professor amici that mandates the creation of a crossover district whenever minority voters can "select their candidates of choice in the primary election," those candidates are "usually" "victorious in the general election," and minorities "are decisive in the selection of candidates." Op. 15. The court did not consider whether respondents' proposed map or any other evidence in the record met that standard. But the court

nevertheless enjoined the state officials from holding an election under the existing map and directed New York's Independent Redistricting Commission to complete a new map by February 6, 2026, before New York's election process begins on February 24, 2026. Op. 16-18.

The court did not expressly address applicants' federal constitutional arguments, stating simply that it had "considered [their] additional arguments * * * and f[ound] them unavailing." Op. 17.

3. Applicants sought an emergency stay from the Appellate Division of the New York Supreme Court on January 27, 2026, and requested a ruling by February 10, 2026, to permit this Court's intervention, if necessary, before New York's election calendar begins on February 24, 2026. Given state-law uncertainty about the appropriate forum for an appeal, applicants simultaneously sought a stay from the New York Court of Appeals. On February 11, 2026, that court held that it lacked jurisdiction and only the Appellate Division could grant relief. 2/11/2026 Letter Order. As of this filing, the Appellate Division has not ruled.

Under New York law, the appeal automatically stayed enforcement of executory portions of the trial court's judgment, *i.e.*, its order that the Independent Redistricting Commission draw a remedial map. See N.Y. C.P.L.R. 5519(a)(1); *Pokoik* v. *Department of Health Servs.*, 641 N.Y.S.2d 881, 883 (App. Div. 1996). The practical effect, then, is that New York currently has *no* congressional map for the 2026 midterms. The current map remains enjoined, and New York has no clear path to adopt a new map before the election calendar begins on February 24.

ARGUMENT

This Court may stay a lower court's injunction pending further review where there is a reasonable probability the Court will grant review, a fair prospect the Court

will reverse, and a likelihood of irreparable harm absent a stay. *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," the Court will also balance the equities and weigh the relative harms. *Ibid.* Those considerations manifestly favor a stay here.

I. THIS COURT IS LIKELY TO REVERSE THE TRIAL COURT'S DECISION ORDERING AN UNCONSTITUTIONAL RACIAL GERRYMANDER

On the merits, the trial court committed grievous constitutional error. "Classifications of citizens solely on the basis of race 'are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.'" *Shaw* v. *Reno*, 509 U.S. 630, 643 (1993) (quoting *Hirabayashi* v. *United States*, 320 U.S. 81, 100 (1943)). Congressional districts where race predominates over neutral districting principles therefore may not be drawn without satisfying the "daunting" requirements of strict scrutiny. *Alexander* v. *South Carolina State Conference of the NAACP*, 602 U.S. 1, 11 (2024). The trial court's order directed such race-predominant districting but comes nowhere close to meeting strict scrutiny's high bar. If that order were affirmed on appeal in state court, this Court would likely grant certiorari and reverse.

A. Race Predominated In The Trial Court's Liability Order And Will Necessarily Predominate In Any Remedial District

Under this Court's precedents, strict scrutiny applies when a State gives race "a predominant role" in placing "'a significant number of voters within or without a particular district.'" *Alexander*, 602 U.S. at 6-7 (quoting *Miller* v. *Johnson*, 515 U.S. 900, 916 (1995)). When race-neutral considerations "came into play only after the race-based decision had been made," the predominance standard is met. *Bethune-Hill* v. *Virginia State Bd. of Elections*, 580 U.S. 178, 189 (2017) (quoting *Shaw* v. *Hunt*, 517 U.S. 899, 907 (1996) (*Shaw II*)).

1. Race predominance is inherent in the trial court's holding that a successful vote-dilution claim can mandate the creation of a crossover district, not just a majority-minority district. As a plurality of this Court has observed in interpreting Section 2 of the federal VRA, 52 U.S.C. 10301, mandatory crossover districts "would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *Bartlett* v. *Strickland*, 556 U.S. 1, 21 (2009) (plurality opinion) (quoting *League of United Latin American Citizens* v. *Perry*, 548 U.S. 399, 446 (2006) (*LULAC*) (plurality opinion)).

