Nos. 25A914, 25A915

IN THE
Supreme Court of the United States

NICOLE MALLIOTAKIS, *et al.*,
Intervenor-Applicants,

and

PETER S. KOSINSKI, *in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State Of New York, et al.,*
Respondent-Applicants,

v.

MICHAEL WILLIAMS, *et al.*,
Petitioner-Respondents.

WILLIAMS PETITIONER-RESPONDENTS' RESPONSE IN OPPOSITION TO EMERGENCY APPLICATIONS FOR INTERIM STAY AND STAY PENDING APPEAL

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INTRODUCTION

These Applications come to the Court in a grossly premature posture: Applicants asked this Court to stay the *non-final* order of a state *trial* court before they had obtained a stay ruling from *either* of New York's appellate courts. In fact, Applicants filed in this Court *just three days* after briefing completed on their stay request before the New York Appellate Division, improperly seeking to dual track review. The Appellate Division denied their stay requests just this morning, *see* Suppl. App. 102–03, but their requests to this Court nonetheless remain premature because they have not yet sought permission to appeal that denial to New York's highest court—the Court of Appeals—or pursued any sort of expedited briefing on the merits from the Appellate Division. *See* N.Y. C.P.L.R. 5602 (permitting Applicants to seek permission to appeal to the Court of Appeals). Allowing such review in New York's courts is critical because this case involves a matter of first impression about how to construe a provision in the *New York Constitution*—the vote dilution provisions in Article III, § 4(c)(1). Applicants, in effect, ask this Court to be the first appellate court *in the country* to weigh in on the meaning of this constitutional provision, leapfrogging New York's own courts in a frenetic effort to inject federal questions into this state case. Applicants' requests are improper in every respect.[1]

[1] Applicants Kosinski, Casale, and Riley are three members of New York's six-member Board of Elections. *See* No. 25A915. They are referred to herein as "Board Respondents" and their application is cited as "Resp. Appl." Applicant Malliotakis is the sitting congresswoman for New York CD-11, and applicants Lai, Medina, Reeves, Sisto, and Togba are voters within CD-11. They are referred to herein as "Intervenors" and their application is cited as "Int. Appl." *See* No. 25A914.

To start, the Applications violate Rule 23 of this Court's rules. Applicants failed to "set out with particularity why the relief sought is not available from any other court or judge." Sup. Ct. R. 23(3). Such relief indisputably remains available in New York courts, either through a motion for leave from the Appellate Division to appeal that court's stay denial to New York's highest court, or through a request to expedite appellate briefing on the merits. Indeed, those were the precise steps this Court set out in denying another recent—and premature—request for a stay of a New York trial court order. *See Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1 (2022).

Applicants are well aware of these state court avenues because they have *already filed* for stay relief in both courts—though their peculiar decision to seek such relief in both courts at the same time was improper. The Court of Appeals (rightly) concluded it did not yet have jurisdiction for a direct appeal from the trial court's order but—in light of the Appellate Division's order this morning—Applicants are now free and clear to seek permission to appeal to that court—New York's "highest court." 28 U.S.C. § 1257(a). Rule 23 is clear that this is mandatory: absent "the most extraordinary circumstances," a stay request "will not be entertained unless the relief requested was first sought in the appropriate court or courts below." Sup. Ct. R. 23(3). The remaining avenues for state court relief are well-established, so this is not a "most extraordinary circumstance." And, if anything, Applicants are the architects of their own misfortune in this regard: New York law sets out a clear and orderly appellate process that Applicants have disregarded at every turn. They should not be rewarded for such gamesmanship, which would set a precedent for dual-tracking stay

requests in this Court and state appellate courts on the hope that the latter either (i) grants relief and moots pending briefing in this Court; or (ii) denies relief while matters in this Court are midstream. Applicants' brazen effort to ice out New York's appellate rules alone warrants denial under Rule 23.

For similar reasons, this Court cannot properly grant certiorari in this posture. When a case arises from state court, this Court can grant certiorari solely 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(a). Its statutory stay authority is similarly limited to staying a "final judgment or decree of any court" that "is subject to review by the Supreme Court on writ of certiorari." *Id.* § 2101(f). But there is no final order from New York's courts, never mind from its highest court. In fact, the order on review is not even final *in the trial court*. The All Writs Act does not change this, both because state court relief remains readily available to Applicants and because no writ is necessary to preserve this Court's jurisdiction over a latter appeal from a final order—assuming any federal question remains by that time. Indeed, a host of state law questions "could effectively moot the federal-law question[s] raised" in the Applications, which bars granting certiorari over this non-final state trial court order. *Jefferson v. City of Tarrant*, 522 U.S. 75, 82 (1997). And, most perplexingly, Applicants seek to justify their rush to this Court by exclusively citing cases in which other applicants properly exhausted state court relief, including from all three levels of New York's courts. *See N.J. Transit Corp. v. Colt*, No. 25A287 (U.S.). They simply have not done that here. *See Yeshiva*, 143 S. Ct. at 1.

Underlying Applicants' procedural chicanery is a pretextual concern about timing, and whether it is feasible for New York to draw a remedial map for CD-11 in time for the midterm elections. Applicants claim they had no choice but to run to this Court because, on February 24, New York will permit congressional candidates to start collecting petition signatures for ballot access.[2] Yet just four years ago, several counsel now seeking relief for Applicants from this Court obtained a *statewide* redraw of New York's congressional map based on a March 31 trial court order—more than two months later than the order below. *See Harkenrider v. Hochul*, 197 N.E.3d 437, 454 (N.Y. 2022). When pressed on the feasibility of such relief—orders of magnitude greater than the single district at issue here—counsel insisted the New York trial court "properly invalidated the 2022 maps" statewide on March 31 of an election year and that such relief "pose[d] no risk to New York's election processes." Brief for Petitioner-Respondents' at 49–50, *Harkenrider v. Hochul*, 167 N.Y.S.3d 659 (N.Y. App. Div. 2022) (No. CAE 22-00506), 2022 WL 1738113, at *49–50. Applicants do not explain why relief was feasible when they sought it in *Harkenrider*, but not here. The Court should look askance at their about-face this time around.

The United States, as *amicus*, all but concedes that the Applicants' timing concerns are contrived. It stresses that "the election is months away," with the primary not scheduled until June 23. U.S. Br. at 24. The supposedly inviolable February 24 deadline, the United States admits, is merely when "[p]etitions for

[2] *Registration and Voting Deadlines*, N.Y. State Board of Elections, https://elections.ny.gov/registration-and-voting-deadlines (last visited February 19, 2026).

getting on the primary ballot . . . begin circulating." *Id.* Thus, it insists that the "distance from the beginning of election season, much less actual voting, should minimize any concerns about altering election rules" in this Court *Id.* So what then excuses Applicants from proceeding through New York's courts? The United States never says. The Court should see through this obvious ploy, whereby Applicants insist it is too late for *New York's courts* to do anything, while their *amicus* promises there is ample time for *this Court* to act—Applicants cannot have their cake and eat it too. In any event, there is ample time for New York's courts and mapdrawing authorities—its Independent Redistricting Commission ("IRC") and Legislature—to carry out the state law functions before them, which further forecloses premature review in this Court.

Finally, even if the Court were to somehow conclude that it would be likely to grant review in this premature posture, Applicants falter at the merits. Most of the "federal questions" they purport to identify are thinly disguised quarrels with the trial court's *state law* conclusions, and nearly all are premature. The Applications' alleged due process concerns are contrived and contrary to law. In essence, they complain that the trial court concluded that vote dilution under the New York Constitution can be proved by evidence of racial polarization and a totality of the circumstances factors—exactly what Petitioners argued from the jump. According to Applicants, this was a due process violation because Petitioners argued the trial court should have relied upon the New York Voting Rights Act ("NYVRA") to draw that framework, rather than from the federal VRA's Senate Factors. But Applicants

cannot identify any prejudice from the trial court's analytical course, which ultimately premised its finding of vote dilution on the evidence *Petitioners* presented at trial evidence, and to which Applicants had ample opportunity to respond. Indeed, they countered Petitioners' three expert witnesses with *five* of their own, including on the topics of racial polarization and the totality factors. Moreover, there is no requirement that a court—particularly one tasked with deciding a matter of first impression—must follow one of the exact analytical paths argued for by the parties. Courts are "not limited to the particular legal theories advanced by the parties, but rather retain[] the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991).

Applicants' equal protection arguments fare no better. To start, they are grossly premature, complaining about racial predominance in a remedial congressional district that has not yet even been drawn—never mind evaluated by New York's Legislature. Under this Court's precedents, racial gerrymandering complainants must show racial predominance based on the boundary lines of an *actual* district. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 191 (2017). This Court has never preemptively deemed a non-existent district to be a racial gerrymander, never mind before the relevant state actors (here, the IRC and the Legislature) have even acted. Doing so would violate this Court's "starting presumption that the legislature acted in good faith." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 10 (2024). That presumption surely cannot be overcome until the Legislature has, in fact, acted. Applicants' equal protection theory also fails on its

own terms. This Court's precedents are clear that a redistricting plan does not trigger strict scrutiny solely because it remedies vote dilution pursuant to court order. And even if strict scrutiny were to apply, complying with the state constitution's prohibition on diluting minority voting strength is a compelling interest to consider race in drawing a new map, alongside other traditional redistricting criteria that the New York Constitution *requires* the IRC and Legislature to consider.

Finally, the Elections Clause argument raised by Intervenors—but notably not Respondents—shows nothing more than a bare disagreement with the state trial court on a question of state law. According to Intervenors, the trial court violated the Elections Clause by concluding (rightly) that New York's Constitution can compel the creation of crossover districts, notwithstanding this Court's conclusion in *Bartlett v. Strickland* that the federal VRA does not. But this Court's decision in *Bartlett* also recognized that permitting crossover districts was "a matter of legislative choice or discretion," such that "[s]tates that wish to draw crossover districts are free to do so where no other prohibition exists." 556 U.S. 1, 23 (2009). The state trial court had ample basis to conclude New York did just that when its voters adopted a constitutional prohibition on vote dilution, and any error in that court's conclusion is best addressed by *state* appellate courts. Indeed, Intervenors' argument on this score completely ignores this Court's recent confirmation that "[s]tate courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause." *Moore v. Harper*, 600 U.S. 1, 37 (2023). That is what occurred here.

At bottom, the Applications are an improper effort to solicit this Court's adjudication of federal questions in a nascent state law case that—in due course—may well moot out those federal questions entirely. And it asks this Court to reach those moot-able federal questions prior to a merits ruling by *any* state appellate court and "on a short fuse without benefit of full briefing and oral argument." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in denial of application). From "the earliest days of our judiciary," this Court has properly limited itself to reviewing "cases in which the State's judgment is final." *Jefferson*, 522 U.S. at 80. Applicants' request for relief from an interlocutory state trial court order—based on contrived timing concerns—seeks to sidestep that longstanding principle. For any number of reasons, the Applications should be denied.

COUNTER-STATEMENT OF JURISDICTION

The Court does not have jurisdiction over this appeal, which originates from a non-final order of a New York trial court. When an appeal originates in state court, this Court's jurisdiction is restricted to "[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(a). This case does not yet even feature a "final judgment or decree," never mind an order rendered by New York's highest court—the Court of Appeals. The stay application posture of this case does require a different result because this Court is authorized to grant stays only for cases "in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari." *Id.* § 2101(f); *see also* Sup. Ct. R. 23.

As explained below, this Court also lacks jurisdiction under the All Writs Act because—among other reasons—relief here is not necessary to preserve the Court's jurisdiction. *See* 28 U.S.C. §§ 1651(a), 2283. If the federal questions presented survive state court appellate review—a far from certain outcome—then this Court will still be able exercise its jurisdiction. *See, e.g.*, *Yeshiva*, 143 S. Ct. at 1 (explaining applicants may return to this Court after exhausting state court relief).

No other possible exception to this Court's finality rule applies. The practical finality exception does not apply here because "the federal issue has [not] been finally decided in the state courts." *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 482 (1975). Indeed, no state appellate court has yet been afforded an opportunity to address the federal or state issues on the merits, nor has the Court of Appeals been afforded a jurisdictionally sound opportunity to weigh in on the prospect of a stay. Once Applicants are compelled to see the state appellate process through, "[r]esolution of the state-law claims could effectively moot the federal-law question raised here." *Jefferson*, 522 U.S. at 82.

