Nos. 25A914, 25A915

In The
Supreme Court of the United States

NICOLE MALLIOTAKIS, et al.,

Applicants,

v.

MICHAEL WILLIAMS, et al.,

Respondents.

PETER KOSINSKI, et al.,

Applicants,

v.

MICHAEL WILLIAMS, et al.,

Respondents.

BRIEF FOR STATE RESPONDENTS KATHY HOCHUL, ANDREA STEWART-COUSINS, CARL E. HEASTIE, AND LETITIA JAMES IN OPPOSITION TO EMERGENCY APPLICATIONS FOR A STAY

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INTRODUCTION

In this special proceeding filed in state court under New York law, the trial court issued a decision and order declaring that New York's Eleventh Congressional District (CD11) unconstitutionally dilutes the votes of Black and Latino voters in violation of Article III, § 4(c)(1) of the New York Constitution. The state trial court enjoined the respondents—including several elected state officials[1] and the co-chairs, commissioners, and co-executive directors of the State Board of Elections (SBOE)—from giving effect to the boundaries of the existing congressional map. The state trial court also ordered the State's Independent Redistricting Commission to convene and to complete a new congressional map that remedies the state constitutional violation that the court found. *See* App. 18.

Applicants are two sets of respondents below—the Republican co-chair, commissioner, and co-executive director of the SBOE (the "Kosinski Applicants") and several individual voters, including CD11's current representative, Congresswoman Nicole Malliotakis (the "Malliotakis Applicants"). Applicants ask this Court to take the extraordinary action of staying enforcement of the state trial court's order pending adjudication of their pending appeals in the state intermediate appellate court and any further review in the State's highest court. This Court should not issue any such stay, which would severely undermine principles of federalism and comity by

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[1] This response is filed on behalf of State Respondents: Kathy Hochul, Governor of New York; Andrea Stewart-Cousins, Majority Leader and President Pro Tempore of the New York State Senate; Carl E. Heastie, Speaker of the New York State Assembly; and Letitia James, Attorney General of New York.

usurping the role of New York's appellate courts to address matters of state constitutional interpretation while minimizing potential disruption to the State's election calendar as much as possible.

To start, the application should be denied because it asks this Court to intrude on questions of *state* election administration in the context of *state* court litigation that involve a careful balancing of interests that is the prerogative of the *State* and its courts to conduct. Applicants base their purportedly urgent need for a stay on an election-calendar date that is purely a creature of *state law*. But there is sufficient time for New York's appellate courts to resolve applicants' appeals on the merits while addressing any such upcoming state-law election-calendar dates. And it is New York courts, not federal courts, that should decide how to balance competing interests in minimizing disruptions to state-law election-calendar dates and in ensuring that the State's election district map is lawful. New York courts are well-equipped to do so. They are required under state law to expedite election-related matters like this one. And they quickly adjudicated an apportionment challenge in 2022, when a challenge to the State's congressional map was filed in February and the State's highest court issued a decision in April requiring a new map to be drawn and adjustments to the State's election-calendar dates to accommodate that process.

In any event, the applications should be denied for the independent reason that applicants have failed to establish that this Court is likely to have jurisdiction to grant certiorari review after the state appellate proceedings conclude, let alone that the Court is likely to do so. The underlying challenge to CD11 alleged, and the trial

court concluded, that the district's boundaries violated § 4(c)(1) of the State Constitution. Although applicants raise federal constitutional arguments, there are multiple, independent ways that the State's appellate courts can resolve applicants' appeals on purely state law grounds, without implicating any federal question. For instance, the state appellate courts could agree with the applicants' own arguments that the state constitutional provision at issue should be interpreted to preclude the specific kind of vote-dilution claim that was brought here. Alternatively, the state appellate courts could agree with other state law grounds for reversal that the applicants have raised, such as laches or the trial court's alleged failure to apply the correct standard under state law in reviewing the constitutionality of a state statute. Or the state appellate courts could agree with applicants' arguments that the evidence submitted during trial did not establish liability under the vote dilution theory adopted by the trial court, even if such a theory is cognizable under § 4(c)(1). Applicants have failed to establish that the state appellate courts are likely to reject all their state law grounds for reversal, and any one of those grounds would, standing alone, resolve this case without implicating any federal question.