Mandatory crossover districts amount to a race-based "electoral advantage." *Bartlett*, 556 U.S. at 20 (plurality opinion). In a democracy, the majority rules, so it should be unsurprising that, assuming racially polarized voting, candidates preferred only by a group that is, by definition, a *minority* typically do not win. Like any other group that makes up a minority of the electorate—be that union members, hockey moms, or gun-rights advocates—racial minorities must "form political coalitions" to turn their electoral minority into a majority. *Id.* at 15. Mandatory crossover districts short-circuit that process and free racial minorities from "the obligation to pull, haul, and trade to find common political ground" at the heart of the democratic process. *Ibid.* Instead of having to work with other constituencies like "any other political group with the same relative voting strength," racial minorities receive a built-in "special protection" that tilts the playing field in their favor. *Id.* at 15, 20. The requirement that federal Section 2 plaintiffs offer an illustrative majority-minority district is thus "[n]ot an arbitrary invention" but "has its foundation in principles of democratic governance." *Id.* at 19.

Mandatory crossover districts also massively expand the role of race to "virtually every redistricting." *Bartlett*, 556 U.S. at 21 (plurality opinion). In federal Sec-

tion 2 cases, the requirement that the plaintiffs' illustrative district be a majority-minority district is a significant limitation, given the need to draw a reasonably configured district that is consistent with traditional race-neutral redistricting criteria. See *Wisconsin Legislature* v. *Wisconsin Elections Comm'n*, 595 U.S. 398, 404 (2022) (per curiam). That requirement must be "rigorously appl[ied]" and can only be met when there is "a large and geographically compact minority population" that the State has "crack[ed] or pack[ed]." *Allen* v. *Milligan*, 599 U.S. 1, 43-44 & n.2 (2023) (Kavanaugh, J., concurring in part) (internal quotation marks omitted). As a consequence, only a relatively small number of districts nationwide are subject to plausible Section 2 claims, on any understanding of that provision.

Potential crossover districts, by contrast, are ubiquitous. Consider an area where minorities make up 30% of the population and typically vote as a bloc for the Democratic candidate. If even 30% of the white majority generally supports the Democrat, that is a viable crossover district. The minorities' 30% plus the white Democrats' 30% of white voters' 70% will form a majority in most elections (30% + 30% × 70% = 51%). And while the areas in which a reasonably configured majority-minority district can be drawn are relatively few, areas in which minorities make up 30% of the population and Democrats get 30% of the white vote are everywhere. Mandatory crossover districts thus risk "[i]njecting [a] racial measure" into a huge number of districts, *Bartlett*, 556 U.S. at 22 (plurality opinion), forcing courts into the problematic business of systematically dismantling Republican-leaning districts in favor of Democratic-leaning ones under the guise of equalizing minority electoral opportunity.

This case illustrates the problem. The trial court viewed as "insufficient" the fact that black and Latino voters win only 25% of federal, state, and local races in CD11 notwithstanding the fact that they make up only 28.5% of the population and

22.7% of the citizen voting-age population. Op. 4, 9; Trial Ct. Doc. 187 ¶ 50. The court thus directed New York to draw a new map in which minority-preferred candidates will "win more often than not." Op. 15. But in the zero-sum electoral game, those wins will come at someone else's expense—namely, the white Republican voters who currently make up a majority of CD11's population but will live in a new district in which, by design, they will see their preferred candidate lose most of the time.

That advantage for CD11's black and Latino voters will come exclusively because of their race. If *white* Democrats made up only 22.7% of CD11's electorate, no one would suggest that those white voters were denied an equal opportunity to participate just because they lost most elections. Likewise, no one would suggest that white Republicans are being denied an equal opportunity to participate in New York's other districts just because they fall well short of proportional representation. President Trump won 43% of the vote in New York State and 30% in New York City. See New York State Bd. of Elections, *Past Elections Results: 2024 Nov 5: General: President of the United States: State of New York*, https://results.elections.ny.gov/contest/5591. Yet Republicans hold only 27% of congressional seats statewide and 7.6% in New York City. See U.S. House of Representatives, *Directory of Representatives*, https:// house.gov/representatives; Trial Ct. Doc. 111. If a State set out to ensure greater representation for white Republicans, that would be a plain-as-day racial gerrymander triggering strict scrutiny. Granting the same "electoral advantage," *Bartlett*, 556 U.S. at 20 (plurality opinion), to black and Latino Democrats—based on express racial considerations—warrants the same exacting review.