Finally, the First Amendment exception to finality pointed to by the United States—but tellingly not Applicants themselves—does not apply here. That exception applies exclusively when parties suffer an ongoing prior restraint on speech that the state courts decline to address in timely fashion. *See* U.S. Br. 20–21 (collecting cases). Applicants do not assert a First Amendment harm, and they are not subject to any kind of ongoing or even imminent constitutional injury (as the United States concedes, *see* U.S. Br. 24 (noting "the election is months away"). Moreover, New York

courts have not delayed proceedings, and relief remains available to Applicants. *See* N.Y. C.P.L.R. 5602; *see also* 22 N.Y. Comp. Codes Rs. & Regs. tit. 22 § 1250.15. Accordingly, the Court should dismiss these appeals.

BACKGROUND AND PROCEDURAL HISTORY

I. New York adopts racial vote dilution protections that exceed those provided in the federal Voting Rights Act.

In 2014, "the people of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process," *Harkenrider*, 197 N.E.3d at 440, including changes that "guarantee[] the application of substantive criteria that protect minority voting rights," Assembly Mem. in Support, 2013 N.Y. Senate-Assembly Concurrent Res. S2107, A2086.

The New York Constitution's prohibition on vote dilution is contained in Article III, § 4(c)(1). It provides that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). It further provides that "[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." *Id.* These provisions apply specifically to New York's state assembly, senate, and congressional districts. *Id.* art. III, § 4(b). The 2014 redistricting amendments list the express prohibition on vote dilution along with other redistricting criteria, including equal population size, contiguity, compactness, maintaining competition and the "cores of existing districts," as well as a prohibition on partisan or incumbency-based gerrymandering. *See id.* art. III, § 4(c)(2)–(5).

By enshrining constitutional protections against minority vote dilution, New York seized upon this Court's recognition that states may go further than the requirements of the

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

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

The present dispute arises out of the tumultuous process that produced New York's 2024 congressional map. In addition to making substantive changes to redistricting criteria, the constitutional amendments New Yorkers enacted in 2014 also created the IRC—which submits proposed redistricting plans to the Legislature for consideration—as well as detailed procedures by which the Legislature could approve, reject, or modify plans submitted by the IRC. *See* N.Y. Const. art. III, § 4(b).

In the first redistricting cycle following the enactment of the 2014 redistricting amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. *See id.*; *see also Harkenrider*, 197 N.E.3d at 442. When the Legislature enacted a map despite the IRC's failure, that map was successfully challenged as constitutionally defective. As a result, the congressional map that was ultimately in place for the 2022 elections was drawn by a special master at the behest of the Steuben County trial court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 197 N.E.3d at 456. The special master admitted in his report that he did not actively avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided simply because "the largest minority groups . . . are almost always highly geographically concentrated." Rep. of the Special Master at 11, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct.,

Steuben County May 21, 2022), NYSCEF Doc. No. 670.

Following additional litigation, the Court of Appeals held that the special master's 2022 congressional map could not remain in place, and it ordered the IRC to finally fulfill its constitutional duties by submitting a new map to the Legislature for the 2024 election. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 234 N.E.3d 1002, 1021–22 (N.Y. 2023). The IRC ultimately submitted a map that made very few substantive changes and no changes at all to the configuration of CD-11, which is rooted in Staten Island.[3] The Legislature rejected the IRC's map, *see* 2024 NY Senate Bill S8639, 2024 NY Assembly Bill A9304, and drew its own, but did not make any major changes.[4] The 2024 congressional map, which was passed by the Legislature on February 28, 2024, also did not alter the configuration of CD-11. *See* 2024 NY Senate Bill S8653A, 2024 NY Assembly Bill 9310A. Thus, although the enactment of the 2024 congressional map fixed the procedural defects identified in earlier litigation, it did not remedy the unlawful racial vote dilution in CD-11 that stemmed from the special master-driven process in 2022.

III. In a non-final order, a New York trial court agrees that Petitioners have established unconstitutional vote dilution based on the totality of the circumstances and evidence of racial polarization.

On October 27, 2025, Petitioners filed this lawsuit challenging the configuration of CD-11 under the 2024 congressional map for violating the New York Constitution's prohibition on vote dilution. Petitioners' claim was the first of its kind, and no New York court had yet opined on either the scope of the New York Constitution's protections against vote dilution or the standard required to prove such a claim. Both were issues of first

[3] *New York Redistricting and You*, https://tinyurl.com/5twthvtr (last visited Feb. 18, 2026).

[4] *New York Redistricting and You*, https://tinyurl.com/3xc9wk8n (last visited Feb. 18, 2026).

impression. Ultimately, the court agreed with Petitioners, concluding that unlike federal VRA cases, a vote-dilution claim under Article III, § 4(c)(1) does not require proof that a racial minority group could have comprised the majority voting bloc in another reasonably configured district. Specifically, the court agreed that the New York Constitution protects "'crossover' districts," wherein the minority population is large enough to elect their candidates of choice with the assistance of "crossover" voters from the minority racial group. App. 13a–14a. Aside from that critical distinction, the court largely adopted and applied the framework from *Thornburg v. Gingles*, 478 U.S. 30 (1986), requiring proof of racially polarized voting and the totality of the circumstances factors. App. 7a.

After a four-day hearing with testimony from no fewer than *eight* expert witnesses, the trial court credited Petitioners' experts, concluding Petitioners had satisfied the standard the court adopted. Petitioners' evidence showed that Staten Island—once overwhelmingly White and sparsely populated—began to meaningfully change in the 1980s. App. 2807a, ¶ 12. Over several decades, Staten Island's population ballooned by approximately 40 percent, and racial demographics shifted dramatically. App. 2807a, ¶¶ 12–13. Although Staten Island's Black and Hispanic population nearly doubled over the same period, these new minority communities were segregated into select neighborhoods on the Island—and in many cases they so remain. See App. 2807a, ¶¶ 12–13, 2809a, ¶ 16. Despite these changes to the borough's demography, Staten Island's congressional district (presently CD-11) has remained roughly the same—joining Staten Island with certain neighborhoods in southern Brooklyn—for more than four decades.

The evidence also showed that voting within CD-11 is heavily racially polarized and that the Black and Hispanic candidate of choice is usually defeated. Indeed, unrefuted testimony showed that the Black and Hispanic candidate of choice has not won an election of any sort within the boundaries of CD-11 since 2018. App. 3242a; App. 2506a, at 168:5–13.

Applicants' efforts to rebut that testimony fell flat. One of their experts—Dr. Voss—walked back key conclusions from his report while on the stand and conceded that his own analysis likewise showed polarized voting across racial groups. Applicants' other expert, Dr. Alford, merely repeated his view that the voting patterns at issue were attributable to partisanship rather than race—a view that courts have serially rejected.[5]

Petitioners also offered evidence about Staten Island's long history of racial discrimination against Black and Hispanic residents through the testimony of Dr. Thomas Sugrue, a respected historian who has repeatedly been credited in similar cases. *See United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 593–95 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606–07 (N.D. Ohio 2008). Dr. Sugrue addressed many of the so-called Senate Factors, which overlap significantly with factors New York state courts consider under the John R. Lewis Voting Rights Act of New York, or NYVRA. *Compare Gingles*, 478 U.S. at 36–37, *with* N.Y. Elec. Law § 17-206(3). Applicants offered just a single witness to rebut this testimony—Mr. Joseph Borelli, a partisan politician who had never previously testified as an expert witness in any capacity. App. 2750a, at 778:24–779:17. Far from rebutting Dr. Sugrue, Mr. Borelli's report was "riddled with errors," "ignore[d] extensive evidence of past and ongoing discrimination in housing and policing," and his opinions were "often not founded upon carefully adduced evidence, reliable data, or accurate reportage." App. 1593a–94a, ¶ 64. Much of his testimony consisted of personal anecdotes about life on Staten Island, like the fact that his family sold his "grandmother's house to a Pakistani family

[5] *See, e.g.*, *Robinson v. Ardoin*, 605 F. Supp. 3d 759, 840 (M.D. La. 2022), *vacated and remanded*, 86 F.4th 574 (5th Cir. 2023); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1209–10 (N.D. Ga. 2023), *appeal filed sub nom. Alpha Phi Alpha Fraternity, Inc. v. Ga. Sec'y of State,* No. 23-13914 (11th Cir. argued Jan. 23, 2025); *NAACP Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021).

who moved in a couple of years ago." App. 2744a, at 756:10–22. Unsurprisingly, the trial court credited Dr. Sugrue's testimony over Mr. Borelli's scattershot and anecdotal response.

Finally, Petitioners offered a third expert witness who set forth a proposed alternative configuration for CD-11 that would redress their vote dilution injury while respecting traditional redistricting principles. Specifically, Mr. William Cooper—one of the nation's most widely recognized map-drawing experts—offered an alternative CD-11 linking Staten Island with Lower Manhattan, a configuration that had previously been in place for most of the twentieth century. *See* App. 2975a.[6] Mr. Cooper testified that he drew this alternative map blind to racial data, App. 2580a, at 337:21–338:6, and he further confirmed that the map was purely illustrative—that is, the map was intended to show it was *possible* to draw a map that remedied unconstitutional vote dilution in the district. Ultimately, he explained, the IRC and the Legislature would have the last word on how best to correct any unlawful practices. App. 2588a, at 371:1–10. While Applicants' rebuttal experts took narrow potshots at Mr. Cooper's illustrative map, neither disputed that it would be feasible for the IRC or Legislature to draw alternative versions of CD-11 that both remedied vote dilution and adhered to traditional redistricting criteria, as the New York Constitution requires.[7]

The trial court assessed and weighed the substantial expert testimony within the

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[6] *See also* Univ. of Richmond, *Electing the House of Representatives*, https://dsl.richmond.edu/panorama/congress/map/1902/NY/036058062008 (last visited Feb. 18, 2026) (identifying every district from 1902 to 1950).

[7] Petitioners' racial polarization expert analyzed this illustrative CD-11 and explained exactly how it would remedy the unlawful dilution of Black and Hispanic voters in the district. He explained that, in this alternate configuration, voting is far less racially polarized, with roughly 40% of White voters supporting the Black and Hispanic-preferred candidate on average, App. 3242a–3243a, ¶¶ 21–25, fig. 4; App. 3247a, tbl. 2, and the Black and Hispanic-preferred candidate is *often* (but not always) successful, App. 3244a, ¶ 26, fig. 5. The IRC and the Legislature have every tool at their disposal to similarly depolarize CD-11 with new district boundaries.

framework it adopted before it and ultimately credited Petitioners' experts. Ultimately, the court found that Petitioners had met their burden to prove unlawful vote dilution because "racially polarized voting ha[d] clearly been demonstrated," App. 8a, and "a totality of the circumstances analysis indicate[d] that as drawn, the district lines of CD-11" violate the New York Constitution. App. 12a. The Court also determined that Black and Hispanic voters in CD-11 comprise a "sufficient portion of the district's population," such that "redrawing . . . the congressional lines is a proper remedy." App. 13a.

To redress this unlawful vote dilution, the trial court ordered swift relief that respected its own role in the state's constitutional structure. First, the court declared the current boundaries of CD-11 unlawful and enjoined their use. Then, respecting the New York Constitution's command that, after such a ruling, "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities," N.Y. Const. art. III, § 5, the court ordered the IRC to reconvene and propose a new map to the Legislature. And in so doing, the trial court offered a standard for the IRC and Legislature to apply to assess whether a potential remedial district constitutes a crossover district. Finally, recognizing that "time is of the essence," the Court ordered the IRC to propose a new map by February 6, 2026—a "deadline" that one Co-Chair of the Board of Elections had proffered as the latest date a *new* map could be implemented for the 2026 election. Since then, however, the Board's other Co-Chair has explained that the Board is perfectly capable of implementing a new map for weeks to come—and that it *has* done so on similar timelines in several recent elections. App. 383a–86a.

The trial court also made clear that its order was a "Non-Final Disposition," and that the case "shall not be deemed resolved until the successful implementation of a new

Congressional map complying with [its] order." App. 18a.[8] To that end, since Applicants have filed their litany of stay motions, proceedings have continued before the trial court. On February 11, the trial court held a hearing and added the IRC and its members as parties to facilitate the remedial process. Applicants appeared at the hearing and indicated that they did not oppose adding these parties—tacit acknowledgment of the trial court's continued jurisdiction and the non-finality of proceedings below.

