

In the Supreme Court of the United States

NICOLE MALLIOTAKIS, ET AL.,
APPLICANTS,

v.

MICHAEL WILLIAMS, ET AL.,
RESPONDENTS.

On Application For Stay to the Court of Appeals of the State of New York to
the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of
the United States and Circuit Justice for the Second Circuit

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

BENNET J. MOSKOWITZ
ELIZABETH A. LOIZIDES
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
JEFF P. JOHNSON
KAITLIN O'DONNELL
CARSON A. COX
LAUREN H. MILLER
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants

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INTRODUCTION

The trial court’s order here prohibits New York from holding any congressional elections unless the State first racially gerrymanders its Eleventh Congressional District (“CD11”) in clear violation of this Court’s Fourteenth Amendment Equal Protection Clause jurisprudence. There is no question that this Court would have jurisdiction over a final appellate decision upholding that egregiously unconstitutional order, and so it follows that this Court also has jurisdiction to issue all writs and injunctions necessary or appropriate “in aid of” its jurisdiction to stay that order now. As Applicants explained, such relief is necessary by February 23 so that New York’s election-petitioning process can move forward as scheduled, avoiding needless uncertainty and chaos. Now that the Appellate Division has denied both Applicants’ stay motion *and* their motion for permission to appeal to the New York Court of Appeals—in an order issued yesterday, Suppl.App.102–03—Applicants have exhausted all avenues for relief in the New York appellate courts, *see* Sup. Ct. R. 23.3.

The Oppositions filed by the New York Attorney General (“Attorney General”)¹—representing two legislators who voted for the 2024 map and a Governor who signed that map into law, but who now refuse to defend that map—and the *Williams* Respondents—who seek to racially gerrymander Applicant Congresswoman Nicole Malliotakis, the first minority representative elected to represent CD11, out

¹ Attorney General Letitia James represents Respondents New York Governor Kathy Hochul, Majority Leader and President Pro Tempore of the New York State Senate Andrea Stewart-Cousins, Speaker of the New York State Assembly Carl E. Heastie, and herself. AG.Resp.1 n.1.

of her own district—only confirm Applicants’ likelihood of success. On the Equal Protection Clause, these parties argue that an order that mandates that the Independent Redistricting Commission (“IRC”) “add[] Black and Latino voters from elsewhere” into CD11, App.13a, with the explicit purpose of increasing Black and Latino voters’ electoral success far above their proportion of the population, does not trigger strict-scrutiny review because the IRC’s resulting map may, perhaps, also comply with state redistricting criteria. That argument is contrary to a wall of this Court’s precedent, which makes clear that strict scrutiny applies whenever “race [i]s the criterion that . . . could not be compromised.” *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citation omitted).

As to the Due Process Clause, the Attorney General does not even defend the constitutionality of what the trial court did. She agrees with Applicants that the trial court adopted a three-element test that no party urged, while asserting that the trial court must have “found these criteria satisfied here.” AG.Resp.7. The *Williams* Respondents concede that they did not advocate for this three-element test or submit any evidence to satisfy that test, but instead claim that—contrary to the Attorney General’s understanding (and the understanding of the *amici* Professors who urged the trial court to adopt the test)—these elements were just a couple of “principles for the IRC to consider.” *Williams* Resp.41. That those who oppose this Application cannot even agree on what test the trial court adopted illustrates the constitutional folly with a trial court coming up with its own test after trial ends.

And as for the Elections Clause, which the Attorney General does not even address, if what the trial court did here does not violate that Clause, then *Moore v. Harper*, 600 U.S. 1 (2023), is a dead letter.