2. The trial court's order makes clear on its face that race predominated in the liability ruling and will predominate in any resulting district. Race predominates whenever "race-neutral districting criteria such as compactness, contiguity, and core

preservation" are "'subordinated'" to "'racial considerations.'" *Alexander*, 602 U.S. at 7. Here, that is the case for two reasons.

First, the trial court's order does not acknowledge or consider traditional redistricting principles. The court found a state-law violation purely based on the presence of racially polarized voting and what the court viewed as "a history of discrimination in the political process, education, housing, and more." Op. 12; see Op. 8-13. That mandate for race-based affirmative action in districting is plainly race-predominant—in fact, it depends on nothing *but* race paired with ubiquitous voting behavior and historical circumstances.

Any resulting map drawn will likewise be tainted by racial predominance. Respondents claimed below that a remedial district might yet "comply with traditional redistricting criteria." App. Div. Doc. 37, at 49 (Feb. 4, 2026). But even if the State considers the traditional redistricting criteria the court ignored, the process will have begun with a "purposefully established" "racial target." *Cooper* v. *Harris*, 581 U.S. 285, 299 (2017). Per the court's order, the State must draw a district where minority voters have a large-enough number to play a "decisive" role in the primary of the party that is "usually" "victorious in the general election." Op. 15. In other words, the State must draw a district where the Democrat will usually win and where black and Latino voters constitute the "decisive" share of the Democratic primary electorate. Whatever race-neutral criteria the State ultimately considers will come "into play only after the race-based decision had been made," *Bethune-Hill*, 580 U.S. at 189 (quoting *Shaw II*, 517 U.S. at 907), so race will necessarily predominate.

That the racial target came from a court rather than the State itself does not alter that result. In *Miller*, Georgia drew an additional majority-minority district after the Department of Justice denied VRA preclearance for plans with only two

such districts. 515 U.S. at 906-908. The Department of Justice pressure, this Court observed, made it "'obvious'" that "race was the predominant factor in drawing" the contested district. *Id.* at 917-918. Likewise, in *Shaw II*, North Carolina drew a second majority-minority district at the Department of Justice's insistence to obtain VRA preclearance. 517 U.S. at 902. Again, that avowed "purpose" to comply with the Department's "dictates" was irrefutable proof of racial predominance. *Id.* at 906 (citation omitted). Satisfying an external actor's (mis)reading of the law thus confirms rather than refutes the conclusion that race predominates.

Second, the resulting remedial map will inevitably be inferior under the traditional redistricting principles that, under this Court's precedents, may not be "subordinated" to race without triggering strict scrutiny. *Cooper*, 581 U.S. at 291. New York has already identified what version of CD11 that it thinks best meets its traditional districting criteria—namely, the map that the Legislature enacted and Governor Hochul signed after the previous map was invalidated by the New York Court of Appeals as a partisan gerrymander. See pp. 5-6, *supra*.

Because the trial court did not require an illustrative district, it did not explain why a crossover district was geographically possible, much less equivalent to the existing CD11 under traditional redistricting criteria. See Op. 15-17. The court adopted its standard from an amicus brief by two law professors who "t[ook] no position on whether [respondents] c[ould] satisfy" their standard, which the record had not been developed to address. Trial Ct. Doc. 135, at 8 (Dec. 15, 2025). As those same professors explained on appeal, the trial court "made a serious mistake" because it "did not *apply* its own standard." App. Div. Doc. 31, at 12 (Feb. 4, 2026).

For their part, respondents did offer an illustrative map in the trial court, albeit in service of a different legal standard. But that map makes clear that any re-

medial district is bound to be vastly *inferior* to the existing CD11. Rather than following Staten Island's only road link to New York across the Verrazzano Narrows Bridge—as CD11 and its predecessors have done for decades, see p. 5, *supra*—respondents would stretch a tendril north across New York Harbor to connect suburban Staten Islanders with skyscraper-dwelling Manhattanites in the Financial District and young urban professionals in the East Village. See Trial Ct. Doc. 187, at 115-116. It does not take a Ph.D. in political science to see that respondents' proposed district is significantly inferior to the existing CD11 under traditional redistricting principles—although Ph.D. expert analysis confirms the point. See Trial Ct. Doc. 112, at 16, 24, 27.