Finally, applicants are unlikely to succeed on the merits of their federal Equal Protection Clause argument, even if the state court appeals are resolved in a way that implicates that argument. Contrary to applicants' contentions, the Independent Redistricting Commission's potential consideration of race in crafting a remedial map does not necessarily mean that racial considerations will predominate over the many

race-neutral factors that it must also consider. Absent such predomination of racial considerations, however, strict scrutiny does not apply.

STATEMENT

A. Trial Court Proceedings

Four individual voters, Michael Williams, Jose Ramirez-Garofalo, Aixa Torres, and Melissa Carty, commenced a special proceeding in Supreme Court, New York County on October 27, 2025, by filing a petition. App. 486-514. The petitioners allege that the current election district map for New York's federal congressional districts, which was enacted into state law in 2024, unconstitutionally dilutes the votes of Black and Latino voters in New York's Congressional District 11 in violation of Article III, § 4(c)(1) of the New York Constitution. App. 487, 499-503. *See generally* N.Y. State Law § 111 (statutory codification of congressional map challenged here). Petitioners brought only this single claim under the State Constitution and did not bring any claims under any provision of the Federal Constitution or any federal statute.

The state constitutional provision at issue provides that "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements," certain "principles shall be used in the creation of state senate and state assembly districts and congressional districts." N.Y. Const. art. III, § 4(c). One of the listed principles is: "[w]hen drawing district lines, the [Independent Redistricting Commission] shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridge-

ment of such rights." *Id.* § 4(c)(1). The constitutional provision then 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.*

As relief, the petitioners sought, inter alia, declaratory relief stating that CD11 unconstitutionally dilutes the votes of Black and Latino voters in violation of § 4(c)(1) of the State Constitution, and injunctive relief enjoining respondents from conducting any election or otherwise enforcing or giving effect to any of the boundaries under the current congressional map. They also sought an order compelling the Legislature to adopt a congressional map in which CD11 extends from Staten Island into lower Manhattan (instead of into southern Brooklyn, as it does currently) to create a "minority influence district in which Black and Latino voters on Staten Island could combine with diverse communities of interest in lower Manhattan to elect their candidate of choice." App. 490; *see* App. 512-513.

The trial court presided over a four-day trial in early January 2026, at which both the petitioners and the participating respondents—here, the Malliotakis Applicants and Kosinski Applicants—presented evidence and arguments as to their claims and defenses, respectively. State Respondents took no position on the merits of petitioners' claims. State Respondents provided their views with respect to various legal

principles at issue in the case in a pretrial letter response to the petition.[2] *See* App. 2262-2267.

On January 21, 2026, the trial court issued a decision and order concluding that CD11 unconstitutionally dilutes the votes of Black and Latino voters in violation of § 4(c)(1). The court rejected petitioners' argument that state constitutional provisions in § 4(c)(1) should be read to effectively incorporate the distinct statutory vote-dilution provisions of the New York Voting Rights Act, which was enacted approximately eight years after § 4(c)(1)'s enactment and which does not apply to congressional or state legislative districts. *See* App. 5.

The trial court then ruled that § 4(c)(1) nevertheless provides for a vote-dilution claim, like petitioners' claim here, that alleges that district lines improperly reduce the influence of voters who are members of protected racial groups—where members of those groups are not alleged to make up the majority of a differently drawn district. App. 7. The court interpreted § 4(c)(1) to provide for such an influence-district claim where, based on the totality of the circumstances, racial or language minority groups have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice. App. 6-8.

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[2] The Democratic co-chair, commissioner, and co-executive director of the State Board of Elections ("Democratic SBOE respondents"), who were also named as respondents in the petition, filed a separate pretrial letter joining in the State Respondents' letter. *See* App. 398. These Democratic SBOE respondents were not (and are not) represented by this Office in the state court proceedings, and are not represented by this Office in this proceeding. Neither the State Respondents nor the Democratic SBOE respondents participated at trial.

The court found, based on the trial evidence, that sufficient totality-of-the-circumstances factors were present here to support a finding of vote dilution. App. 7-12.

The court further stated that, to determine whether "redrawing of the congressional lines is a proper remedy" under § 4(c)(1), petitioners "must first show that minority voters make up a sufficient portion of the district's population" such that they would be able to influence electoral outcomes. App. 13. The court specified criteria for making that showing: (i) "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election"; (ii) "these candidates must usually be victorious in the general election"; and (iii) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates." App. 15. The court found these criteria satisfied here based on the trial evidence. *See* App. 12-13.