IV. Applicants simultaneously seek stays in two different New York appellate courts and then—before either court has ruled—come to this Court.

Since the trial court's ruling, Applicants have adopted a spaghetti-throwing approach to obtaining a stay. On January 26—five days after the trial court's ruling—both sets of Applicants simultaneously noticed appeals to *both* New York's intermediate appeals court (the Appellate Division) and its highest court (the Court of Appeals). This was a strange choice, not least of all because it is well established in New York that "simultaneous appeals do not lie to both the Appellate Division and the Court of Appeals." *DeGraff v. Colontonio*, 211 N.E.3d 95, 95 (N.Y. 2023) (citing *Parker v. Rogerson*, 320 N.E.2d 650, 650 (N.Y. 1974)); *accord Bertini v. Murray*, 45 N.E.2d 907, 907 (N.Y. 1942) (per curiam) ("Appeals may not be taken to both courts."). Even more puzzling, Applicants themselves seemed well aware of this: the Intervenors' own correspondence to the Court of Appeals suggested that the Appellate Division was the more appropriate venue for their own request. Suppl. App. 83.

Applicants then filed *identical* stay applications in both the Appellate Division and the Court of Appeals on January 28, 2026, seeking the exact same relief, further sowing confusion as to which court properly had the case. The Court of Appeals, given the cloud over

[8] In a subsequent letter to the New York Court of Appeals, Intervenors acknowledged their own "uncertainty" as to whether the trial court's order finally determines the action. Suppl. App. 82.

its jurisdiction, declined to issue interim relief and directed the parties to brief whether that court had direct appeal jurisdiction under New York civil procedure law. Suppl. App. 91–93. It also diligently asked the parties to complete briefing on Applicants' stay motions, in the event it had jurisdiction. That briefing was completed on February 6. In parallel, the Appellate Division also issued a briefing schedule on the stay motion in that court, which concluded on February 9—roughly ten days from when the stay applications had been formally docketed in that court. App. 468a–69a.

Applicants made clear from the start that they did not intend to pay much regard to New York's appellate courts, notwithstanding the state law issues at the heart of this case. In a letter to the Court of Appeals on January 26, the Intervenors demanded a ruling on their stay motion no later than February 10—barely two weeks from when they noticed their appeal—or else they would head directly to this Court for a stay instead, regardless of the status of any state court proceedings. Suppl. App. 83. This urgency, they said, flowed from the looming commencement of New York's signature collecting period for ballot access on February 24. This explanation was clearly pretextual. Intervenors' own counsel told a very different story just four years ago when they obtained a trial court order in *Harkenrider* requiring a new, *statewide* map to be redrawn on *March 31, 2022*—more than a month *after* the same deadline. *See Harkenrider*, 197 N.E.3d at 454. The United States candidly admits that "here, the election is months away" and "[t]hat distance from the beginning of election season, much less actual voting, should minimize any concerns" about the pace of appellate proceedings here. U.S. Br. 24. The Co-Chair of the New York Board of Elections submitted declaration testimony below confirming the point, and she further confirmed that the Board could efficiently facilitate primary elections even if a new map had to be drawn. App. 386a, ¶ 10. Thus, the February 10 ultimatum Applicants gave to the New York appellate courts to issue a stay was little more than invented excuse to reach this Court.

On February 11, the Court of Appeals confirmed—as Applicants apparently anticipated—that it lacked jurisdiction and dismissed the motions for a stay as "academic." App. 19a–21a. It further transferred the appeal to the Appellate Division—where briefing on Applicants' parallel stay motion had completed on February 9.

On February 12, Applicants filed in this court—*one day* after the Court of Appeals denied jurisdiction and *three days* after briefing concluded in the Appellate Division. On February 13, Applicants filed letters in the Appellate Division apprising them of their motions to this Court but indicating that they still wanted the Appellate Division to issue a ruling. Suppl. App. 100–01. The Appellate Division did so on February 19—the same day as this response—and denied the requests for a stay, while making clear the IRC may proceed with proposing a new map to the Legislature, which as a matter of New York law is entitled to review the map and ultimately has the last word on the subject. Suppl. App. 102–03.; *see also* N.Y. Const. art. III, § 5.

LEGAL STANDARD

Before reaching the merits of the Applications, the Court must assure itself of jurisdiction. *See Abbott v. Perez*, 585 U.S. 579, 594 (2018). This Court has jurisdiction to stay a "final judgment or decree of any court" that "is subject to review by the Supreme Court on writ of certiorari." 28 U.S.C. § 2101(f). For appeals from state courts, only "[f]inal judgments" by "the highest court of a State in which a decision could be had" are subject to review by writ of certiorari. *Id.* § 1257(a).

On the merits, Applicants "bear[] the burden of showing that the circumstances justify" a stay, which is "an 'intrusion into the ordinary processes of administration and judicial review.'" *Nken v. Holder*, 556 U.S. 418, 427, 433–34 (2009) (quoting *Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921, 925 (D.C. Cir. 1958)

(per curiam)). A stay is never granted as "a matter of right, even if irreparable injury might otherwise result." *Id.* at 427 (quoting *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672 (1926)). The Court considers (1) whether "the stay applicant has made a strong showing that he is likely to succeed on the merits," (2) "whether the applicant will be irreparably injured absent a stay," (3) whether a stay "will substantially injure the other parties," and (4) the public interest. *Id.* at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

The Court further considers whether there is "'a reasonable probability' that this Court will grant certiorari [and] . . . will then reverse the decision below." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, C.J., in chambers) (quoting *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers)). "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3*, 142 S. Ct. at 18 (Barrett, J., concurring in denial of application).

Finally, this Court's rules advise that "[e]xcept in the most extraordinary circumstances, an application for a stay will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof." Sup. Ct. R. 23(3). The "application for a stay shall set out with particularity why the relief sought is not available from any other court or judge." *Id.*

REASONS TO DENY THE APPLICATION

I. The Applications—which leapfrog available relief from New York's appellate courts—are procedurally improper.

The Applicants filed their requests in brazen defiance of this Court's rules, seeking a stay from (1) a non-final state court trial order; that (2) interprets a state constitutional provision as a matter of first impression; (3) where no state appellate court had yet exercised jurisdiction over the state or federal issues presented; and (4) where further state court proceedings are available and could moot out Applicants' federal concerns on state law grounds. Notwithstanding the Appellate Division's order this morning, the Applications remain premature and violate Rule 23, which requires applicants to "set out with particularity" why relief is not available elsewhere and show "extraordinary circumstances" that warrant sidelining the New York appellate courts. Neither requirement is satisfied here, as New York's appellate courts plainly remain available to Applicants and can afford them relief.

The Applications also seek relief beyond this Court's statutory authority to grant certiorari or to stay a final state court order, rendering it impossible for the Court to conclude that there is a "reasonable probability" that it would grant certiorari over this case. *Maryland*, 567 U.S. at 1302.

A. The Court cannot grant a stay under § 2101(f) because there is no final judgment or decree on which the Court can grant certiorari.

"The authority for a single Justice to issue a stay of the sort requested here is conferred by 28 U.S.C. § 2101(f)." *Barnes v. E-Sys., Inc. Grp. Hosp. Med. & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers). Under § 2101(f), this

Court can stay "final judgments" that are "subject to review by the Supreme Court on writ of certiorari." But the only state orders "subject to review" on a writ of certiorari are "[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(a) (emphasis added). An order qualifies as a "final judgment" when the state high court "has finally determined the federal issue present in a particular case" and "the federal issue . . . is not subject to further review in the state courts." *Cox*, 420 U.S at 477, 485. This Court has identified a narrow "practical finality" exception to the rule, but that exception still requires that "the federal issue" has been "finally decided" in the state courts. *Id.* at 480–82.

This case falls miles outside this Court's § 2101(f) jurisdiction. No New York appellate court—let alone the State's highest court—has finally resolved the federal issues identified in the Applications. The only court adjudication of the federal questions below are a non-final order of a New York trial court, and a brief order from an intermediate appeals court denying a stay, very possibly for reasons unrelated to the federal questions. Under New York's civil procedure rules, Applicants have several state court paths yet available to them, including seeking permission to appeal the Appellate Division's stay denial to the Court of Appeals, *see* N.Y. C.P.L.R. 5602, and seeking expedited merits review. *See generally Yeshiva*, 143 S. Ct. at 1. Applicants know all this as their stumbling efforts to seek simultaneous relief from the Appellate Division and Court of Appeals show. *See generally* App. 1991a–2031a, 3589a–3649a. And there is no dispute that the state courts can afford Applicants relief on either state or federal grounds. *E.g.*, *Eng. v. Avon Prods., Inc.*, 169 N.Y.S.3d

300 (N.Y. App. Div. 2022). Yet neither of these New York appellate courts has "finally determined," the various federal issues raised in the Applications. *Cox*, 420 U.S at 477. Unsurprisingly, Applicants never even bother to cite § 2101(f), never mind explain how it is satisfied here.

The Board Respondents at least hazard an argument that the New York Court of Appeals "denied Applicants' motion for an interim stay," Resp. Appl. 3, but that does not satisfy § 2101(f). The Court of Appeals' January 29 letter to counsel simply noted that "no interim stay was granted" while the court assessed its own jurisdiction. It then confirmed it lacked jurisdiction on February 11 when it transferred Applicants' improper appeal to the Appellate Division and dismissed Applicants' stay request as "academic." App. 20a–21a (citing N.Y. Const. art. VI, §§ 3(b)(2), 5(b); N.Y. C.P.L.R. 5601(b)(2)). Neither event constitutes a final determination of the merits of any federal issue. "When the highest state court is silent on a federal question," this Court "assume[s] that the issue was not properly presented." *Adams v. Robertson*, 520 U.S. 83, 86 (1997); *see also Liles v. Nebraska*, 465 U.S. 1304, 1304 (1984) (Blackmun, J., in chambers) (denying stay for lack of jurisdiction where state supreme court dismissed applicant's appeal "for lack of an appealable order"). Here, the Court need not assume that—it is plain from the Court of Appeals' determination that it lacked jurisdiction, thus its order could not have been a merits ruling as a matter of New York law. *See Caffrey v. N. Arrow Abstract & Settlement Servs., Inc.*, 73 N.Y.S.3d 70, 77–78 (N.Y. App. Div. 2018) ("A judgment rendered by a court without subject matter jurisdiction is void as a matter of law." (collecting authority)). Now

that the Appellate Division has ruled, however, Applicants have a clear avenue to seek jurisdictionally-proper relief from New York's highest court. *See* N.Y. C.P.L.R. § 5602. Accordingly, this Court has no authority under § 2101(f) to issue a stay.

B. Applicants are not entitled to relief under the All Writs Act for substantially the same reasons.

Perhaps recognizing that § 2101(f) is a dead end, Applicants point instead to the All Writs Act as a possible source of relief. *See* Resp. Appl. 4; Int. Appl. 5; *see also* 28 U.S.C. § 1651(a). Even assuming it can apply here,[9] the All Writs Act "demands a significantly higher justification than . . . § 2101(f)," which Applicants cannot meet for the reasons above. *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm'n*, 479 U.S. 1312, 1312 (1986) (Scalia, J., in chambers). Such relief requires, among other things, that there be "no other adequate means" to obtain relief, *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010), and that issuance of a writ is "necessary or appropriate in aid of [the Court's] jurisdiction[]," 28 U.S.C. § 1651(a).

Neither requirement is satisfied here. Relief remains available to Applicants from both the Court of Appeals via leave for review of the Appellate Division's stay denial, as well as through the Appellate Division itself via expedited merits briefing. And no writ is necessary to preserve this Court's jurisdiction, which will still exist following adjudication by the New York appellate courts—unless those courts moot out the federal issues altogether on state law grounds. *See Hobby Lobby Stores, Inc.*

[9] *But see Pa. Bureau of Corr. v. U.S. Marshals Serv.,* 474 U.S. 34, 43 (1985) ("Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, that is controlling."). Here, § 2101(f) supplies the more naturally applicable framework for deciding the Applications.

v. Sebelius, 568 U.S. 1401, 1404 (2012) (Sotomayor, J., in chambers) (concluding writ was unnecessary to preserve this Court's jurisdiction where applicants could appeal later).