This case therefore creates no need for this Court to address whether an illustrative map must be *superior* to the existing map, as the United States has argued in *Callais* with respect to Section 2 of the VRA. See U.S. Amicus Br. at 22-27, *Louisiana* v. *Callais*, No. 24-109 (argued Oct. 15, 2025) (U.S. *Callais* Br.). As we have explained, only when an alternative district better serves traditional redistricting criteria can a court order its creation without requiring the State to subordinate traditional redistricting criteria to race. *Id.* at 23-24. But where, as here, the alternative map is plainly *inferior* to the State's, racial predominance should be obvious on any understanding of what a vote-dilution claim requires. See *Allen*, 599 U.S. at 21.

3. In the trial court, respondents claimed that their approach was "'race-neutral'" and would merely "equalize opportunity, rather than give preference to individual voters." Trial Ct. Doc. 154, at 26, 30 (Dec. 18, 2025). But the court's order neither *equalizes* opportunity nor is race *neutral*. As discussed, white Republicans across New York are a numerical minority but do not get to have district lines redrawn to their benefit to "correct" for that disadvantage. And white Republicans on

Staten Island will now see their district redrawn so that "minority-preferred candidates win more often than not," Op. 15—*i.e.*, the candidate preferred by the white majority will usually *lose*. Even if that could be described as anything other than a racial "preference" for minority voters at the expense of white voters, Trial Ct. Doc. 154, at 30, the trial court's order would still require the State to move "a significant number of voters within or without" the district predominantly (indeed, exclusively) because of race. *Alexander*, 602 U.S. at 7 (quoting *Miller*, 515 U.S. at 916).

This case also raises none of the partisan-gerrymandering concerns that can complicate racial-gerrymandering cases. Cf. *Alexander*, 602 U.S. at 9-10. New York's Constitution expressly bans partisan gerrymandering. N.Y. Const. Art. III, § 4(c)(5). While one might question the motives of the voters who waited years to challenge CD11 and then targeted the only Republican in New York City two months after Texas enacted its mid-decade partisan gerrymander, those motives cannot be attributed to the judge. The trial court's decision is based on race and race alone.

B. No Compelling Interest Justifies Race Predominance Here

Because race predominates in the mandated redrawing of district lines under the court's order, strict scrutiny applies. To justify the decision below, respondents must therefore show that the use of race was "'narrowly tailored'" to achieve "a compelling governmental interest." *Alexander*, 602 U.S. at 11. That standard, by design, is "daunting" and "extraordinarily onerous," *ibid.*, because race-predominant districting—like all race-based government action—is "presumptively unconstitutional," *Miller*, 515 U.S. at 927.

Setting aside abrogated affirmative-action cases and cases involving prison security, the only compelling interest that this Court has ever accepted to justify race-based government action is "remediating specific, identified instances of past discrim-

ination." *Students for Fair Admissions, Inc.* v. *President & Fellows of Harv. Coll.*, 600 U.S. 181, 207 (2023) (*SFFA*). That category is limited to "extreme case[s]" where racial preferences are "necessary to break down patterns of deliberate exclusion." *City of Richmond* v. *J.A. Croson Co.*, 488 U.S. 469, 509 (1989) (plurality opinion); see *Shaw II*, 517 U.S. at 909-910. Because the trial court refused to engage with applicants' constitutional argument, see Op. 17, it is unclear whether it viewed its order as necessary to further a compelling governmental interest.

Respondents try to shoehorn this case into that box by invoking the "'compelling governmental interest[]' in 'eliminat[ing] discrimination against . . . minorities.'" App. Div. Doc. 37, at 51 (brackets in original). But that response suffers from a basic level-of-generality problem. "[R]emedy[ing] the effects of societal discrimination" is not a compelling interest that can justify "explicitly race-based measures." *SFFA*, 600 U.S. at 226. The relevant discrimination must be "specific" and "identified." *Id.* at 207. The trial court's opinion, however, is full of generalized concerns like gaps in home-ownership rates, "significant environmental hazards," and literacy tests in the 1920s—none of which has anything to do with the current boundaries of CD11 or the specific, intentional discrimination that is the only constitutional end race-based government action can pursue. Op. 9.

