

Nos. 25A914 and 25A915

In the Supreme Court of the United States

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NICOLE MALLIOTAKIS, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

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PETER S. KOSINSKI, ET AL., APPLICANTS

v.

MICHAEL WILLIAMS, ET AL.

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**BRIEF OF JOSEPH ISRAEL SILVERSTEIN, AS AMICUS CURIAE  
IN SUPPORT OF APPLICANTS**

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**INTEREST OF AMICUS CURIAE<sup>1</sup>**

Amicus Curiae Joseph Israel Silverstein is a member of the Kings County Republican Party County Committee and Law Committee, with a direct and substantial interest in this case. The Kings County Republican Party has interviewed and nominated Congresswoman Nicole Malliotakis as its nominee for the 2026 Congressional District 11 (CD11) race and plans to petition for her beginning February 24th. Amicus has been assigned to collect signatures for Malliotakis in Southern Brooklyn beginning February 24th. The New York Supreme Court's January 21st Order throws those plans into disarray, as it is unclear whether Southern Brooklyn will even be part of CD11 and whether the signatures will be accepted.

Amicus has spent the vast majority of his life in Southern Brooklyn and Staten Island. He knows the district well and has served in various leadership capacities in the community, including as a representative for Staten Island public school students in the New York City Department of Education's Borough Student Advisory Council and Chancellor's Student Advisory Council, a volunteer for several charities in Staten Island, and a member of Brooklyn Community Board 11. Amicus attended elementary school in Bensonhurst, Brooklyn and middle school and high school in Tottenville, Staten Island and Huguenot, Staten Island respectively. He

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<sup>1</sup> No counsel for any party has authored this brief in whole or in part, and no entity or person other than *amicus curiae* and his counsel made any monetary contribution intended to fund the preparation or submission of this brief.

also spent two summers interning in St. George, Staten Island, at the Staten Island Borough President's Office and Richmond County District Attorney's Office. Amicus knows CD11 like the back of his hand and has a vested interest in seeing all of its citizens be able to participate in its electoral process free from bias or favor.

Amicus is also a 3L at Brooklyn Law School, where he has studied constitutional law, local government law, and election law. He is passionate about the development of case law that is consistent with the separation of powers doctrine and U.S. Constitution more broadly.

## Summary of Argument

This Court has long held that one of the factors it considers when determining whether to grant an emergency stay is where the public interest lies.<sup>2</sup> In *Malliotakis et al v. Williams*, it is in the public interest to grant Applicants' emergency stay application. New Yorkers in Staten Island and South Brooklyn are more right-leaning than the rest of the city and New York trial court's order dated January 21, 2026 mandates that the Independent Redistricting Commission mute their voices.<sup>34</sup> Allowing the New York trial court decision to stand runs contrary to the will of New York voters, who adopted a constitutional amendment in 2014 to limit partisan gerrymandering, and the New York State legislature, which voted overwhelmingly to pass the legislation that instituted the 2024 CD11 map. Allowing the New York trial court order to stand would diminish public trust in the judiciary, which this Court has repeatedly held is paramount.<sup>5</sup> Lastly, allowing the New York trial court order to stand would be extremely onerous for the Kings County Republican Party and cast a shadow of uncertainty around the race because the party has already nominated Congresswoman Malliotakis and plans to petition for her, but it is unclear whether CD11 will still include parts of Southern Brooklyn pending the results of this litigation.

## Argument

### I. Granting an emergency stay is in the public interest.

<sup>2</sup> See, e.g., *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Nken v. Holder*, 556 U.S. 418, 426 (2009).

<sup>3</sup> See *Infra* note 9

<sup>4</sup> *Williams et. al v. Board of Elections, et al.*, No. 164002/2025, slip op. at 18 (Sup. Ct. N.Y. Cnty. Jan. 21, 2026) (Pearlman, J.) (App. A at 18a).

<sup>5</sup> See, e.g., *Williams-Yulee*, 575 U.S. 433, 446 (2015); *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009).

**A. New Yorkers that live in Staten Island and South Brooklyn are more right-leaning than the rest of the city and the New York trial court order would mute their voices.**

Staten Island is much more conservative than the rest of New York City. In 2017, when then-State Assemblywoman Malliotakis ran for mayor, she garnered 70.8% of the vote on Staten Island compared to the incumbent mayor and Democrat nominee Bill de Blasio, who got 25.5%.<sup>6</sup> Citywide, however, Mayor de Blasio received 66.5% of the vote compared to Malliotakis's 27.8%.<sup>7</sup> Malliotakis secured 70.8% of the vote in Staten Island despite registered Democrats outnumbering registered Republicans by 44,800 as of November 1, 2017.<sup>8</sup> In the 2024 presidential election, President Donald Trump won 63.9% of the vote in Staten Island, compared to Vice President Kamala Harris's 34.58%.<sup>9</sup> Citywide, Trump won 30.01% of the vote compared to Harris's 68.10% percent of the vote.<sup>10</sup> This illustrates that Staten Island is more politically conservative than the rest of New York City and has different values.