Although the trial court concluded that redrawing CD11 was a proper remedy, it rejected petitioners' request to order the Legislature to adopt petitioners' proposed remedial map. App. 15-17. Instead, based on the approach taken by the New York Court of Appeals in *Hoffman v. New York State Independent Redistricting Commission*, 41 N.Y.3d 341 (2023), the trial court directed the State's Independent Redistricting Commission to reconvene and to redraw the boundaries of CD11 "so that it comports with the standard" described in the court's decision. App. 17. The court further directed the Independent Redistricting Commission to complete this court-ordered task by February 6, 2026. App. 17.

The court also enjoined all respondents from conducting an election under the State's existing congressional map. App. 18. The court further ordered that the case would "not be deemed resolved until the successful implementation of a new Congressional Map complying with this order." App. 18.

B. Appellate Proceedings

On January 26, 2026, the Malliotakis Applicants and Kosinski Applicants filed notices of appeal to the intermediate state appellate court—the Appellate Division of the New York Supreme Court, First Judicial Department. App. 3657, 3667. They also filed motions in the First Department seeking a stay of the trial court's order pending adjudication of their appeals in that court. App. 479-2035, 2036-3656. The First Department set an expedited briefing schedule under which the motions were fully briefed and submitted to the First Department for consideration on February 9. App. 469, 471.

At around the same time, the Malliotakis Applicants and Kosinski Applicants also sought to appeal directly to the New York Court of Appeals. App. 3661, 3667. And they asked the Court of Appeals to issue a stay of the trial court's order pending those direct appeals. App. 472-474.

On February 11, 2026, the Court of Appeals concluded that it lacked jurisdiction over the direct appeals and entered an order transferring those appeals to the First Department. In the same order, the Court of Appeals dismissed the stay motions as academic. App. 20.

One day later, on February 12, 2026, the Malliotakis Applicants and Kosinski Applicants filed the instant applications in this Court for a stay of the state trial court's order and an interim stay pending adjudication of the applications. *See* Emergency Application for Interim Stay & Stay Pending Appeal at 28, *Kosinski v. Williams*, No. 25A915 (U.S.) ("Kosinski Application"); Emergency Application for Stay at 40, *Malliotakis v. Williams*, No. 25A914 (U.S.) ("Malliotakis Application"). After the applications were docketed the next day, on February 13, Justice Sonia Sotomayor requested responses to the applications by no later than February 19 by 4:00 p.m.

On the morning of February 19, the First Department denied applicants' motions for a stay. *See Williams v. State Board of Elections*, No. 2026-00384, Order (N.Y. App. Div., 1st Dep't Feb. 19, 2026), NYSCEF No. 53.[3]

[3] The electronic docket for the proceedings in the First Department is available at https://tinyurl.com/WilliamsDocketNY1stDept.

ARGUMENT

THE COURT SHOULD DENY APPLICANTS' EXTRAORDINARY REQUEST TO STAY ENFORCEMENT OF A STATE TRIAL COURT ORDER

Applicants ask this Court to take the extraordinary action of staying enforcement of a state trial court order that turns primarily on the proper interpretation of a state constitutional provision. Worse still, applicants make that request even though the State's appellate courts have not yet considered the merits of applicants' state court appeals from the trial court's order. The Court should deny the applications because such a stay would severely undermine fundamental principles of federalism and comity, and because applicants have not satisfied the exceedingly high burdens for such a stay.

In general, this Court "will grant a stay pending appeal only under extraordinary circumstances." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers). Moreover, the specific circumstances in this case impose especially heavy burdens on applicants because they seek a stay of a state court order. There is a "national policy forbidding federal courts to stay or enjoin state court proceedings except under special circumstances." *Younger v. Harris*, 401 U.S. 37, 41 (1971). Congress has implemented that national policy through the Anti-Injunction Act, which prohibits federal courts from "grant[ing] an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283. These statutory exceptions to the prohibition against federal courts staying state court proceedings must remain narrow because the Anti-Injunction Act's "core message is

one of respect for state courts," *Smith v. Bayer Corp.*, 564 U.S. 299, 306 (2011)—a "necessary concomitant of the Framers' decision to authorize, and Congress' decision to implement, a dual system of federal and state courts," *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988). "Any doubts as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy." *Atlantic Coast Line R. v. Brotherhood of Locomotive Eng'rs*, 398 U.S. 281, 297 (1970).