Respondents also claim a compelling interest in complying "with the New York Constitution's racial vote dilution prohibition." App. Div. Doc. 37, at 51. This Court has "assumed" without deciding that VRA Section 2 compliance is a compelling interest that could justify race-based districting under strict scrutiny. *E.g.*, W*isconsin Legislature*, 595 U.S. at 401. But to the extent that assumption is correct, it could only be because of Congress's constitutional power to enforce the Fifteenth Amendment's ban on intentional racial discrimination in voting "by appropriate legislation."

U.S. Const. Amend. XV, § 2; see U.S. *Callais* Br. at 10-12. Compliance with *state* law cannot somehow justify conduct that would otherwise violate the *federal* Constitution. See U.S. Const. Art. VI, Cl. 2; see also *Miller*, 515 U.S. at 921 ("[C]ompliance with federal antidiscrimination laws cannot justify race-based districting where the challenged district was not reasonably necessary under a constitutional reading and application of those laws.").

Accordingly, regardless of whether Section 2 of the VRA can be construed in a way that is constitutional—at issue in *Callais*, see U.S. *Callais* Br. at 8-14—the trial court's order clearly flunks strict scrutiny. Respondents have pointed to no evidence suggesting that CD11's lines are rooted in racial discrimination. They acknowledge that the district was originally drawn at a time when the minority population was far smaller. Trial Ct. Doc. 1 ¶ 4. It was not even arguably discriminatory for the New York Legislature to fail to "account for the[] demographic changes," *ibid.*, that now make it possible to gerrymander a district that favors minorities. Any purported remedial district will also go well beyond an inappropriate "proportionality mandate," *Allen*, 599 U.S. at 44 n.2 (Kavanaugh, J., concurring in part), to conferring on minority voters the "electoral advantage" of winning a majority of races despite being a minority of the population, *Bartlett*, 556 U.S. at 20 (plurality opinion). Requiring race-predominant redistricting in these circumstances does not further any conceivable compelling interest. Rather, it is patently unconstitutional racial balancing that is an especially "sordid" example of "divvying us up by race." See *LULAC*, 548 U.S. at 511 (Roberts, C.J., dissenting in part).

II. THE OTHER FACTORS FAVOR A STAY

A. This Court Is Reasonably Likely To Grant Certiorari From A Final Judgment Of The State's Highest Court That Could Consider The Issue

Reflecting their national importance, this Court often intervenes in congressional-redistricting cases on an interim basis to preserve the status quo before an election. *E.g.*, *Abbott* v. *League of United Latin American Citizens*, 146 S. Ct. 418 (2025); *Robinson* v. *Callais*, 144 S. Ct. 1171 (2024); *Merrill* v. *Milligan*, 142 S. Ct. 879 (2022). Congress has underscored the importance of these cases by mandating that federal constitutional challenges to congressional districts be heard by a three-judge court with a right of direct appeal to this Court. 28 U.S.C. 1253, 2284(a). And this Court often exercises certiorari jurisdiction in redistricting cases to review decisions of state courts. *E.g.*, *Moore* v. *Harper*, 600 U.S. 1 (2023); *Wisconsin Legislature*, 595 U.S. 398; *Bartlett*, 556 U.S. 1.

In cases arising from state court, this Court has certiorari jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had." 28 U.S.C. 1257. This Court takes a "pragmatic approach" to defining finality; the possibility of future state-court proceedings does not foreclose jurisdiction. *Cox Broad. Corp.* v. *Cohn*, 420 U.S. 469, 486 (1975). In the First Amendment context, this Court has thus treated a state high court's denial of a stay—or even its failure to timely act on a stay application—as "a final judgment for purposes of [this Court's] jurisdiction" because it "finally determine[s] the merits" of whether the allegedly unconstitutional conduct will continue "during the period of appellate review." *National Socialist Party of Am.* v. *Village of Skokie*, 432 U.S. 43, 44 (1977) (per curiam); see, *e.g.*, *M.I.C., Ltd.* v. *Bedford Township*, 463 U.S. 1341, 1342 (1983)

(Brennan, J., in chambers); *Nebraska Press Ass'n* v. *Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, J., in chambers).