Applicants barely offer any explanation as to how they meet these requirements. The Board Respondents simply assert that a "stay of the trial court's order would be in aid of this Court's jurisdiction," Resp. Appl. at 4, while the Intervenors offer nothing other than a series of citations that reflect greater effort on the part of other litigants to exhaust state court relief. *See CBS, Inc. v. Davis*, 510 U.S. 1315, 1316 (1994) (Blackmun, J., in chambers) (noting "the South Dakota Supreme Court denied CBS' application for a stay of the injunction"); *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303, 1303 (1983) (O'Connor, J., in chambers) (noting the "Michigan Court of Appeals denied leave to appeal"); *see also Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs.*, 398 U.S. 281, 284 (1970) (request for stay made after orders from both a federal district court and a federal court of appeals). Intervenors' reference to this Court's stay order in *New Jersey Transit Corporation v. Colt* is even more inexplicable. There, a New York court scheduled trial in a matter after this Court had already granted a petition to review whether a New Jersey executive agency was immune from suit. *See* Petition, No. 24-1113 (Apr. 24, 2025). That applicant sought a stay from this Court—but only after first seeking and being denied relief from all three levels of the New York court system. *See* Stay Application at 2, No. 25A287 (Sep. 11, 2025). Applicants have done nothing remotely similar here.

The case that these circumstances best resemble are those in *Yeshiva*, where this Court rejected an applicant's effort to obtain a stay under both § 2101(f) and the All Writs Act after skipping over New York's appellate courts. The applicant in *Yeshiva* similarly requested a stay from the New York Court of Appeals of a trial court order, and the New York Court of Appeals "decline[d] to sign the order." Appendix of Exhibits App.4–5, *Yeshiva*, 143 S. Ct. 1 (No. 22A184). In denying a stay under 28 U.S.C. § 2101 and 28 U.S.C. § 1651, this Court explained that applicants had "at least two further avenues for expedited or interim state court relief" before it could return for interim relief, one of which included filing a motion with the Appellate Division "for permission to appeal that court's denial of a stay to the New York Court of Appeals." *Yeshiva*, 143 S. Ct. at 1.

Remarkably, neither Applicant even bothers to cite *Yeshiva*, even though it sets forth the steps they still must take before coming to this Court. Indeed, the Applications here are even more flawed than those in *Yeshiva*, where according to the applicants they had "sought leave to appeal the stay denial in the Appellate Division and the Court of Appeals" before coming to this Court. *See* Reply in Support of Emergency Application for Stay at 6, *Yeshiva* (No. 22A184). And in *Yeshiva* the Court of Appeals had at least denied a request for interim relief, though not on the basis of jurisdiction. *Compare* Appendix of Exhibits App.4–5, *Yeshiva*, 143 S. Ct. 1 (No. 22A184) (denying request without reasoning), *with* App. 20a (denying on the explicit basis of jurisdiction and transferring appeal to Appellate Division). Moreover, while still improper, the applicants in *Yeshiva* at least bothered to wait for the Appellate

Division to resolve their stay motion before coming to this Court. *See* Emergency Application for Stay at 4, *Yeshiva* (No. 22A184). The Applicants here have made markedly less effort in state court than even the deficient efforts of the *Yeshiva* applicants and indisputably have not yet sought "permission to appeal [the Appellate Division's] denial of a stay to the New York Court of Appeals." 143 S. Ct. at 1. Indeed, this Court has repeatedly made clear that its review is not proper from an immediate state appeals court, at least where parties have not exhausted channels for further state court review. *See, e.g.*, *Sandquist v. California*, 419 U.S. 1066, 1066 (1974) (denying certiorari for lack of finality where "petitioners did not seek to have the Appellate Department certify their cases to the Court of Appeal"); *Banks v. California*, 395 U.S. 708, 708 (1969) (similar). This is "not one of those technicalities to be easily scorned," but rather "an important factor in the smooth working of our federal system." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 124 (1945).

Nor should the Court grant the Applicants much credit for the denial of their stay request in the Appellate Division a full week after they sought relief from this Court. Rest assured, if relief is granted in this posture, future stay applicants will see little purpose in waiting for state court rulings before coming to this Court. The state courts will either simply grant relief in the meantime—wasting this Court's time and resources—or deny relief, thus vindicating an applicant's choice to jump the gate. Permitting the gamesmanship Applicants have shown here will make Swiss cheese of this Court's otherwise "firm final judgment rule" for review of state court orders. *Jefferson*, 522 U.S. at 85 (explaining this Court does not review state court orders

where such orders remain subject to further review or correction by state courts).

C. The United States' "practical finality" and First Amendment arguments cannot remedy the deficiencies in the Applications.

Seeking to prop up Applicants' deficient arguments, the United States asks that the Court take a "'pragmatic approach' to defining finality," citing this Court's "practical finality" exception in *Cox*. U.S. Br. at 20 (quoting *Cox*, 420 U.S. at 486). But that argument is wrong as a matter of law: practical finality still requires that "the federal issue" has been "finally determined" in the state courts, even where further proceedings are still occurring on *state law* issues. *Cox*, 420 U.S. at 477. The United States does not, and cannot, suggest that any state appellate court has "finally decided" the federal issues raised by Applicants.

The United States also cites a smattering of decisions for the proposition that a state court's "failure to timely act on a stay application" should be construed as a final judgment where "the allegedly unconstitutional conduct will continue 'during the period of appellate review.'" U.S. Br. 20 (quoting *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977) (per curiam)). That argument fails here for several reasons. First, it is simply not true that the New York appellate courts have failed to act in a timely manner in this case, even if they have not acted on Applicants' *preferred*—and entirely artificial—timeline. *See infra* § III.A. Second, the finality exception the United States points to is rooted exclusively in the First Amendment and the unique type of ongoing irreparable harm caused by a "[prior] restraint" on speech. *Skokie*, 432 U.S. at 44. Applicants here do not assert First Amendment harm—presumably why they themselves do not assert this basis for the Court's

jurisdiction. Nor are Applicants subject to alleged constitutional injuries that are in any way akin to a prior restraint on speech; their claims of harm stem from forthcoming elections that the United States admits "is months away." U.S. Br. at 24. The IRC has not yet even drawn a remedial map, nor have New York's appellate courts or Legislature weighed in upon that map. Applicants' claims of harm are therefore highly contingent on ongoing state court proceedings. Third, even in the case upon which the United States relies to make this argument, the "Illinois Supreme Court [had] denied both the stay and leave for an expedited appeal." *Skokie*, 432 U.S. at 44. In sum, the circumstances here simply bear no resemblance to the First Amendment line of cases relied upon by the United States.[10]

D. This case may yet be resolved on a number of independent state law grounds, which weighs strongly against this Court's jurisdiction.

Exercising jurisdiction in this extraordinary posture would also undermine an "important purpose" behind the finality requirement: to prevent "interference with state proceedings when the underlying dispute may be otherwise resolved." *Costarelli v. Massachusetts*, 421 U.S. 193, 196 (1975). Notwithstanding Applicants' effort to federalize this case, the crux of the dispute is the scope and meaning Article III, §

[10] The other cases cited by the United States for this exception all turned on both the existence of a prior restraint on speech *and* undue delay by state courts. Neither circumstance is present here. *See, e.g.*, *Neb. Press Ass'n v. Stuart*, 423 U.S. 1327, 1329 (1975) (Blackmun, J., in chambers) (granting stay where "direct prior restraint" on news media meant "each passing day may constitute a separate and cognizable infringement of the First Amendment" and where Nebraska Supreme Court had deferred consideration of any stay motion until its next regular session); *M.I.C., Ltd. v. Bedford Township*, 463 U.S. 1341, 1342–43 (1983) (Brennan, J., in chambers) (same where prior restraint would stay "in effect during the pendency of review," which was expected to "extend up to six months").

4(c)(1) of the New York Constitution. It remains to be seen how New York's appellate courts answer these questions. Depending on how they do, "[r]esolution of the state-law claims could effectively moot the federal-law question raised" in the Applications. *Jefferson*, 522 U.S. at 82; *see also Doe v. Facebook, Inc.,* 142 S. Ct. 1087, 1088 (2022) (Thomas, J., respecting denial of certiorari) (explaining no finality exception applied where ongoing state court proceedings could moot any federal issue).

Most obviously, New York's appellate courts could adopt a construction of Article III, § 4(c)(1) that undercuts Petitioners' claim or at least requires remand for further proceedings. Moreover, the New York Appellate Division has the same fact-finding authority as the trial court and, on merits review, could take a different view of the evidence presented. *E.g.*, *Kaliontzakis v. Papadakos*, 892 N.Y.S.2d 542, 544 (N.Y. App. Div. 2010) ("[T]he power of this Court is as broad as that of the trial court, allowing this Court to render the judgment it finds is warranted by the facts." (collecting authority)). Finally, New York's appellate courts could agree with Applicants' constitutional arguments but on *state* constitutional grounds. Equally as important, the ongoing proceedings in New York may well shape the nature and scope of the federal questions posed by Applicants, most obviously by yielding an actual remedial map for Applicants to challenge. *See infra* pp. 45–48.

In sum, there is little doubt that the "federal constitutional issues" raised by Applicants "may be affected by additional proceedings in the state courts." *Minnick v. Cal. Dep't of Corr.*, 452 U.S. 105, 123 (1981) (concluding practical finality exception did not apply for this reason and dismissing appeal). If the federal questions raised

by Applicants survive after state court proceedings run their proper course, this Court can then consider "the underlying constitutional issues in clean-cut and concrete form, unclouded by any serious problem of construction relating either to the terms of the questioned legislation or to its interpretation by the state courts." *Rescue Army v. Mun. Ct. of L.A.*, 331 U.S. 549, 584 (1947) (dismissing appeal pending further proceedings in state court). But it makes little sense to do so while state court proceedings remain at this stage and when the state court appellate process has barely commenced.

II. Even if this Court could grant review, it would not likely reverse on any of the federal issues offered by Applicants.

Assuming the federal issues presented even survive to a point where this Court could grant certiorari to review them, Applicants would still be unlikely to prevail on the merits of those federal questions. *See Nken*, 556 U.S. at 434.

A. The state trial court did not violate due process, and Applicants' arguments to the contrary are contrived and meritless.

Both sets of Applicants pin their requests for a stay on the argument that the state trial court committed a due process error in how it went about construing Article III, § 4(c)(1) of the New York Constitution. *See* Resp. Appl. 15–22; Int. Appl. 25–31. There are three critical problems with this theory. *First*, the construction of Article III, § 4(c)(1) was squarely at issue below; indeed, it was the *only* claim asserted by Petitioners. Applicants' arguments ignore the state trial court's independent duty to construe that provision as a legal matter (and here, a question of first impression), without being rigidly bound by party argument. *Second*, Petitioners and Applicants alike presented *ample* evidence—through no less than *eight* witnesses—on the

standard of proof for vote dilution claims the court ultimately adopted: the extent of racially polarized voting and the *Gingles* totality factors. And although the trial court charted a slightly different analytical course to reach that end than Petitioners originally proposed, Applicants can claim no conceivable prejudice where the record plainly shows they offered ample evidence on each factor the court ultimately deemed relevant to the claim. *Third*, Applicants' due process arguments are intertwined with the merits question of how Article III, § 4(c)(1) should be interpreted—a state law question beyond this Court's remit. For each of these reasons, it would be quite surprising for this Court to even grant review—never mind reverse—on this question.

1. All parties agree that the case below presented a matter of first impression about the scope and meaning of Article III, § 4(c)(1) of the New York Constitution. *E.g.*, App. 2469a–70a, at 18:13–21 (Intervenors' counsel agreeing this is a "matter of first impression"). And all parties further agree that Petitioners asserted a single standalone claim under Article III, § 4(c)(1). Accordingly, the Court was duty-bound to resolve this "issue of first impression" placed squarely before it.

Applicants contend that in carrying out this interpretive task, the Court was "constrained" to the arguments put forward by the parties. Resp. Appl. at 16; *see also* Int. Appl. at 26–27 (similar). Setting aside that Applicants grossly exaggerate the trial court's analytical course, *see infra* pp. 38–43, their argument straightforwardly fails as a matter of law. This Court has made clear that courts are "not limited to the particular legal theories advanced by the parties, but rather retain[] the independent power to identify and apply the proper construction of governing law." *Kamen*, 500

U.S. at 99; *cf. Hankins v. Lyght*, 441 F.3d 96, 104 (2d Cir. 2006) ("We are required to interpret federal statutes as they are written . . . and we are not bound by parties' [positions]."). Any other approach would improperly "relieve [courts] of [their] responsibility to interpret the law correctly." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 41 n.2 (2015) (Thomas, J., concurring in part and dissenting in part) (explaining party argument does not cabin a court's interpretation of law).