Here, for multiple, independent reasons, applicants have not come close to carrying their burden of establishing the type of truly extraordinary circumstances that would be required for this Court to stay a state trial court's order. First, it is New York's state courts, not federal courts, that are responsible for balancing the interests in avoiding potential disruptions to *state-law* election-calendar dates against the interests in resolving *state law* election challenges brought in *state court* on the merits in a timely manner that provides an orderly and fair election. New York's appellate courts are well-positioned to conduct that balancing, as they have done in the past.

Second, the Court should deny the applications for the independent reason that the state trial court's order is not "predicated on federal as opposed to state grounds," and applicants have failed to establish that this Court is likely to grant certiorari review when there are multiple ways in which the appeals may be resolved on purely state law grounds that do not implicate any federal issue. *See Fare v. Michael C.*, 439 U.S. 1310, 1311 (1978) (Rehnquist, J., in chambers). Third, and finally, even if the state appellate courts were to resolve applicants' appeals in a manner that implicates

their federal Equal Protection Clause argument, that argument is unlikely to succeed on the merits in any event.

I. STATE COURTS, NOT FEDERAL COURTS, ARE RESPONSIBLE FOR RESOLVING STATE ELECTION LITIGATION QUICKLY WHILE MINIMIZING DISRUPTIONS TO THE STATE'S ELECTION CALENDAR.

Applicants' requests for a stay ask this Court to intercede in this *state* court litigation brought under *state* law on the ground that, absent a stay, the *state* courts' resolution of their pending appeals could disrupt certain *state-law* deadlines in the *state* election calendar. As an initial matter, the applicants' request is premature because applicants have potential avenues in state court for the relief they seek. For example, they could seek leave to appeal to the Court of Appeals from the First Department's denial of their motions for a stay pending appeal. *See* N.Y. C.P.L.R. 5602(b)(1).[4]

In any event, this Court should not issue a stay because it would improperly intrude on the state appellate courts' prerogative to balance varied state-based interests in determining whether a stay pending appeal is warranted while the state appellate courts resolve the merits of applicants' appeals. Applicants hinge their request for a stay on the February 24 start date for the designating petitioning period

[4] *Cf. United States v. Texas*, 144 S. Ct. 797 (2024) (mem.) (denying application to vacate administrative stay entered by single judge of the Fifth Circuit, where full panel of that court was considering whether to grant motion for a stay pending appeal); *Aaron v. Cooper*, 357 U.S. 566, 567 (1958) (per curiam) (denying application for a stay (among other relief) while parallel motion for a stay was still pending in the circuit court because "the petition for a stay" was "properly to be adjudicated by" the lower court "in the first instance"); *Krause v. Rhodes*, 434 U.S. 1335, 1335 (1977) (Stewart, J., in chambers) (denying application for relief that would stop construction of challenged facility, where similar applications were pending in district court and circuit court).

in New York. But New York's designating petitioning process and deadlines are matters of state law. Indeed, the U.S. Constitution grants to States authority to regulate the times, places, and manner of holding congressional elections in their respective jurisdictions when Congress has not explicitly done so. *See Smiley v. Holm*, 285 U.S. 355, 366-67 (1932); U.S. Const. art. I, § 4, cl. 1. It is thus New York courts, not federal courts, that should balance the interests of voters, candidates, and the public in the February 24 date (or any other purely state-law election-calendar date) against the interests of voters, candidates, and the public in ensuring that election district lines used for CD11 in the upcoming election are lawful. Put another way, applicants have no federal right to the February 24 date, and this date thus provides no basis for a federal court to stay the state court trial order below.

Contrary to applicants' contentions (*see* Malliotakis Application at 38-40; Kosinski Application at 25-27), there is sufficient time for New York courts to resolve the pending appeals on the merits, and to manage the impact of the appeals on, the state election deadlines and processes—which are matters of state law—to ensure that an orderly and fair election is conducted. As applicants concede, the time for designating petitioning—the period during which candidates collect signatures to qualify for ballots under New York law—does not begin until February 24. *See* Malliotakis Application at 1, 39; Kosinski Application at 1, 12-13; *see also* App. 386. And that period is scheduled to run until April 2, 2026. *See* N.Y. Election Law § 6-134(4-a) (petitioning period goes until "the twelfth Thursday prior to the primary election"). New York courts should determine whether the balance of interests here

warrants a stay of the trial court's order below pending appeal, or an adjustment to the state-law February 24 date (or any other state-law election-calendar date) to provide the state appellate courts with sufficient time to resolve applicants' appeals on the merits.