Moreover, even when a state high court has not issued a final judgment within the meaning of 28 U.S.C. 1257, this Court has authority under the All Writs Act to issue a stay as "necessary or appropriate in aid of [its] * * * jurisdiction." 28 U.S.C. 1651(a); see *Nken* v. *Holder*, 556 U.S. 418, 426 (2009) (recognizing a stay pending appeal as an appropriate remedy under the All Writs Act). That language contemplates this Court's authority to grant relief "in certain emergency circumstances" in cases over which this Court would later "have *potential* appellate jurisdiction." Cf. *Atlantic Coast Line R.R. Co.* v. *Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970) (discussing materially similar language in 28 U.S.C. 2283, which permits a federal court to enjoin state-court proceedings when "necessary in aid of its jurisdiction") (emphasis added).

For example, when a state trial court issued a preliminary injunction against a television broadcast, Justice Blackmun issued a stay under the All Writs Act based on his assessment that a final judgment in the "case would warrant certiorari." *CBS, Inc.* v. *Davis*, 510 U.S. 1315, 1318 (1994) (Blackmun, J., in chambers). And when a state trial court ordered foreign depositions in alleged violation of the Hague Evidence Convention, Chief Justice Burger and Justice O'Connor each granted stays before the state high court had ruled on the stay request, much less the merits. *Volkswagenwerk A.G.* v. *Falzon*, 461 U.S. 1303, 1303-1305 (1983) (O'Connor, J., in chambers) (granting stay and discussing earlier stays entered by the Chief Justice).

Those principles support jurisdiction here. There is no question that this Court would have certiorari jurisdiction over a final judgment by the New York Court of Appeals rejecting applicants' federal constitutional objection to any remedial district.

And even in the current appeal of the trial court's liability ruling, a decision of the State's highest court that could consider the issue may be practically final even if remedial proceedings remain. See *Cox*, 420 U.S. at 479-483 (recognizing situations where state-high-court decisions are "final" for purposes of 28 U.S.C. 1257, notwithstanding further proceedings in the lower state courts). This Court often grants stays in federal redistricting decisions at the liability phase, notwithstanding the likelihood of further remedial proceedings. *E.g.*, *Merrill*, 142 S. Ct. 879; *Abbott* v. *Perez*, 138 S. Ct. 49 (2017); see *Abbott* v. *Perez*, 585 U.S. 579, 593 (2018) (discussing procedural history). This Court's early intervention is likewise appropriate here, particularly since awaiting full adjudication in the state courts risks prejudicing this Court's ability to provide a timely federal remedy before the 2026 election. See pp. 24-25, *infra*.

B. Applicants Face Irreparable Harm And The Balance Of The Equities Supports A Stay

Because the state-court appeal automatically stayed the trial court's order to draw a remedial district, but not its injunction against using the current map, N.Y. C.P.L.R. 5519(a)(1), New York currently has *no* operative congressional map for the 2026 election. That gaping hole in the electoral map—brought about by the state appellate court's inexplicable failure to timely act on applicants' stay applications—plainly warrants this Court's intervention.

Even assuming a remedial map will be adopted, the trial court's order "barring the State from conducting this year's elections pursuant to a statute enacted by the Legislature" establishes "serious[] and irreparabl[e] harm." *Abbott* v. *Perez*, 585 U.S. at 602. This Court's recurrent intervention in redistricting cases reflects a common-sense judgment that, when a lower court orders a State to hold an election under a potentially unconstitutional map, the irreparable harm and equities are obvious. The

State loses its primacy in redistricting—"a traditional domain of state legislative authority." *Alexander*, 602 U.S. at 7. The voters in the proper district lose their representative of choice and suffer the "'fundamental injury' to the 'individual rights of a person'" that comes from "a racial classification" in districting. *Shaw II*, 517 U.S. at 908. And the candidates lose their chance to run and win in a proper district.