The *Williams* Respondents rely on various jurisdictional objections and Rule 23.3 arguments to argue that this Court lacks authority to give Applicants relief by February 23, but these Respondents are wrong. This Court has jurisdiction under the All Writs Act to stay a trial court order that has stopped congressional elections for an entire State in flagrant violation of the U.S. Constitution. As for Rule 23.3, “the relief requested [here] was first sought in the appropriate court or courts below or from a judge or judges thereof.” As soon as Applicants received the trial court’s unconstitutional order, they did everything possible to forestall the irreparable harm that will befall them on February 24 by seeking emergency stays both from the Appellate Division and the Court of Appeals. To guard against the possibility that the Court of Appeals would not accept a direct appeal, Applicants *also* sought permission from the Appellate Division to appeal immediately to the Court of Appeals, which is the only other available path to seek relief of a non-final decision in that court. The Court of Appeals and then the Appellate Division denied each of these requests, ***including the Appellate Division yesterday denying Applicants’ stay motion and their motion for leave to appeal.*** Suppl.App.102–03.

No equitable considerations support following the path of delay that the *Williams* Respondents and the Attorney General urge. Unless this Court stays the trial court’s order by February 23, New York’s congressional election across all 26

congressional districts—covering over 12 million registered voters²—will not begin on time and will be delayed indefinitely. Meanwhile, the IRC will have to violate the U.S. Constitution by adopting a racial gerrymander, in light of the Appellate Division now lifting the automatic stay as to the IRC. Whatever map comes out of the IRC process will be appealed because that map must be a racial gerrymander to comply with the trial court’s order, and the *Williams* Respondents and the Attorney General will again argue that this Court should not act until the New York appellate courts adjudicate that appeal—however long that takes. All the while, it will remain unclear when the 2026 Congressional Elections will begin and what will be the district lines of CD11 and its adjacent districts. No possible equitable considerations support allowing this chaos in federal elections to reign when the only reason those elections would not begin as scheduled is an order that is so clearly unconstitutional. And the equities are clearer still, given that the *Williams* Respondents’ 65-page opposition does not even try to explain why, if they were concerned about CD11’s current boundaries governing the 2026 elections, they waited 18 months after the adoption of the challenged map to bring their lawsuit.

REPLY ARGUMENT

I. This Court Has Ample Authority To Grant Applicants Relief By February 23, Which Relief The New York Courts Have Denied

The *Williams* Respondents argue that this Court has no authority to grant the relief that Applicants seek here: a stay of the trial court’s order by February 23, which

² N.Y. State Board of Elections, *Enrollment by County*, https://elections.ny.gov/enrollment-county?f%5B0%5D=filter_term%3A596 (last visited Feb. 20, 2026).

stay is necessary to avoid irreparable harm to Applicants' federal rights. While the *Williams* Respondents are not entirely clear as to their position, they appear to be arguing that: (A) as a jurisdictional matter, this Court may never issue a stay that permits New York to actually hold congressional elections in 2026 until the Court of Appeals finally affirms the constitutionality of the remedial map that the IRC adopts to comply with the trial court's order some months from now; or (B) at minimum, this Court cannot (or should not) grant such relief until the Appellate Division denies Applicants leave to appeal to the Court of Appeals, an argument that overlooks the fact that Applicants did move for leave to appeal to the Appellate Division, and the Appellate Division denied such leave in its order issued yesterday. *See Williams* Resp.21–31.

A.1. This Court has jurisdiction to issue an emergency stay of the trial court's order because that order involves significant federal issues and a stay is necessary and appropriate to preserve this Court's jurisdiction over an eventual final judgment.

This Court has authority to issue stay relief in this context. Under 28 U.S.C. § 1257(a), this Court may review “[f]inal judgments or decrees rendered by the highest court of a State” where the validity of a State statute is challenged as “being repugnant to the Constitution.” 28 U.S.C. § 1257(a). Then, under the All Writs Act, this Court has the authority to “issue all writs necessary or appropriate in aid of [its] jurisdiction[],” 28 U.S.C. § 1651(a); *accord* 28 U.S.C. § 2283 (also providing this Court with similar authority with respect to state courts, under the Anti-Injunction Act, with materially identical language)—including its jurisdiction over state-court