New York's appellate courts are experienced in conducting this complex and sensitive balancing of state-based interests, including when late-breaking litigation involving election district lines occurs immediately before or after various state-law time periods and deadlines in the election calendar. *See* App. 383-385 (Affirmation of Kristen Zebrowski Stavisky, Democratic Co-Executive Director of New York State Board of Elections, discussing judicial changes to petitioning calendar due to redistricting litigation in 2022, 2012, 2002, and 1992). For example, in *Harkenrider v. Hochul*, the New York Court of Appeals held in late April of an election year that the statewide congressional map violated state constitutional provisions, and ordered the redrawing of a new map along with the development of an election schedule that allowed time for "the adoption of new constitutional maps, the dissemination of correct information to voters, the completion of the petitioning process, and compliance with federal voting laws." 38 N.Y.3d 494, 522-23 (2022). In so ruling, the Court of Appeals determined that, despite the disruptions to the state election calendar that it caused, it was possible and preferable to implement redrawn and lawful congressional maps before the upcoming election rather than to delay a remedy until the next election. *See id.* at 522 n.18; *see also Brown v. DeGrace*, 193 Misc. 2d 391, 397-98 (N.Y. Sup.

Ct.) (issuing order contemplating amendment to certain election deadlines in context of ballot litigation), *aff'd*, 298 A.D.2d 536 (N.Y. App. Div., 2d Dep't 2002).

Moreover, New York's courts are well-equipped to resolve the merits of election-related proceedings, including appeals in such proceedings, on a highly expedited basis that causes the least possible disruption to the State's election calendar. For example, the New York Constitution requires challenges to "[a]n apportionment by the legislature, or other body," such as the congressional map here, to be resolved at the trial level within sixty days. N.Y. Const. art. III, § 5. Such challenges must be given "precedence . . . over all other causes and proceedings" by "*any* court before which [such] cause may be pending"—including the state appellate courts. *Id.* (emphasis added). The proceedings in *Harkenrider* provide a prime example of the speed with which New York courts can operate to resolve such legislative apportionment challenges on the merits. The challenge in *Harkenrider* was filed in the trial court on February 3, 2022—more than fourteen weeks later in the election cycle than when the challenge was filed here. Yet *Harkenrider* was resolved on the merits by the Court of Appeals—after a trial and published opinions by both the trial court and the intermediate appellate court—less than three months later, on April 27, 2022. 38 N.Y.3d at 505-508. And the new election-district maps required by the Court of Appeals' decision in *Harkenrider* were certified in May 2022. *See Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben County May 21, 2022), NYSCEF No. 670. Here, there is no reason to presume that New York's appellate courts will not similarly be able to resolve the merits of applicants' appeals in time

for the election to proceed with the least possible disruption to the state-law election calendar.

II. APPLICANTS HAVE FAILED TO ESTABLISH THAT THIS COURT WOULD LIKELY GRANT REVIEW OF THIS CASE.

If the Court does not dismiss the applications as premature, it should deny the applications because the trial court's order turns primarily on state law grounds. *See Fare*, 439 U.S. at 1311 (Rehnquist, J., in chambers). Although applicants raise federal constitutional arguments (*see* Malliotakis Application at 17-37; Kosinski Application at 15-25), there are multiple, independent ways in which the First Department (and the Court of Appeals, if there is further state court appellate review) may resolve the appeals on purely state law grounds that render those federal arguments irrelevant. Applicants have thus failed to establish that it is likely that this Court will even have jurisdiction to grant certiorari in this case, *see* 28 U.S.C. § 1257(a), let alone that it is likely to grant certiorari if it has authority to do so, *see Fare*, 439 U.S. at 1311 (Rehnquist, J., in chambers); s*ee also Does 1-2 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunction relief).

First, the core legal issue presented by this case and decided by the trial court is the proper interpretation of Article III, § 4(c)(1) of the New York Constitution. Specifically, the core legal issue is whether that state constitutional provision permits a claim alleging that district lines improperly reduce the influence of voters who are members of protected racial groups, where members of those groups are not alleged to make up the majority of a differently drawn remedial district. That is a quintes-

sential question of state constitutional law that must be decided by the state courts, and not this Court.