Where, as here, the applicants include the sitting congresswoman who risks being racially gerrymandered out of her seat, the irreparable harm should be indisputable. Political candidates "spend untold time and resources seeking to claim the right to voice the will of the people" and thus have "'an undeniably different—and more particularized—interest'" in election rules. *Bost* v. *Illinois State Bd. of Elections*, No. 24-568, 2026 WL 96707, at *3 (Jan. 14, 2026). Most obviously, candidates might "lose the election." *Ibid.* Given that the avowed purpose of this lawsuit is to ensure that a candidate, like Congresswoman Malliotakis, preferred by white voters will "usually" lose CD11, Op. 15, the irreparable harm is manifest.

On the other side of the ledger, respondents have no legitimate interest in compelling an unconstitutional racial gerrymander, particularly in time for the 2026 midterm elections. On respondents' own telling, CD11's boundaries have remained essentially "static since 1980." Trial Ct. Doc. 1 ¶ 53. And the precise current boundaries were used in both 2022 and 2024. See *id.* ¶¶ 56-58. Yet respondents waited until October 2025 to bring this suit, forcing the New York courts to resolve this case on an accelerated timeline to have a new map in place before the 2026 primary. Rather than plow forward with a novel racial gerrymander, this Court should permit continued use of the status quo district that has served Staten Island and Brooklyn for decades—and has elected representatives of both parties in recent years.

C. The *Purcell* Principle Does Not Counsel Against A Stay

Under *Purcell*, "lower federal courts should ordinarily not alter the election rules on the eve of an election." See *Abbott* v. *League of United Latin American Citizens*, 146 S. Ct. at 419 (quoting *RNC* v. *DNC*, 589 U.S. 423, 424 (2020) (per curiam)). Some Justices have suggested that the same principle applies to this Court. See *Moore* v. *Harper*, 142 S. Ct. 1089, 1089 (2022) (Kavanaugh, J., concurring in the denial of application for stay).

But here, the election is months away: New York's primary is on June 23, 2026, and the general election is on November 3, 2026. N.Y. State Bd. of Elections, *2026 Political Calendar* (Dec. 9, 2025), https://elections.ny.gov/system/files/documents/2025/12/2026-political-calendar-quad-fold-12.9.2025-final.pdf. Petitions for getting on the primary ballot do not begin circulating until February 24, 2026. *Ibid.* That distance from the beginning of election season, much less actual voting, should minimize any concerns about altering election rules—particularly when all applicants ask is that this Court retain the lines that have governed CD11's last two elections. Cf., *e.g.*, *RNC* v. *Genser*, 145 S. Ct. 9 (2024) (denying application to stay judgment issued two weeks before election day); *Berger* v. *North Carolina State Bd. of Elections*, 141 S. Ct. 658 (2020) (denying stay of judgment issued 13 days before start of in-person early voting).

To the extent the timing of these applications implicates *Purcell*, that is entirely a product of the lower courts' (and respondents') making. Parties that persuade a court to unsettle the rules close to an election cannot turn around and use *Purcell* to insulate that same decision from this Court's correction. "[W]hen a lower court intervenes and alters the election rules so close to the election date, [this Court's] precedents indicate that this Court, as appropriate, should correct that error." *RNC*

v. *DNC*, 589 U.S. at 425; accord *DNC* v. *Wisconsin State Legislature*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in the denial of application to vacate stay); cf. *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 617-624 (1989) (holding that this Court has jurisdiction to review a state-court decision resting on allegedly erroneous federal-law grounds even though the prevailing party in state court would have lacked Article III standing to bring the suit in federal court).

To be sure, *Purcell*, by its terms, applies only to federal courts. See *DNC* v. *Wisconsin State Legislature*, 141 S. Ct. at 28 (Roberts, C.J., concurring in the denial of application to vacate stay); *id.* at 34 n.1 (Kavanaugh, J., concurring in the denial of application to vacate stay). But *Purcell*'s "basic tenet" is universal: "When an election is close at hand, the rules of the road should be clear and settled." *Id.* at 31 (Kavanaugh, J., concurring in the denial of application to vacate stay). Here, a state court scrambled the election map in January of an election year in a lawsuit claiming that New York has diluted minority votes for decades. To the extent the trial court's ruling implicates the *Purcell* principle, it is wholly appropriate for this Court to intervene a few weeks later to prevent an egregious racial gerrymander.

CONCLUSION

The applications for a stay should be granted.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

FEBRUARY 2026