cases under 28 U.S.C. § 1257(a). This Court’s All Writs Act authority “is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal but [also] extends to those cases which are within its appellate jurisdiction although no appeal has been perfected.” *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603–04 (1966) (citations omitted); see *Atl. Coast Line R.R. Co. v. Brotherhood of Locomotive Eng’rs*, 398 U.S. 281, 294–96 (1970) (interpreting 28 U.S.C. § 2283). The All Writs Act covers cases that are within this Court’s “potential jurisdiction,” “where an appeal is not then pending [before the Court] but may later be perfected.” *Dean Foods Co.*, 384 U.S. at 603–04; see *Atl. Coast Line R.R.*, 398 U.S. at 294–96. The Court may in its discretion deem it necessary or appropriate to exercise its All Writs Act authority with respect to a state-court order prior to final judgment to “maintain the status quo by injunction pending review.” *Dean Foods Co.*, 384 U.S. at 604 (citations omitted); accord *Nken v. Holder*, 556 U.S. 418, 426–27 (2009). And state-court litigants are free “in certain emergency circumstances [to] seek such relief from this Court.” *Atl. Coast Line R.R.*, 398 U.S. at 294–96. This Court has on multiple occasions exercised this authority to stay state-court orders involving questions of federal law before a final judgment affirming that state-court order has issued. See, e.g., *CBS, Inc. v. Davis*, 510 U.S. 1315, 1318 (1994) (Blackmun, J., in chambers); *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303, 1305 (1983) (O’Connor, J., in chambers); *N.J. Transit Corp. v. Colt*, No.25A287 (U.S. Sept. 19, 2025); see also Br. For U.S. As *Amicus Curiae* In Supp. Of Applicants (“US.SG.Br.”) at 20–22.

This Court thus clearly has jurisdiction to issue an emergency stay of the trial court's order. This Court would have certiorari jurisdiction under 28 U.S.C. § 1257(a) over any final judgment from the New York state courts affirming the trial court's order, as that order implicates significant questions of federal constitutional law under the Equal Protection Clause, the Due Process Clause, and the Elections Clause, *see infra* Part II.A–C. It follows that this Court also has jurisdiction now under the All Writs Act to stay the trial court's order when necessary or appropriate in aid of its certiorari jurisdiction. *Id.* §§ 1651(a), 2283; *Dean Foods Co.*, 384 U.S. at 603–04; *Atl. Coast Line R.R.*, 398 U.S. at 294–96. This Court staying the trial court's order would be “necessary or appropriate in aid of” this Court's “jurisdiction,” 28 U.S.C. § 1651(a), because it would “maintain the status quo,” *Dean Foods Co.*, 384 U.S. at 603–04 (citations omitted), by forestalling the needless, unconstitutional chaos from the trial court prohibiting New York from holding any congressional elections until the IRC unconstitutionally racially gerrymanders CD11, *see infra* Part III.

2. The *Williams* Respondents seem to argue that this Court lacks jurisdiction to grant the emergency stay relief requested in the Application because the New York Court of Appeals has not affirmed a final judgment in this case, *Williams* Resp.8–10, 21–31, but this argument is wrong.³

³ The Attorney General makes passing reference to this Court's “jurisdiction” to grant the Application, but she does not appear to take the same position as the *Williams* Respondents with respect to the scope of this Court's authority under the All Writs Act. *Compare* AG.Resp.2, 16–17, *with Williams* Resp.8–10, 21–31.