Moreover, a ruling from the state appellate courts interpreting § 4(c)(1) to preclude such an influence-district claim would obviate the need for any consideration of applicants' federal constitutional arguments, resolve the case on an independent state law ground, and render this Court without jurisdiction to grant certiorari. *See Dixon v. Duffy*, 344 U.S. 143, 146 (1952) ("If the state judgment was based on an adequate state ground, the court, of course, would be without jurisdiction to pass upon the federal question."). Applicants argued in the trial court that § 4(c)(1) should be interpreted to preclude influence-district claims (*see* App. 2284-2295, 2340-2350), and have advanced the same state law arguments to the First Department in arguing that they are likely to succeed on their appeals in that court (*see* App. 3623-3633 (arguments made in stay motion to First Department)). Applicants have not established that the New York appellate courts are likely to reject applicants' own arguments about the proper interpretation of § 4(c)(1). They have thus failed to establish that this Court is likely to have jurisdiction over a petition for certiorari review here.

Second, the Kosinski Applicants have contended that, under New York law, the trial court applied the incorrect standard of review for adjudicating a constitutional challenge to a state statute. *See* App. 2020-2022 (stay motion in First Department), 2339-2340 (trial court papers). Specifically, these applicants contend that the trial court failed to afford the state statute apportioning congressional districts the "strong presumption of constitutionality" required by New York law (App. 2020-2021), a

standard that requires establishing the unconstitutionality of a state statute "beyond a reasonable doubt," *People v. Viviani*, 36 N.Y.3d 564, 576 (2021). If the state appellate courts agree, the trial court's order could be vacated and remanded (if not reversed altogether) on that nonfederal ground. *See, e.g.*, *White v. Cuomo*, 38 N.Y.3d 209, 228-29 (2022).

Third, applicants contend that the trial court erred in adopting an interpretation of § 4(c)(1) that was advanced solely in an amicus brief and that was not advanced by any of the parties below. Applicants frame their procedural argument as a matter of federal due process. *See* Malliotakis Application at 25-31; Kosinski Application at 15-20. But if the state appellate courts agree with applicants' characterization of the trial court's order and the parties' presentations below, the state appellate courts could rule in applicants' favor based solely on *state* procedural or due process grounds. *See, e.g.*, *Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009); *Colgate-Palmolive Co. v. Erie Cnty.*, 39 A.D.2d 641, 641 (N.Y. App. Div., 4th Dep't 1972) (amicus participant may not "control the litigation," and "only the issues raised by the parties may be considered" (quotation marks omitted)).

Fourth, the Malliotakis Applicants have raised laches as a defense to the petitioners' state constitutional claim, given what these applicants characterize as the petitioners' "egregious delay in bringing [their] challenge" to an apportionment statute enacted in 2024. Malliotakis Application at 40; *see* App. 2318-2319. The Court of Appeals has expressly noted the availability of laches as a defense to a redistricting challenge "that does not leave enough time for the [Independent Redistricting Commission] to

act." *Hoffmann v. New York State Ind. Redistricting Comm'n*, 41 N.Y.3d 341, 364 n.10 (2023). Accordingly, the Malliotakis applicants' laches argument provides yet another avenue for the state appellate courts to resolve this matter on purely state law grounds that would preclude certiorari review.

Fifth, even if the New York appellate courts ultimately reject the above-described arguments and agree with the trial court that § 4(c)(1) should be interpreted to allow an influence-district claim, they could nonetheless conclude that petitioners failed to prove such a claim at trial. Indeed, applicants have argued to both the First Department (*see* App. 2017-2020, 3621-3623) and this Court (*see* Malliotakis Application at 30; Kosinski Application at 18-20) that petitioners failed to prove an influence-district claim even if such a claim is valid under the state law criteria that the trial court applied under § 4(c)(1). To provide just one example of applicants' evidentiary arguments, the Malliotakis Applicants argue (at 30) that the petitioners failed to provide primary election data to establish that Black and Hispanic voters would be able to select candidates of their choice in a primary election in a newly drawn district—a criterion that the trial court had identified as required for establishing an influence-district claim under § 4(c)(1) (s*ee* App. 15). And as applicants note, various amici have also argued to the First Department that the trial court erred in finding liability because the evidentiary record was insufficient to establish that an influence-district claim under § 4(c)(1) had been proven under the state constitutional standards that the trial court had set forth for such a claim. *See* Malliotakis Application at 16, 30-31; Kosinski Application at 18-20; App. 71-78, 367-377. A state appellate court

ruling in applicants' favor on these evidentiary arguments would resolve the matter without implicating the federal constitutional issues raised in the applications, and would preclude this Court's review.