South Brooklyn is also more conservative than the city as a whole and the rest of Brooklyn. Rep. Malliotakis won the South Brooklyn portion of CD11, which

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<sup>6</sup> The New York Times, *New York General Elections Results*, NYTimes.com (last updated Dec. 20, 2017), <https://www.nytimes.com/elections/results/new-york-general-elections> (accessed Feb. 18, 2026).

<sup>7</sup> *Id.*

<sup>8</sup> NY St. Bd. of Elections, *NYS Voter Enrollment by County, Party Affiliation and Status: Voters Registered as of November 1, 2017* (Nov. 1, 2017), <https://elections.ny.gov/system/files/documents/2023/10/11-01-2017.pdf>.

<sup>9</sup> N.Y.C. Bd. of Elections, *Statement and Return Report for Certification, General Election 2024–11/05/2024: Citywide President/Vice President 6* (Dec. 3, 2024), available at [https://www.vote.nyc/sites/default/files/pdf/election\\_results/2024/20241105General%20Election/00000100000Citywide%20President%20Vice%20President%20Citywide%20Recap.pdf](https://www.vote.nyc/sites/default/files/pdf/election_results/2024/20241105General%20Election/00000100000Citywide%20President%20Vice%20President%20Citywide%20Recap.pdf).

<sup>10</sup> *Id.* at 7.

encompasses Bay Ridge, Dyker Heights, Bath Beach, and parts of Gravesend, with 56% of the vote compared to her Democrat opponent's 44% of the vote.<sup>11</sup> CD11 is the only one of New York City's seven congressional districts that is represented by a Republican. Despite the Republican presidential nominee having secured 30.01% of the vote in New York City during the last presidential election, the Republican candidate only won in one of the seven 2024 House elections held within New York City (14.29%).<sup>12</sup> The New York trial court judge's order would bring that percentage to 0%, because under his standard CD11 can only be constitutional if the nominee favored by Black and Latino voters wins the majority of the time.<sup>13</sup>

**B. Allowing the New York trial court order to stand runs contrary to the will of the voters and duly elected state legislature.**

Stripping Staten Island and South Brooklyn of their right to elect Republican candidates through judicial edict runs contrary to democracy. The Court has previously said that gerrymandering is “incompatible with democratic principles.”<sup>14</sup> In *Rucho*, the Court said despite that, the judiciary did not have authority to overrule the judgement of the legislature because districting is a political question.<sup>15</sup> However, here, Applicants are not asking the Court to overrule the legislature. Applicant is asking the Court to *prevent* a trial court judge from unilaterally overruling the legislature.

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<sup>11</sup> *New York 11th Congressional District Results*, N.Y. Times (last updated Dec. 11, 2024), <https://www.nytimes.com/interactive/2024/11/05/us/elections/results-new-york-us-house-11.html>.

<sup>12</sup> *Supra* note 6.

<sup>13</sup> *Williams et. al v. Board of Elections, et al.*, No. 164002/2025, slip op. at 15 (Sup. Ct. N.Y. Cnty. Jan. 21, 2026) (Pearlman, J.) (App. A at 15a).

<sup>14</sup> *Rucho v. Common Cause*, 588 U.S. 684, 718 (2019) (internal citation omitted) (quoting *Ariz. State Legis. v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 791 (2015)).

<sup>15</sup> *Id.*

The Elections Clause states that “The Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof.”<sup>16</sup> Here, the state legislature overwhelmingly passed the legislation that created the 2024 CD11 map.<sup>17</sup> The Senate voted 45-17 to approve it.<sup>18</sup> The Assembly voted 115-3 to approve it.<sup>19</sup> The duly elected governor, Kathy Hochul, who now refuses to defend the map in court, signed it into law.<sup>20</sup> It is against the public interest to allow a single judge to override the will of the democratically elected government based on the erroneous application of a novel legal standard that a court has never previously adopted.