First, the *Williams* Respondents claim that this Court cannot stay the trial court's order until the New York Court of Appeals has finally affirmed the constitutionality of the remedial map that the IRC adopts many months from now to satisfy that order. *See Williams* Resp.8–10, 21–25. The *Williams* Respondents cannot possibly square that position with the text of the All Writs Act, which text broadly grants this Court the authority to “issue all writs necessary or appropriate in aid of [its] [] jurisdiction[].” 28 U.S.C. § 1651(a). That language covers both cases where this Court's “jurisdiction” has already been “acquired by appeal” (that is, cases in which a final judgment from the lower courts has issued) as well as cases within the Court's “potential jurisdiction” (that is, cases without a final judgment, “where an appeal is not then pending [with the Court] but may be later perfected”). *Dean Foods Co.*, 384 U.S. at 603 (citation omitted). Indeed, the cases that both the *Williams* Respondents and Applicants cite for support refute the *Williams* Respondents' argument here. *See Williams* Resp.25; Stay Appl.4. So, in *CBS, Inc. v. Davis*, 510 U.S. 315 (1994) (Blackmun, J., in chambers), and *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983) (O'Connor, J., in chambers), Justices of this Court granted stays pending appeal of state-court orders where the highest courts of the State had not finally decided the federal issues involved, *CBS, Inc.*, 510 U.S. at 1316–18 (Blackmun, J., in chambers); *Volkswagenwerk A.G.*, 461 U.S. at 1304–05 (O'Connor, J., in chambers). And, in *Atlantic Coast Line Railroad Company*, 398 U.S. at 296, this Court endorsed the ability of state-court litigants to request emergency stays of nonfinal state-court orders where the state-appellate courts had not finally resolved

any federal issues involved, given that such cases fall within this Court’s “potential appellate jurisdiction over federal questions raised in state court proceedings.” *Id.*

Second, the *Williams* Respondents argue that “independent state law grounds” “weigh[] strongly against this Court’s jurisdiction,” *Williams* Resp.29 (emphasis omitted), but this is a red herring. This Court has jurisdiction to stay the trial court’s order under the All Writs Act now because if *that* order were affirmed in a final judgment of the New York state courts, this Court would clearly have certiorari jurisdiction over that future final judgment, *Dean Foods Co.*, 384 U.S. at 603–04; *Atl. Coast Line R.R.*, 398 U.S. at 294–96, given the significant federal questions involved, 28 U.S.C. § 1257(a). That is why this Court explains that its All Writs Act authority “extends” to cases in its “potential jurisdiction . . . where an appeal is not then pending but may later be perfected.” *Dean Foods Co.*, 384 U.S. at 603; *see Atl. Coast Line R.R.*, 398 U.S. at 294–96; *see also* US.SG.Br.20–22.

Third, the *Williams* Respondents argue that this Court lacks jurisdiction to grant this Application under 28 U.S.C. § 2101(f), *Williams* Resp.21–24, the section of the U.S. Code providing that this Court (or a single Justice) may temporarily 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). This argument too is irrelevant given that, as explained in detail above, it is this Court’s All Writs Act authority that empowers this Court to stay nonfinal state-court orders like the trial court’s order here. *Supra* pp.5–7. Thus, Applicants need not show that the trial court’s order is “final” within the meaning of 28 U.S.C. § 2101(f) in order to obtain relief from this Court.

Nevertheless, the Solicitor General is correct that the trial court’s order should qualify as final, under this Court’s “pragmatic approach” to finality, US.SG.Br.20–22 (quoting *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 486 (1975)), given the grave federal constitutional injuries inflicted upon Applicants, New York, and the public as a whole from the trial court’s order that the IRC must racially gerrymander CD11 before New York may hold congressional elections, *see infra* Part III. As the Solicitor General explains, this Court has recognized this kind of pragmatic finality in stay decisions “[i]n the First Amendment context,” given the significant federal interests involved in such cases. US.SG.Br.20–21 (citing, for example, *Nat’l Socialist Party of Am. v. Vill. of Skokie*, 432 U.S. 43, 44 (1977) (per curiam)). Federal interests of similar weight are present here, *see* US.SG.Br.21–22, given the indignity that the voters who live in such racially gerrymandered districts face, *see United States v. Hayes*, 515 U.S. 737, 744–45 (1995). Accordingly, if this Court believes that any finality requirement applies, it should consider the New York appellate courts’ stay denials here to be final under this pragmatic approach, due to the significant federal interests at stake in this case. *See* US.SG.Br.20–22. And while the *Williams* Respondents resist this result, *Williams* Resp.28–29, they do not even recognize the weighty federal interests involved here because of the trial court’s flagrantly unconstitutional order.