III. APPLICANTS HAVE FAILED TO ESTABLISH THAT THE EQUITABLE STAY FACTORS SUPPORT EXTRAORDINARY RELIEF FROM THIS COURT.

The applications should also be denied for the independent reason that applicants have failed to carry their burden of establishing that the equitable stay factors support the extraordinary relief of a stay from this Court enjoining enforcement of a state trial court order. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). Applicants' arguments about the equitable stay factors hinge on the designating petitioning period's scheduled start date of February 24. *See* Malliotakis Application at 38-40; Kosinski Application at 25-27. But as discussed, that date and the designating petitioning period are matters of state law. Accordingly, applicants' arguments about the allegedly imminent and irreparable harm they would face if a stay does not issue before February 24 are inextricably intertwined with issues of state election law and policy. And as explained, it is the New York courts, not federal courts, that should evaluate those arguments and balance them against the interests of voters, candidates, and the public in ensuring that the election is conducted using lawful district boundaries. See *supra* at 12-15. Applicants have thus failed to show that their asserted irreparable harm absent a stay, the balance of the equities, or the public interest warrant a stay from this Court.

IV. APPLICANTS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR FEDERAL EQUAL PROTECTION CLAUSE ARGUMENT.

Finally, applicants have failed to make the requisite strong showing that they are likely to succeed on the merits of their Equal Protection Clause argument. *See Nken*, 556 U.S. at 434. So long as election district lines are drawn in a manner where race does not *predominate* over traditional redistricting principles—such as compactness and contiguity—the lines are presumptively valid and not subject to heightened scrutiny under the Equal Protection Clause. *See Allen v. Milligan*, 599 U.S. 1, 31 (2023) (plurality op.); *Cooper v. Harris*, 581 U.S. 285, 291 (2017). When it comes to considering race in the context of districting, there is a difference "between being aware of racial considerations and being motivated by them," with the former being permissible and the latter not. *Miller v. Johnson*, 515 U.S. 900, 916 (1995). Only where a State has "subordinated race-neutral districting criteria" to racial considerations does the map become subject to strict scrutiny under the Equal Protection Clause. *See Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (quotation marks omitted).

Applicants contend that the trial court impermissibly elevated race above other factors by ordering the Independent Redistricting Committee to redraw CD11 "by 'adding Black and Latino voters from elsewhere.'" Malliotakis Application at 20 (quoting App. 13, 15); *see also* Kosinski Application at 21. But the mere consideration of race in crafting a remedial map does not, as applicants incorrectly argue, mean that a remedial map will necessarily be drawn with race as the predominating factor. Indeed, New York's Constitution mandates that its congressional and state district

lines be drawn in accordance with several race-neutral redistricting criteria, including contiguity; compactness; maintaining the cores of existing districts and preexisting political subdivisions; and not "discourag[ing] competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties." N.Y. Const. art. III, § 4(c)(3)-(5). Consideration of race, as one factor among the many race-neutral factors that must be considered in drawing a remedial map, does not, standing alone, subject a remedial map to strict scrutiny.[5] *See Milligan*, 599 U.S. at 31-32 (plurality op.). And the trial court's order explaining the basis for its finding of vote-dilution liability under § 4(c)(1), and articulating the means by which such vote dilution can be remedied, does not, by itself, mean that race will predominate in the Independent Redistricting Committee's implementation of the trial court's order.

[5] Applicants note that in *Louisiana v. Callais*, Nos. 24-109, 24-110, 145 S. Ct. 2608 (2025), the Court is considering the application of the federal Equal Protection Clause to a vote-dilution claim brought under the federal Voting Rights Act. *See* Malliotakis Application at 19 n.2. But as explained above (at 16-20), there are many ways in which the state appellate courts can resolve this case (which does not involve the federal Voting Rights Act) on purely state law grounds, thus eliminating any impact this Court's ruling in *Callais* may have on this case. In any event, the state appellate courts should have the first opportunity to consider whether any result in *Callais* is relevant here.

CONCLUSION

The emergency applications for stay should be denied.

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Respectfully submitted,

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