**C. Allowing the New York trial court order to stand will throw the local political parties into disarray.**

The New York trial court opinion leaves South Brooklyn in a state of disarray. The Kings County Republican Party plans to move forward with collecting signatures for Malliotakis, but it is unclear whether those signatures will even be accepted based on what happens in the coming days, weeks, and possibly months. If the lower court order were to stand, all the signatures the local Republican Party collects will be invalidated. The Party would have to ask its volunteers and paid petitioners to re-canvas neighborhoods. This would be burdensome, as many people involved in the Brooklyn GOP infrastructure have personal and professional

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<sup>16</sup> U.S. Const. Art. I, § 4.

<sup>17</sup> Luke Parsnow & Jack Arpey, *Hochul Signs New York Legislature’s Own Set of New Congressional Maps into Law*, Spectrum Local News (Feb. 28, 2024), <https://spectrumlocalnews.com/nys/central-ny/politics/2024/02/28/new-york-legislature-passes-new-congressional-maps>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

obligations that would make petitioning all over again difficult. More money would have to be spent to pay lawyers to draft legally qualified petition documents. Surely, the public interest is in the efficient administration of elections. The New York trial court order ensures anything but. Staying the order would allow for the fair conduction of an election as the litigation of this novel legal issue develops. This case can take months or even years to work its way up the appellate process, and it is unjust for the state to administer an election wholly divorced from what the state legislature prescribed based on one faulty opinion from a single trial judge.

**D. Allowing the New York trial court order to stand will diminish the public's trust in the judiciary.**

This Court has ruled that there is a compelling government interest in maintaining faith in the judiciary.<sup>21</sup> The Court found that the government interest in maintaining faith in the judiciary was so high that a Florida Bar rule that limited the political speech during judicial elections withstood strict scrutiny.<sup>22</sup> Here, Malliotakis *et al* asked the Hon. Jeffrey H. Pearlman, the New York trial court judge, to recuse himself on the basis of his past political involvement with Gov. Kathy Hochul and the Democrat Party more broadly. Judge Pearlman denied that request. Judge Pearlman, however, has ties to the parties in the litigation and has been described by Crain's New York Business as part of a "band of longtime aides and close loyalists" with whom she surrounded herself when she first became

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<sup>21</sup> *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 444.

<sup>22</sup> *Id.*

governor.<sup>23</sup> The article also described Judge Pearlman as a “political operative with deep ties to Albany”.<sup>24</sup> The Associated Post also described Judge Pearlman as a “Democratic lawyer” prior to him becoming a judge.<sup>25</sup> Judge Pearlman also served as chief of staff to New York State Senator Stewart-Cousins, one of the parties in the litigation, from 2014-2015, and also served as an elections lawyer for Stewart-Cousins in 2004 and 2006.<sup>26</sup>

This Court has held that “public perception of judicial integrity is a ‘state of interest of the highest order.’”<sup>27</sup> Given the foregoing factors, and the constitutional violations that exist in the New York trial court’s order, which Applicants lay bare, it is hard to imagine that the public will accept the legitimacy of this lower court opinion.

### **Conclusion**

The New York trial court’s January 21st, 2026, order extinguishes the CD11 map drawn by the people’s representatives in the state legislature. The U.S. Constitution, however, unequivocally grants the power to determine the boundaries of congressional districts to the state legislature. The New York trial court judge justified the order’s judicial intrusion by attempting to apply a novel standard for evaluating vote dilution claims that was proposed by *amici* professors in the New

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<sup>23</sup> Brian Pascus, *Hochul will rely on these longtime allies; State’s first female governor pledges more consensus building and less combativeness*, Craig’s New York Business (August 30, 2021), at 3703a-3705a (Exhibit C, Appendix X).

<sup>24</sup> *Id.*

<sup>25</sup> Jim Fitzgerald, *GOP challenging voters’ right to cast ballots in NY state Senate battleground*, The Associated Press (October 31, 2006), at 3712a-3713a (Exhibit E, Appendix Z).

<sup>26</sup> Memorandum of Law In Support of Respondents’ Motion for Recusal, at 3 (App. AC, at 3730a).

<sup>27</sup> *Williams-Yulee*, 575 U.S. 433, 446 (2015) (internal citation omitted) (quoting *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 889 (2009)).

York trial court litigation. Those same *Amici* professors wrote a subsequent brief in the New York Court of Appeals saying that the judge incorrectly applied the framework they suggested. Given these circumstances, allowing the New York trial court order to stand would be significantly adverse to the public interest. It would disrupt the entire electoral process, silence the voices of Republican New Yorkers in Staten Island and South Brooklyn, and undermine public confidence in the judiciary.

*Amicus* urges the Court to grant a stay.

Respectfully submitted.

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