B.1. Applicants have exhausted available relief from the New York state courts in the time remaining before New York’s electoral process will begin on February 24 without a statewide congressional map, in satisfaction of this Court’s Rule 23.3. Under Rule 23.3, a stay applicant must “set out with particularity why the relief

sought [from this Court] is not available from any other court,” Sup. Ct. R. 23.3; *see* “Available,” *Oxford English Dictionary* (Sep. 2025) (“Able to be used, obtained, or selected”),⁴ and Applicants have complied with that Rule.

New York has two levels of appellate review, the Appellate Division and the Court of Appeals. To appeal to the Appellate Division, which is an appeal as of right, a party must simply file a notice of appeal under N.Y.C.P.L.R. §§ 5701(a) and 5515(1). A party may request that the Appellate Division stay enforcement of the trial court order on appeal. N.Y.C.P.L.R. § 5519. Appeals to the Court of Appeals take two different pathways, as relevant here. In some specific circumstances, a party may appeal to the Court of Appeals as of right from either the trial court directly (after certain kinds of final determinations issued there) or from the Appellate Division (generally after certain kinds of final determinations issued there). *See* N.Y.C.P.L.R. § 5601. In other specific circumstances, a party may seek permission to appeal to the Court of Appeals from the Appellate Division from certain orders entered there. *See* N.Y.C.P.L.R. § 5602(a)–(b). A party may request an emergency stay from the Court of Appeals in cases pending there. N.Y.C.P.L.R. § 5519(c). Unlike this Court, which has authority under the All Writs Act to issue writs and injunctions in cases within its “potential jurisdiction” that are not yet pending before it, *supra* pp.5–6, the Court of Appeals does not have jurisdiction to entertain applications for extraordinary relief in cases not yet pending before it, *see Ocean Accident & Guarantee Corp., Ltd. v. Otis Elevator Co.*, 291 N.Y. 254, 255 (1943) (*per curiam*).

⁴ Available at <https://doi.org/10.1093/OED/1521802557> (subscription required).

In this case, before coming to this Court, Applicants “first sought” emergency “relief,” Sup. Ct. R. 23.3, in both the Appellate Division and the Court of Appeals, using all of the potentially available pathways, App.2036a–3656a; App.479a–2035; yet, both of those courts denied that relief to Applicants, App.19a–21a; Suppl.App.102–03. First, Applicants filed a direct appeal of the trial court’s order in the Court of Appeals under N.Y.C.P.L.R. § 5601 and sought an emergency stay of that order from that court. App.473a–74a (explaining that Applicants filed nearly identical applications in both the Appellate Division and Court of Appeals). Second, Applicants *also* filed a notice of appeal in the Appellate Division and moved the Appellate Division *both* for an emergency stay of the trial court’s order *and* for leave to appeal to the Court of Appeals—while making clear that their request for leave to appeal comprised *both* leave to appeal the trial court’s order *and* leave to appeal any orders that the Appellate Division would issue that would permit such appeal. App.2036a–3656a; App.473a–74a. In all of these filings before the Court of Appeals and the Appellate Division, Applicants explained that they were seeking all of these various forms of relief—which, to be clear, was all the relief potentially available to Applicants from any New York appellate court—to avoid the irreparable harm from the trial court’s order that would begin on February 24. App.3596a. On February 11, the New York Court of Appeals held that it did not have jurisdiction to hear Applicants’ direct appeal, transferred the appeal to the Appellate Division (which, as noted, already had such an appeal from Applicants pending before it), and denied Applicants’ emergency-stay motion as “academic.” App.19a–21a. Yesterday, the

Appellate Division entered an order that considered Applicants’ motion “**to stay enforcement of the [trial court’s] order . . . and for leave to appeal [the] same to the Court of Appeals**” and denied all of that relief in whole. Suppl.App.102–03 (emphasis added).