This is no less true for New York courts. *E.g., Rogoff v. Anderson*, 310 N.Y. S.2d 174, 177 (N.Y. App. Div. 1970) ("The power to construe a law is generally vested in the courts."), *aff'd*, 271 N.E.2d 553 (N.Y. 1971); *O'Reilly v. City of New York*, 198 N.Y.S. 76, 81 (N.Y. App. Div.) ("This court must interpret the law as it finds it."), *aff'd*, 142 N.E. 306 (N.Y. 1923). Accordingly, the trial court simply engaged in "the distinct role of the courts to interpret the laws to give effect to legislative intent." *Regina Metro. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 154 N.E.3d 972, 976 (N.Y. 2020) (per curiam). In doing so it was "not bound by the parties' formulation of the issues," *Wiley v. Altman*, 420 N.E.2d 371, 373 n.6 (N.Y. 1981), and party argument alone could "not intrude upon the judicial function of correctly identifying and applying the law to the facts." *Knavel v. W. Seneca Cent. Sch. Dist.*, 53 N.Y.S.3d 731, 733 (N.Y. App. Div. 2017).

There is nothing novel about this judicial duty to construe constitutional and statutory provisions independently. Since the founding of this country, courts have always exercised independent judgment "when interpreting the laws." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (citing *Marbury v. Madison*, 5 U.S. (1

Cranch) 137, 177 (1803)). Thus, "courts must exercise independent judgment in determining the meaning of statutory [and constitutional] provisions." *Id.* at 394. That is precisely what the trial court did here: it was presented with the question of Article III, § 4(c)(1)'s scope and construed it as asked. Any error in that construction is a question of *state* law best resolved by *state* appellate courts; there is no federal aspect to such error.

The cases Applicants point to are simply nothing like this one. In *United States v. Sineneng-Smith*, for example, a criminal defendant argued that her conduct fell outside the scope of the criminal statute she was charged under. *See* 590 U.S. 371, 377 (2020). She further asserted an affirmative defense that, if her conduct was proscribed, the statute violated her First Amendment rights as applied. *See id.* She appealed her conviction to the Ninth Circuit, which then appointed several *amici* to address whether the statute the defendant was charged under violated the First Amendment as overbroad or the Fifth Amendment as unconstitutionally vague—constitutional defenses the defendant had never raised and which the Ninth Circuit had no need to pass upon in resolving the arguments actually presented by the defendant. *See id.* at 378–79.

This Court recognized that while "a court is not hidebound by the precise arguments of counsel," *id.* at 380, the defendant herself had never so much as "hint[ed]" at the constitutional defenses introduced by the Ninth Circuit, *id.* at 377. But the error there was clear—the Ninth Circuit introduced legal questions it otherwise had no need to opine upon, and in doing so failed to "wait for cases to come

to [them]" that necessarily presented those issues. *Id.* at 376 (alteration in original) (quoting *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in the denial of rehearing en banc)). In this case, however, the trial court *had* to construe the scope and meaning of Article III, § 4(c)(1), which was the stated basis for Petitioners' sole claim and indisputably the relevant "governing law" of the case. *Kamen*, 500 U.S. at 99. The trial court did not strain to bring in extraneous legal questions; it simply resolved the question put directly before it.

Similarly, in *Clark v. Sweeney*—an unpublished per curiam order—the Fourth Circuit granted a habeas petition based "on a claim that Sweeney never asserted." 607 U.S. 7, 9 (2025) (per curiam). Sweeney claimed he lacked effective assistance of counsel because his trial lawyer failed to *voir dire* the jury after one juror had been dismissed for improperly investigating the crime scene. *See id.* at 8–9. Rather than rule upon *that* claim, which was governed by AEDPA, the Fourth Circuit relitigated broader swathes of the case to find a "structural error" that "extend[ed] far beyond just [counsel's] ineffectiveness," resulting in an "error [that] infected the entire judicial process and Sweeney's right to a fair trial" under the Sixth Amendment. *Sweeney v. Graham*, No. 22-6513, 2025 WL 800452, at *20 (4th Cir. Mar. 13, 2025). In doing so, the Fourth Circuit improperly "grant[ed] relief on a claim that Sweeney never asserted" and improperly "devised a new one." *Clark*, 607 U.S. at 9. That, too, is nothing like this case, where Petitioners indisputably raised a claim under Article III, § 4(c)(1), App. 511a–12a, and which the trial court then ruled upon as asked.

At bottom, Applicants' due process theory is built upon a flawed legal

foundation. They cannot cite a *single* case finding a due process violation based solely on a court's construction of a law that was necessarily placed before it by the operative pleading. And the reason why is clear—"it rests on a profound misconception of the judicial role," *Loper Bright*, 603 U.S. at 403, which necessitates "independent judgment in determining the meaning" of the law, *id.* at 394.

2. Applicants' due process argument is not just legally confused—it also relies upon a histrionic retelling of events below, wherein both Petitioners and Applicants set out competing frameworks for how the Court should construe the meaning of Article III, § 4(c)(1) as a matter of first impression.

Petitioners argued that Article III, § 4(c)(1) is broader than the federal VRA—specifically in that it does not contain a majority-minority district requirement (that is, the first *Gingles* precondition). Petitioners thus proposed that the court should borrow from the better-established legal framework of a closely related statute—the NYVRA. *See, e.g.*, App. 2234a–39a. That law, which applies to local elections, guarantees that "eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the electoral processes of the state of New York." N.Y. Elec. Law § 17-200(2). The NYVRA expressly permits coalition and crossover district claims where a plaintiff proves vote dilution through evidence "that candidates . . . preferred by members of the protected class would usually be defeated, and either: (A) voting patterns of members of the protected class within the political subdivision are racially polarized; or (B) under the totality of the circumstances, the ability of members of

the protected class to elect candidates of their choice or influence the outcome of elections is impaired." *Id.* § 17-206(2)(b). Petitioners contended the text of Article III, § 4(c)(1) supported a similar framework, particularly given that provision's own reference to the "totality of the circumstances."

Applicants, in contrast, argued that Article III, § 4(c)(1) was merely a carbon copy of § 2 the federal VRA, and thus urged the trial court to adopt the same legal framework set out in this Court's VRA precedents. App. 2285a–90a, 2340a–46a.

Acknowledging this "issue of first impression," App. 4a, the state trial court proceeded to construe the provision in two parts—first, how a Petitioner *establishes* that vote dilution is occurring, App. 4a–13a; and then, second, how the Constitution requires such vote dilution to be *remedied*, *see* App. 13a–17a.

As to the first issue, the court adopted a straightforward textualist approach focused on the Constitution's use of the term "totality of the circumstances." N.Y. Const. art. III, § 4(c)(l); *see also* App. 4a–5a. Drawing from federal case law, the court applied the "Senate Factors" from the federal VRA analysis, which among other things asks whether there is racially polarized voting in the relevant jurisdiction and set out a list of objective factors relevant to a racial vote dilution claim. *See* App. 7a (citing *Gingles*, 478 U.S. at 44–45). In other words, the court concluded the *exact* evidence presented by Petitioners—proof of racial polarization and a totality of the circumstances—could establish vote dilution. While the court reached that conclusion via the Senate Factors rather than the NYVRA, its ultimate conclusion on the merits—that "racially polarized voting has been clearly

demonstrated" and that "a totality of the circumstances" reflected unlawful vote dilution, App. 8a, 12a—mirrored Petitioners' trial evidence, which Applicants had opportunity to attack through their *five* responsive expert witnesses who addressed these precise topics. *See supra* Background § III.

According to Respondents, this was a due process violation because "Petitioners exclusively argued that the NYVRA's standards should be applied to Article III, § 4." Resp. Appl. at 15; *see also* Int. Appl. at 27–28 (similar). That argument mangles the record below. For one, Petitioners did *not* exclusively argue the NYVRA applied. Their opening brief stressed that Petitioners could "satisfy any possible standard" based on their showing of *both* "racially polarized voting in which Black and Latino voters' candidates are consistently defeated, alongside strong totality of the circumstances evidence." App. 2239a n.5. And as their post-trial memorandum further emphasized, "[t]he totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA," such that New York courts often rely upon federal VRA cases to resolve NYVRA claims. Suppl. App. 33. And as the Petition made abundantly clear from the start, Petitioners at all times argued that the New York Constitution permitted influence and crossover districts. *See, e.g.*, App. 2156a, ¶ 8; App. 2165a, ¶ 46. Indeed, this was—in form and function—the *only* true distinction between the competing standards the parties presented.

To put a finer point on the issue, Petitioners *always* premised their vote dilution claim on evidence of racially polarized voting and the totality of the

circumstances—the precise categories of evidence the trial court found to be determinative. App. 8a, 12a. Respondents and Intervenors harp on the fact that the court found this evidence determinative via the Senate Factors rather than via the NYVRA—despite that the factors are more or less identical. But they can claim no conceivable prejudice from that; indeed, as the Applications themselves lay plain Int. Appl. 11–13, Resp. Appl. 8–9, their five experts at trial addressed these *precise* topics, which had been extensively previewed prior to that by Petitioners in their Petition, Memorandum of Law, expert reports, and trial evidence. Their argument on this score therefore amounts to nothing more than a complaint that the court reached the exact evidentiary destination proposed by Petitioners via a slightly different analytical path. That is not a due process violation. *See supra* pp. 34–37.

Applicants next claim that Petitioners "effectively conceded that their dilution claim fails under federal law," insinuating that the trial court's use of federal case law somehow dooms the Petition. Resp. Appl. at 15. That argument borders on misleading. Petitioners conceded that their claims were not structured around satisfying the first *Gingles* precondition, but argued that element is not required under New York law—a point they consistently argued throughout the case and upon which the trial court squarely agreed with them. *See, e.g.*, App. 2236a–37a (arguing Article III, § 4(c)(1) permits crossover-district claims). Petitioners *never* suggested they could not satisfy the Senate Factors for purposes of showing vote dilution. In fact, they *expressly* argued they would prevail under that test or any similar formulation. App. 2239a n.5.

On the second issue the court addressed, Applicants complain about the remedial portions of the trial court's order, a process which is not yet even final and is subject to ongoing proceedings before the trial court. On this score, the court held the New York Constitution does not require minority groups "to constitute a majority in a single-member district" to remedy vote dilution. App. 13a (quoting *Gingles*, 478 U.S. at 51). That correct articulation of state law is precisely what Petitioners argued. *E.g.*, App. 2234a–39a; Suppl. App. 17–24. The court next explained the New York Constitution restricts vote dilution claims to circumstances where "minority voters . . . comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes." App. 13a. That, too, is precisely what Petitioners showed through their racially polarized voting evidence. *See generally* App. 3237a–49a (Palmer Report).

Because Petitioners did not demand a majority-minority district to remedy their vote dilution injury, the court concluded Petitioners were asserting a "crossover claim." App. 14a. A crossover district is one in which minority group voters can elect their preferred candidate with the aid of "crossover voters"—members of the majority racial group who also vote for the minority-preferred candidate. *See Bartlett*, 556 U.S. at 23 (rejecting such districts as mandatory under the federal VRA, but noting states are free to exceed federal law in this regard). Applicants take umbrage with this, arguing in their stay application before the New York Appellate Division that Petitioners never asserted a crossover claim. *E.g.*, App. 3621a. That allegation, which they now downplay before this Court, is

baffling—Petitioners asserted a crossover claim directly on the face of their Petition. *See* App. 2156a, ¶ 8; App. 2165a, ¶ 46.

Finally, rather than draw a new district itself—or simply adopt the Petitioners' proposed illustrative map—the Court ordered New York's IRC to draft a proposed remedial map, which the Legislature by law has the opportunity approve or revise. App. 18a. In doing so, the Court adopted three principles for the IRC to consider in drawing a remedial map: (1) whether minority voters can select their candidates of choice in a primary election; (2) whether those candidates are then usually victorious in a general election; and (3) whether a new district can "increase the influence of minority voters" such that they are decisive in selection of candidates. App. 15a. The IRC has since been added as a party to the ongoing and non-final trial court proceedings below, Suppl. App. 90; *see also* Suppl. App. 84–89, and it may take preparatory steps for proposing a new map pending resolution of Applicants' myriad and parallel stay requests, *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 218 N.E.3d 152, 153 (N.Y. 2023).

Applicants complain that Petitioners never introduced evidence below about the influence of Staten Island's minority voters over congressional primary elections, but that argument fundamentally misunderstands the trial court's order. The court never held that it was Petitioners' burden to prove minority primary-election control as an element of a constitutional vote-dilution claim. Indeed, it explained that a district "should count" for remedial purposes if it achieves this outcome—an obvious instruction to the IRC. App. 15a. The only thing the trial court required Petitioners

to establish as to remedy is "that minority voters make up a sufficient portion of the district's population," such that they are "able to influence electoral outcomes." App. 13a. Petitioners satisfied this requirement through a combination of racially polarized voting analysis and the proffering of an illustrative map showing how minority voters could play an influence role in determining the outcomes of elections in any new district.

3. As the foregoing shows, Applicants' due process complaint is a thinly disguised assignment of error to the trial court on a question of state law. Boiled down, their arguments are simply that the trial court erred by permitting crossover districts and not reading Article III, § 4(c)(1) to be a clone of § 2 of the federal VRA, which under this Court's precedents do not allow for crossover districts. But whether Article III, § 4(c)(1) is a carbon copy of the federal VRA—or instead reflects a distinct "legislative choice" by the New York Legislature, *Bartlett*, 556 U.S. at 23—is indisputably a question for New York courts to resolve. *See Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) ("This Court . . . repeatedly has held that state courts are the ultimate expositors of state law . . . ."); *Murdock v. Memphis*, 87 U.S. (20 Wall.) 590, 626 (1875) ("State courts are the appropriate tribunals . . . for the decision of questions arising under their local law, whether statutory or otherwise.").

Applicants have ample opportunity to press that state law question to New York's appellate courts, notwithstanding their haste in raising it here. But their effort to convert that straightforward state law dispute into a federal due process violation

necessarily invites this Court to delve into the ongoing dispute below about just what Article III, § 4(c)(1) means. Clear federalism principles weigh against doing so, particularly at this nascent stage of the state court proceedings. *See supra* § I; *see also Jefferson*, 522 U.S. at 82; *Carey v. Brown*, 447 U.S. 455, 485 n.14 (1980) (Rehnquist, J., dissenting) (observing that "[i]f given an opportunity," state courts might resolve dispute through resolution of state law questions "with which this court should not be concerned until the state courts have had an opportunity to address them").

If any doubt remained that Applicants' due process theory is just a state law argument masquerading as a federal constitutional question, their reliance on the *amici* briefs below gives the game away. Those briefs contend the trial court *correctly* construed Article III, § 4(c)(1) to permit crossover districts and adopted the proper standard for vote dilution. App. 364a–67a (NYCLU Br.); App. 431a–39a (Greenwood & Stephanopoulos Br.). They quarrel only with the remedial portion of the trial court's order on state law grounds. Those concerns are misplaced—the trial court's order is non-final and the IRC is in the process of proposing a remedial map. But the relevant point is that these *amici* merely seek further refinement of state court vote dilution doctrine—a *state law merits* issue that will be addressed in due course by New York's appellate courts. Applicants seek to transform this dispute over state law rulings—from an interlocutory trial court order no less—into a federal question. The Court should reject that gambit.

B. Applicants' equal protection arguments are premature and meritless.

Applicants next contend that the trial court ordered the IRC—and ultimately

the Legislature—to violate the Equal Protection Clause of the U.S. Constitution by compelling the creation of a racial gerrymander. That argument is both premature and fails on its own terms.

1. To start, Applicants' equal protection arguments put the cart before the horse, asking this Court to circumvent ongoing remedial proceedings before the trial court, New York's appellate courts, the IRC, as well as the Legislature, by prejudging the constitutionality of a remedial congressional map that has not even been drawn. That all but forecloses their premature complaints of racial gerrymandering. After all, "the basic unit of analysis for racial gerrymandering claims in general, and for the racial predominance inquiry in particular, is *the district*." *Bethune-Hill*, 580 U.S. at 191 (emphasis added). Thus, a "court faced with a racial gerrymandering claim therefore must consider all of the lines of the district at issue." *Id.* at 192; *cf. Gill v. Whitford*, 585 U.S. 48, 66 (2018) (explaining a gerrymandering plaintiff's injuries stem from the "boundaries of the particular district in which he resides"). Here, the relevant district and its boundaries do not even exist, leaving Applicants to simply guess that any district drawn by the IRC—and then approved or modified by the New York Legislature—will be a racial gerrymander. Because such an argument "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all," it is not yet ripe for this Court. *Texas v. United States*, 523 U.S. 296, 300 (1998) (citation and internal quotation marks omitted).

Relatedly, establishing that the remedial map (whatever it ends up looking like) is an unlawful racial gerrymander will "as a practical matter," require

Applicants "to show that the State's chosen map conflicts with traditional redistricting criteria." *Alexander*, 602 U.S. at 8 (alteration omitted) (quoting *Bethune-Hill*, 580 U.S. at 190). Applicants cannot make that showing at this juncture because no map drawing has occurred. Nor can Applicants simply assume race will predominate in any new district because the New York Constitution *requires* the IRC, as well as the Legislature, to consider traditional redistricting criteria, placing them on equal footing with the State's prohibition on vote dilution. *See* N.Y. Const. art. III, § 4(c). At this juncture, the Court is bound to accord the Legislature a presumption of good faith that any new map it proposes will adhere to these criteria. *See Alexander*, 602 U.S. at 10.

This Court has also consistently respected legislative precedence in redistricting, instructing that federal courts "should not pre-empt the legislative task nor intrude upon state policy any more than necessary." *White v. Weiser*, 412 U.S. 783, 795 (1973) (citation and internal quotation marks omitted). Further, this Court has held that "federal judges [must] defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." *Growe v. Emison*, 507 U.S. 25, 33 (1993). Keeping with these federalism principles, this Court has never—so far as Petitioners are aware—issued a prophylactic ruling on the constitutionality of a legislative district that does not yet exist or that state executive officers are in the middle of drawing. This Court's precedents require federal courts to "stay[] [their] hand" while New York "formulate[s] a valid redistricting plan." *Scott v. Germano*, 381 U.S. 407,

409 (1965) (per curiam) (explaining federal courts retain jurisdiction to act if a Legislature fails to enact a valid plan).[11]

Heeding this Court's guidance, lower courts have refused to pre-judge the constitutionality of purely hypothetical congressional districts. *See, e.g.*, *Singleton v. Allen*, 691 F. Supp. 3d 1343, 1354 (N.D. Ala. 2023) (per curiam) ("[I]t is premature, speculative, and entirely unfounded for [the Secretary] to assail any plan we might order as . . . 'violating . . . traditional redistricting principles in favor of race' because we have not yet adopted a remedial plan." (alteration omitted)); *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sep. 2, 2023) (rejecting racial gerrymander defense because "there [is] no specific district under which this Court could evaluate whether racial gerrymandering occurred" and proponents could not show "that *any* remedial district" would "necessarily" be a racial gerrymander), *rev'd on other grounds*, 375 So. 3d 335 (Fla. Dist. Ct. App. 2023). And the trial court's refusal to do the same is entirely keeping with this approach, appropriately recognizing the impossibility of scrutinizing the boundaries of a "specific electoral district" under the equal protection clause where no such boundaries exist.

[11] Such deference to ongoing state processes makes particular sense here given that the state court proceedings remain germinal. As explained, New York's intermediate appellate court possesses the same factfinding authority as the trial court. *See Kaliontzakis*, 892 N.Y.S.2d at 544. Thus, it is entirely conceivable that Applicants' appeal to the Appellate Division could result in a modification of the trial court's remedial order in a manner that significantly alters their federal arguments. Such modification occurred in *Harkenrider*, another recent redistricting litigation in New York. *See Harkenrider*, 197 N.E.3d at 444 (explaining the Appellate Division modified the trial court's order in a manner that significantly curtailed scope of remedy).

For these reasons, it is highly unlikely that this Court would grant certiorari on this issue—only to issue an advisory opinion pre-determining the constitutionality of a nonexistent district in a manner that flouts longstanding authority.

2. Applicants' argument also fails on its own terms. Applicants essentially argue that because the court's order below *referred* to race, there is *no way* to comply with the order without triggering strict scrutiny. This argument misunderstands remedies in racial vote dilution cases and flouts decades of precedent. This Court "never has held that race-conscious state decisionmaking is impermissible in all circumstances." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (emphasis omitted). "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *see also Shaw*, 509 U.S. at 646. This Court has therefore rejected the "contention that mapmakers must be entirely 'blind' to race" when drawing districts to comply with the Voting Rights Act, *Allen v. Milligan*, 599 U.S. 1, 33 (2023) (plurality opinion), and reaffirmed "[t]he line that we have long drawn . . . between consciousness and predominance" of race, *id.*

Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Bush v. Vera*, 517 U.S. 952, 959 (1996) (plurality opinion). The racial-predominance inquiry is a "holistic analysis" that cannot turn purely on the fact that a district is drawn to remedy otherwise unlawful dilution of minority voting strength. *See, e.g.*, *Bethune-Hill*, 580 U.S. at 192 ("[T]he use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation

for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's districting decision." (citation modified)). And this Court has held that a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Milligan*, 599 U.S. at 31 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices"). Here, Applicants simply have no idea whether or how the remedial map will comply with traditional redistricting criteria because it does not exist yet—further underscoring why their application to this Court is grossly premature.

To overcome this obvious defect in their equal protection argument, Applicants wrongly claim that the trial court's reference to "adding Black and Latino voters from elsewhere" to a remedial district containing Staten Island "alone establishes that race is the predominant" and "determinative" factor in any map that the Legislature will eventually adopt. Resp. Appl. at 21. But the IRC and the Legislature—not the trial court—is the "relevant state actor" for a racial gerrymandering claim. *Alexander*, 602 U.S. at 9. That is particularly so since the remedial process is non-final and because the trial court's order to review and modification by New York's higher courts. Even then, this brief remark from the trial court at most establishes awareness of race. This Court has, on several occasions, foreclosed the argument that race predominates solely because a map is drawn in response to vote-dilution litigation. *See, e.g.*, *Easley*, 532 U.S. at 241.

That is for good reason: map drawers will be aware of race in *every* remedial district created in response to a racial vote dilution claim. *See Allen*, 599 U.S. at 32–33. Thus, most

recently, in *Allen v. Milligan*, this Court declined to adopt the "flaw[ed]" view that districts drawn to remedy vote dilution under Section 2 of the VRA necessarily trigger strict scrutiny because "they were designed to hit 'express racial targets,'" regardless of the mapmakers' treatment of other traditional, race-neutral redistricting criteria. *Id.* at 32–33 (alteration omitted) (citation omitted). It recognized the fallacy in that approach: were the Court to credit such an approach, "racial predominance [would] plague[] *every single illustrative map ever adduced*" to show that racial vote dilution can be remedied. *Id.* at 33. But as the Court aptly pointed out, "[t]hat is the whole point of the enterprise." *Id.* That "express racial targets" in *Allen* were insufficient to trigger strict scrutiny there, makes clear that the court's reference to ensuring that an unspecified number of Black and Hispanic voters are among the many additional voters that "must be joined" with Staten Islanders to constitute a properly sized and properly constituted congressional district, App. 12a, also does not trigger strict scrutiny.

In addition, nowhere in the decision below did the trial court purport to instruct the Legislature to ignore other redistricting criteria. This matters because for strict scrutiny to apply, a challenger "must prove that the State 'subordinated' race-neutral districting criteria such as compactness, contiguity, and core preservation to 'racial considerations.'" *Alexander*, 602 U.S. at 7 (citation omitted). To assume that the Legislature will invariably do so—as Applicants' arguments do—flips the operative presumption in racial gerrymandering claims on its head. The Supreme Court has made clear that "in assessing a legislature's work" in a racial gerrymandering claim, courts must "start with a presumption that the legislature acted in good faith." *Id.* at 6. Indeed, "courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Id.* at 7 (internal quotation marks and citation omitted). Assuming the Legislature will do so before it has even attempted to draw a new map ignores these commands.

Nor is it the case, as the United States contends, that any remedial map will *necessarily* fare worse across traditional redistricting criteria because "New York has already identified what version of CD11 that it thinks best meets" these criteria in the 2024 congressional map. U.S. Br. at 15. Redistricting is a fact-intensive endeavor. There are often many different ways to draw a map that respects traditional redistricting criteria, with some factors giving way to others depending on the evidence before the Legislature. Indeed, it is routine in redistricting litigation for challengers to present *multiple* alternate maps—including in cases challenging the Legislature's adherence to neutral redistricting criteria only. *See Wolpoff v. Cuomo*, 600 N.E.2d 191, 194 (N.Y. 1992).

The trial court's conclusion that minority voters should have "influence" in the selection of candidates also does not impermissibly "turn[] entirely on the racial composition of the electorate" and therefore purportedly require strict scrutiny. *See* Resp. Appl. at 35. That requirement simply ensures that the remedial district will remedy the racial vote dilution by "increas[ing] the influence of minority voters," whose votes the court had already found diluted. App. 15a. In this way, the remedy is no different than a remedial district created under the federal VRA. Under the VRA, the purpose of "the creation of [a] majority-[minority] district[]" is to "enhance the influence of [minority] voters" in that district. *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993). Nevertheless, "[s]trict scrutiny *does not apply* . . . to all cases of intentional creation of majority-minority districts." *Vera*, 517 U.S. at 958 (emphasis added); *see also Clarke v. Town of Newburgh*, 226 N.Y.S.3d 310, 319, 327 (N.Y. App. Div. 2025) (For "decades, [the Supreme] Court and the lower federal courts . . . have authorized race-based redistricting as a remedy" to racial vote dilution under the Federal Voting Rights Act, but "[n]o court has ever suggested . . . that strict scrutiny applies to section 2." (citation omitted) (quoting *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 682 (2006))),

aff'd, No. 84, 2025 WL 3235042 (Nov. 20, 2025). So too here.

3. Even if strict scrutiny applied, a properly drawn map that remedies the dilution of Black and Hispanic voters would likely satisfy that standard. Contrary to Applicants' claims, *see* Resp. Appl. at 22–23; Int. Appl. at 22–23, the IRC, and ultimately the Legislature, have a compelling interest in considering race to the extent necessary to remedy unlawful vote dilution. This Court has long "assumed that complying with the [federal] VRA is a compelling state interest," *Abbott*, 585 U.S. at 587, and there is no reason to treat compliance with the New York Constitution's racial vote dilution prohibition any differently. New York's highest court has recognized the State's "compelling governmental interest[]" in "eliminat[ing] discrimination against . . . minorities." *N.Y. State Club Ass'n v. City of New York*, 505 N.E.2d 915, 921 (N.Y. 1987), *aff'd*, 487 U.S. 1 (1988). And this Court has made clear that racial discrimination in voting is "an insidious and pervasive evil" that requires "stern[] and . . . elaborate measures" to fight it. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).[12] Nothing in this Court's precedent justifies finding that a state's interest in abiding by its *own constitution* is less compelling than respecting federal *statutory* law. And Applicants cite none.[13]

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[12] For this reason, and contrary to Applicants' claims, the substantial government interest underlying any remedial district would be to remedy the racial vote dilution identified by the trial court, and would not rely on "generalized assertion[s] of past discrimination." *See* Resp. Appl. at 22–23; Int. Appl. at 22.

[13] The United States bizarrely claims that this Court's longstanding assumption that complying with the federal VRA is a "compelling interest" follows exclusively from the Congress's power to enforce the Fifteenth Amendment. U.S. Br. at 18–19. That makes little sense. Of course, the federal VRA *must* be grounded in a compelling federal interest like enforcing the Fifteenth Amendment; otherwise, the federal government would lack authority to intrude upon states' near plenary power over redistricting in the first place. But the Fifteenth Amendment's *authorization* for Congress to act in a space typically reserved for states hardly *precludes* states from likewise ensuring their redistricting plans do not infringe upon the rights secured by that same amendment.

Any remedial district the Legislature enacts is also likely to satisfy narrow tailoring. Applicants' arguments to the contrary omit this Court's well-established standard for assessing narrow tailoring in vote-dilution cases. In the VRA context, this Court has held that "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott*, 585 U.S. at 587 (citation omitted). Put differently, "to meet the 'narrow tailoring' requirement," a state must show "that it had 'a strong basis in evidence' for concluding that the [operative racial vote dilution provision] required its action." *Cooper v. Harris*, 581 U.S. 285, 292 (2017). The Legislature would have such a "strong basis in evidence" to draw a remedial map because the trial court's conclusion (based on a substantial body of largely unrebutted evidence credited by the trial court) that under the totality of the circumstances Black and Hispanic voting strength is diluted in the current CD-11. This showing plainly supplies the requisite "good reasons" in support of a remedial map. *See Rose v. Sec'y, State of Ga.*, 87 F.4th 469, 477 (11th Cir. 2023) ("In the context of . . . single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-member districts to remove the plan's dilutive effect." (citing *LULAC v. Perry*, 548 U.S. 399, 495 (2006) (Roberts, C.J., concurring)).

None of the cases that Applicants cite counsel otherwise. In *Cooper*, this Court considered whether North Carolina had "a good reason" to believe it would be liable under the federal VRA if it failed to draw an additional majority-minority district. *See* 581 U.S. at 301. The Court held that the legislature lacked "good reasons" because there was "no evidence" of "effective white bloc-voting," which was required to establish racial vote dilution. *See id.* at 302. Here, by contrast, there was extensive evidence of racially polarized voting in CD-11, including that White voters consistently voted as a bloc to defeat Black and Hispanic-

preferred candidates. *See supra* Background § III; App. 8a–9a. And in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Court held that the Wisconsin Supreme Court misapplied strict scrutiny precedent where it approved an expressly race-based map while "believ[ing] that it had to conclude only that the VRA *might* support race-based districting—not that the statute required it." 595 U.S. 398, 403 (2022) (per curiam). Here, the record confirms that the current configuration of CD-11 violates the New York Constitution's prohibition on minority vote dilution and *must* be altered to remedy it. *See supra* Background § III.[14]

C. The state trial court's application of New York law in no way violates the Elections Clause.

1. In one final Hail Mary attempt to gin up a federal question, the Intervenor Applicants—but tellingly not the Board Respondents—assert the state trial court's decision violated the Elections Clause. *See* Int. Appl. at 31–37. This argument is, again, little more than a bare disagreement with the trial court's interpretation of the New York Constitution and a plea that this Court adopt Intervenors' preferred view of "New York's constitutional-interpretation principles" to reach a different conclusion. *Id.* at 34. That is plainly beyond this Court's remit. *See Mullaney*, 421 U.S. at 691; *Murdock*, 87 U.S. (20 Wall.) at 626. This is all the more so since no New

[14] Nor does Applicants' citation to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), move the needle here. Applicants cite *SFFA* for the proposition that the court's redistricting standard lacks any limiting principle. Resp. Appl. at 23. Not so. The trial court's order makes clear that petitioners must demonstrate racially polarized voting, that the totality of the circumstances demonstrate the minority group has less ability to participate in the political process, and that in a remedial district, minority voters are a decisive voting group. App. 12a.

York appellate court has yet been afforded a chance to address the matter on the merits. *See Pac. Tel. & Tel. Co. v. Kuykendall*, 265 U.S. 196, 204 (1924) (Taft, C.J.) ("It is our duty to avoid expressing an opinion on such an issue under the Constitution of [a State] in the absence of a clear decision by its highest court, if we can do so . . . ."); *Louisville & Nash. R.R. Co. v. Garrett*, 231 U.S. 298, 305 (1913) (Hughes, J.) (noting this Court "has often expressed its reluctance" to resolve a state constitutional question before state appellate courts have done so). The Court should decline this invitation to use the Elections Clause as a basis for interfering in ongoing state court proceedings. *See Minnesota v. Nat'l Tea Co.*, 309 U.S. 551, 557 (1940) ("It is fundamental that state courts be left free and unfettered by [this Court] in interpreting their state constitutions.").

2. This Court's decision in *Moore* only confirms the grasping nature of Intervenors' argument. That case principally held that "State courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause." 600 U.S. at 37. That is precisely what occurred below. New York empowers its courts "[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts," to invalidate "any law establishing congressional or state legislative districts found to violate the provisions of this article." N.Y. Const. art. III, § 5. The same article forbids racial minority vote dilution. *See id.* art. III, § 4(c)(1). The state trial court did nothing more than carry out its charge, and the "Elections Clause does not [otherwise] insulate state legislatures from th[is] ordinary exercise of state judicial

review." *Moore*, 600 U.S. at 22.

Citing Justice Kavanaugh's concurrence in *Moore*, Intervenors nonetheless contend that the trial court "impermissibly distorted" state law. *Id.* at 38 (Kavanaugh, J., concurring) (quoting *Bush v. Gore*, 531 U.S. 98, 115 (2000)). That argument goes nowhere. For one, that proposed framework was not adopted by the Court. *See id.* at 39 (Justice Kavanaugh agreeing the Court "does not[] adopt any specific standard for . . . review of a state court's interpretation of state law in a case implicating the Elections Clause"). This Court's sole admonition in *Moore* was that "state courts may not transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36 (majority opinion). That did not occur here—the state trial court carried out its constitutional charge, *see* N.Y. Const. art. III, § 5, and interpreted a provision the Legislature itself enacted in a manner the legislative parties here *urged* the court to adopt. App. 407a–10a, 2264a–66a. Further still, the trial court's remedy grants the *Legislature* the final word on a new map. *Contra Moore*, 600 U.S. at 12 (noting the North Carolina court rejected the legislature's remedial districting plan). In doing so, the court plainly did not "arrogate to [itself] the power vested in state legislatures to regulate federal elections." *Id.* at 36. That alone disposes of Intervenors' Elections Clause theory.

3. Even if Justice Kavanaugh's proposed framework did govern, the trial court in no way transgressed it. The question before the court was whether Article III, § 4(c)(1) requires a feasible majority-minority district, as this Court held to be the

case with the *federal* VRA in *Bartlett*. *See* 556 U.S. at 14. But *Bartlett* itself recognized that "States that wish to draw crossover districts are free to do so where no other prohibition exists." *Id.* at 24. New York enacted its constitutional vote dilution prohibition just a few years after this invitation for State variance from the federal VRA. N.Y. Const. art. III, § 4(c)(1) (2015). And the New York trial judge had many independently sufficient reasons for concluding New York law did not import federal law's first *Gingles* precondition. App. 5a–7a.

To start, contrary to Intervenors' argument, there are salient textual differences between Article III, § 4(c)(1) and § 2 of the VRA. Article III refers to "racial or minority language groups" in the plural, whereas the VRA refers singularly to "a class" of citizens. *Compare* N.Y. Const. art. III, § 4(c)(1), *with* 52 U.S.C. § 10301(b). As the Sixth Circuit has observed, federal law's singular focus on "a class" casts doubt on the permissibility of remedial districts that require placing groups of voters in combination to achieve a certain remedial goal. *See Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc) (noting the VRA "speaks of a 'class' in the singular"). The New York Legislature chose a deliberately broader textual formulation.

Further evidence of the New York Constitution's broader scope can be seen in the later enactment of the NYVRA, which applies to local elections. The NYVRA declares that the "public policy of the State of New York" is "[e]nsur[ing] that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the [State's] political processes . . . and especially

to exercise the elective franchise." N.Y. Elec. Law § 17-200. This policy "recogni[zes] . . . the *constitutional guarantees* . . . against the denial or abridgement of the voting rights of members of a race, color, or language-minority group." *Id.* (emphasis added). And it further explains these constitutional guarantees "exceed the protections [of] the right to vote provided" for in federal law. *Id.* Thus, the NYVRA's own declared purpose is to extend the "constitutional guarantees" in provisions like Article III, § 4(c)(1) to local elections, reinforcing that the two should be read harmoniously. This subsequent legislative action sheds light on the related meaning of Article III, § 4(c)(1). *See, e.g.*, *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (explaining a later legislative act "can . . . be regarded as a legislative interpretation of (an) earlier act" (alteration in original) (citation omitted) (collecting authority)); *Great N. Ry. Co. v. United States*, 315 U.S. 262, 277 (1942) (explaining "subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject").

It also bears emphasis that the NYVRA indisputably does *not* include the first *Gingles* precondition. *See Clarke v. Town of Newburgh*, 226 N.Y.S.3d at 321 (holding that the NYVRA "does not require the first *Gingles* precondition"). Given that the NYVRA was crafted to extend similar constitutional guarantees to local elections, it was entirely logical for the trial court to conclude the NYVRA and New York Constitution mirror one another with respect to any *Gingles*-like requirements. *See People v. Harris*, 570 N.E.2d 1051, 1053 (N.Y. 1991) (explaining that when New York courts construe the Constitution, they may look to "[s]tate statutory or common law defining the scope of the individual right in question."). Indeed, at least one other

New York court has suggested that is the case. *See Harkenrider v. Hochul*, 173 N.Y.S.3d 109, 112 (N.Y. Sup. Ct.) (noting that "according to many experts," Article III's "prohibition against discriminating against minority voting groups . . . expanded the[] protection" against vote dilution as compared to the VRA), *aff'd as modified*, 167 N.Y.S.3d 659 (N.Y. App. Div.), *aff'd as modified*, 197 N.E.3d 437 (N.Y. 2022).

Intervenors, to be sure, disagree and present arguments for adopting a different construction of Article III, § 4(c)(1). *See* Int. Appl. at 33–36. But this dispute about the scope of a state constitutional provision is one reserved for New York courts alone to resolve. *See Am. Fed'n of Lab. v. Watson*, 327 U.S. 582, 596 (1946) (state high courts "have the final stay" as to meaning of state constitution). Intervenors' constitutional-interpretation arguments are not so obviously correct as to show the trial court here distorted state law in a manner that violates the Elections Clause. That is particularly so since New York's executive and legislative leaders, as well two state trial courts (including the one below), all agree with Petitioners on this issue. App. 407a–10a, 2264a–66a (submissions from New York's Governor, Attorney General, and state legislative leaders agreeing that Section 4(c)(1) provides broader rights for affected groups of voters than those provided under federal law); *see also Harkenrider*, 173 N.Y.S.3d at 112 (similar).

Moreover, Intervenors' Elections Clause arguments are quite weak—so much so that the Respondent-Applicants do not even join them. Their principal contention is that New York courts read their own laws to mirror federal laws when one appears modelled on the other. *See* Int. Appl. at 33. But their own cited precedent reflects that

this is not a reflexive rule, and that New York courts are ultimately bound by plain statutory meaning. *See Zakrzewska v. New Sch.*, 928 N.E.2d 1035, 1039 (N.Y. 2010) (declining to read New York City human rights law synonymously with state and federal equivalents). And the Court of Appeals has confirmed that the New York Constitution may be read more expansively than similar federal laws. *See People v. P.J. Video, Inc.*, 501 N.E.2d 556, 559–61 (N.Y. 1986). Finally, Intervenors' claim that there is clear "prior" New York law contradicting the trial court's construction is galling. *See* Int. Appl. at 35. Intervenors' *own counsel* agreed during opening trial arguments that this case presents a "matter of first impression," so plainly the trial court did not transgress precedent. App. 2469a–70a at 18:13–21.[15]

Intervenors' request that this Court stay a state trial court's order based on an alleged error of state law—which New York's appellate courts stand ready to review—falls far afield of whatever narrow jurisdiction exists under the Elections Clause to review state law questions. To intrude upon New York's legal system on that basis—particularly at this preliminary stage—would throw open this Court's doors to cases demanding its superintendence over "the ordinary exercise of state judicial review."

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[15] Respondents fleetingly suggest that the text of Article III, § 4(c)(1) "expressly require[s] it to be interpreted in accordance with federal statutes and not New York State statutes." Resp. Appl. at 16. Such text simply does not exist. The provision *does* say it must be read "[s]ubject to the requirements of the federal constitution and statutes." N.Y. Const. art III, § 4(c)(1). But, on its face, that does not mean the provision must be ready *synonymously* with federal law; merely in a way that is not *offensive* to federal law. It is hard to fathom why New York would have bothered enacting a constitutional amendment otherwise. The language instead makes clear that the federal constitution and federal law set "a floor" for the minimum protections states must afford voters, *People v. Stultz*, 810 N.E.2d 883, 887 n.12 (N.Y. 2004); *cf. Bartlett*, 556 U.S. at 24–25.

Moore, 600 U.S. at 22. The Court should reject that invitation.

III. The Applications seek intrusive federal relief that will cause irreparable harm to Petitioners, the public, and the State of New York.

A. Applicants' premature request for federal intervention—not the trial court's order—threatens to disrupt New York's elections.

This Court has made abundantly clear in recent months that States are entitled to settled expectations around their congressional maps and that federal courts should not unnecessarily create "confusion and upset[] the delicate federal-state balance in elections." *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (denying stay application); *see also id.* at 420 (Alito, J., concurring) (explaining states require "certainty" on what maps "will govern the 2026 midterm elections"); *Tangipa v. Newsom*, No. 25A839, 2026 WL 291659 (U.S. Feb. 4, 2026).

It therefore bears emphasis that it is Applicants—and not the trial court—whose conduct threatens to disrupt orderly elections in New York. The trial court's remedial order sets forth a clear process that, if permitted to proceed unencumbered, will produce a legislatively approved remedial map in a manner that does not disrupt the upcoming primary elections. App. 18a; *see generally* App. 381a–86a (Stavisky Decl.). In contrast, staying that court's non-final order—while appeals are still pending in New York's appellate courts—will sow confusion and prevent the IRC from *preparing* an alternative map, which New York's appellate courts may ultimately deem proper.

Applicants' counter-arguments on this score are unavailing. According to them, it is simply too late for New York's lawfully designated map-drawing entities—

the IRC and the Legislature—to implement a new map or for New York's appellate courts to carry out their sovereign function. *See* Resp. Appl. at 25; Int. Appl. at 38. But just four years ago, *Intervenors' own counsel* sought and obtained an entirely new *statewide* remedial map based on a state trial court order issued *more than two months later* in New York's election calendar. *See Harkenrider*, 197 N.E.3d at 454. As New York's highest court explained then, it is simply not acceptable "to subject the People of [New York] to an election conducted pursuant to an unconstitutional reapportionment." *Id.* This precedent dispels Applicants' timing arguments and yet they fail to address it.

Applicants also insist the February 24 deadline for the commencement of collecting ballot access signatures is simply too inviolable to permit New York's appellate courts to have their say. Int. Appl. at 1; Resp. Appl. at 26. That again is a remarkable *volte face* given that four years ago Intervenors' principal counsel here argued that a New York trial court "properly invalidated the 2022 maps" statewide on March 31 of an election year—more than a month after the deadline they now claim to inviolable—and that such relief "pose[d] no risk to New York's election processes." Brief for Petitioner-Respondents' at 50, *Harkenrider*, 167 N.Y.S.3d 659 (No. CAE 22-00506), 2022 WL 1738113, at *50. The relief ordered here both comes far earlier in the election calendar and is far narrower in scope, pertaining to just a single congressional district rather than a statewide map.

It is also apparent that Applicants and their amici seek to have their cake and eat it too when it comes to timing. While Applicants argue it is too late for the *State*

to do anything, the United States assures this Court there is plenty of time for *federal* intervention. U.S. Br. at 24–25 (addressing the *Purcell* arguments Applicants ignore). As the United States recognizes, "the election is months away" and the February 24 deadline is inconsequential—it is merely when "[p]etitioners for getting on the primary ballot . . . begin circulating." U.S. Br. at 24. Thus, the United States says, the "distance from the beginning of election season, much less actual voting, should minimize any concerns about altering election rules." *Id.* So why does the United States think Applicants should be permitted to skip over New York's appellate courts? They do not say.

In the end, as the United States all but concedes, there is ample time for New York's courts and Legislature to see through execution and review of the trial court's remedial order. *See* U.S. Br. at 25 (conceding *Purcell* does not apply to state courts and collecting authority to that end). The Co-Executive Director of the Board of Elections agrees, App. 386a, ¶ 10, as did Intervenors' counsel when it suited them. The federal courts are duty-bound to respect that process. *See Growe*, 507 U.S. at 33. The gravest threat to that process occurring in an orderly manner is gratuitous and premature federal "intrusion on the most vital of local functions." *Miller*, 515 U.S. at 915. The Court should deny this request to throw a wrench into the gears of New York's court system and electoral machinery.

B. Petitioners face irreparable harm from a stay, whereas Applicants face no harm at all from proceeding through the New York courts.

It is Petitioners, not Applicants, who are at risk of irreparable harm if this

Court grants the motion to stay. The only court to address the merits to date has determined that Petitioners' votes are being unlawfully diluted by the current configuration of CD-11, and that burden upon their right to vote is prototypical irreparable harm. *See Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (explaining any impingement on the right to vote is "irreparable harm"); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 97 (2d Cir. 2005) (similar). This is only reinforced by the trial court's factual findings and the evidence below, which highlighted how voting on Staten Island is highly polarized by race, *see* App. 8a–9a (crediting Petitioners' evidence of racial polarization), and the difficulties that Black and Hispanic Staten Islanders face in participating in the political process, *see id.* at 9–13 (crediting Petitioners' "testimony" and "empirical data" establishing the ongoing "impacts" Black and Hispanic voters on Staten Island); *see also* App. 3237a–49a, App. 2801a–52a.

This irreparable harm is by no means cabined to Petitioners; tens of thousands of other voters on Staten Island are suffering from unlawful racial vote dilution as well. *See* App. 12a–13a; *see also Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011) (explaining public also has a strong interest in the preservation of voting rights). That factual finding weighs overwhelmingly in favor of ensuring Petitioners can obtain timely relief. New York's courts have, quite rightly, deemed it unacceptable for "the people of this state" to be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider*, 197 N.E.3d at 454; *cf. Clarke v. Town of Newburgh*, 216 N.Y.S.3d 850, 858 (N.Y. Sup. Ct.

2024) (recognizing the irreparable harm of conducting elections under unlawful district lines), *aff'd*, 227 N.Y.S.3d 196 (N.Y. App. Div. 2025). Granting Applicants' requested stay would therefore inflict immediate and irreparable harm on Petitioners and other voters in CD-11, making it all but certain that upcoming elections will be conducted under an unlawful map.

In contrast, Applicants present comparatively weak evidence of irreparable harm. They focus principally on the purported risk to the orderly administration of the upcoming primary. That argument is quite obviously wrong, for the reasons described above. Moreover, under the status quo, nothing precludes the IRC from taking preparatory steps to draft a remedial map in case the trial court's opinion survives the forthcoming merits appeal. As Respondent Riley himself explains, the relevant state officials are presently able to prepare for either "contingency" following an expeditious appeal—that the New York Board of Elections must administer the upcoming primary under a new, remedial map, or that the 2024 map remains in place. Suppl. App. 94–99. A stay, on the other hand, would "literally ensure[] delay should the lower court remedy be upheld on appeal." App. 385a, ¶ 7 (Stavisky Decl.). Applicants therefore seek not to preserve their own right to relief on appeal but rather solely to *preclude* any prospect of relief for Petitioners—a point they were candid about in the New York courts below. Int. Appl. at 4 (suggesting relief will follow only "after the 2026 elections" if Petitioners prevail on appeal).

Applicants also passingly suggest they further face the prospect of irreparable harm because any district the Legislature enacts will be a racial gerrymander. *See*

Int. Appl. at 39. But as explained elsewhere, those concerns are entirely speculative and premature—no new district even exists at this juncture. Moreover, New York voters—through their adoption of the 2014 redistricting amendments—have designated the IRC and the Legislature as the proper authorities for drawing congressional districts. *See* N.Y. Const. art. III, § 5. Intervenors cannot establish irreparable harm by speculating those lawfully charged bodies will carry out their duties in a harmful manner. *See, e.g.*, *Nken*, 556 U.S. at 434–35 ("[S]imply showing some 'possibility of irreparable injury'" is insufficient. (quoting *Abbassi v. Immigr. & Naturalization Serv.*, 143 F.3d 513, 514 (9th Cir. 1988))). The IRC—and surely the Legislature—are entitled to a presumption that they will act lawfully and in good faith. *Alexander*, 602 U.S. at 10 (courts must begin with a "starting presumption that the legislature acted in good faith").

CONCLUSION

For the foregoing reasons, the Applications for injunctive relief should be denied.

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Respectfully submitted,

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