2. The *Williams* Respondents admit that Applicants have “*already filed* for stay relief in both [New York appellate] courts” and that both courts denied that relief, *Williams*.Resp.2; *see* AG.Resp.8–9, yet they argue that Applicants should seek the Appellate Division’s leave to appeal to the Court of Appeals, *Williams* Resp.9, 22–23. The *Williams* Respondents omit entirely from their Opposition that Applicants already filed a motion in the Appellate Division for leave to appeal to the Court of Appeals, which motion the Appellate Division denied yesterday. Suppl.App.102–03.

Unless the *Williams* Respondents accidentally overlooked the leave-of-appeal-denial aspect of the Appellate Division’s order—which would be understandable, given that the order issued shortly before their Opposition was due to be filed in this Court, *see* Suppl.App.102–03—they would appear to be arguing that Applicants must re-ask the Appellate Division for leave to appeal to the Court of Appeals from an order that, within the order’s own terms, denies such leave to appeal. Court rules generally do not require “paper shuffling [that] serves ‘no practical purpose.’” *Outlaw v. Airtech Air Conditioning & Heating, Inc.*, 412 F.3d 156, 163 (D.C. Cir. 2005) (Roberts, J.) (quoting *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 385 (1978)). In addition to Applicants’ emergency-stay motion, the Appellate Division had before it Applicants’ motion for a leave to appeal to the Court of Appeals, their request that the Appellate

Division issue any additional orders necessary to permit that appeal, and a clear plea that this leave was necessary for relief by February 24. App.3647a–48a. If this Court now denied this Application without prejudice to Applicants filing the futile, duplicative state-court motion that the *Williams* Respondents appear to be urging, that would simply generate another couple of weeks of chaos and delay in New York’s congressional elections, with no benefit to anyone. Such a pointless filing is not required by any exhaustion principle, including anything in this Court’s Rule 23.3.

The *Williams* Respondents also claim that Rule 23.3 requires a “request to expedite appellate briefing on the merits.” *Williams* Resp.2. Such a request is unnecessary in this case because the New York Constitution automatically expedites briefing in elections cases. N.Y. Const. art. III, § 5 (requiring courts to “give precedence” to such case “over all other causes and proceedings”). The relevant point is that no amount of expedition can produce a final decision on the merits from the New York appellate courts in time to forestall the chaos that will begin in New York’s congressional elections starting on February 24, absent a stay.

Finally, the *Williams* Respondents’ reliance on *Yeshiva University v. Yu Pride Alliance*, 143 S. Ct. 1 (2022), does not suggest that this Court should decline to grant relief here, *see, e.g.*, *Williams* Resp.2–3, 26–28. The *Yeshiva* applicant had neither sought a stay from the Court of Appeals directly nor had that applicant even filed a procedurally proper motion in the Appellate Division. Rather, the *Yeshiva* applicant had only sought a stay from the Appellate Division and, once the Appellate Division denied that stay, filed two motions for permission to appeal the denial of that stay in

the Appellate Division and the Court of Appeals. YU Pride Alliance Opp. To Appl. For Stay at 7, *Yeshiva*, No.22A184 (U.S. Sept. 2, 2022). Both the Court of Appeals and the Appellate Division found that the permissions to appeal the stay were improperly filed under New York’s rules of appellate procedure, such that the Appellate Division did not pass on those motions. *Id.* at 7–8. In denying the *Yeshiva* applicant’s subsequent stay application, this Court noted that the *Yeshiva* applicant failed to avail itself of that relief after the Appellate Division had “directed” applicants to do so. *Yeshiva*, 143 S. Ct. at 1, and thus the New York courts had not shown that the *Yeshiva* applicant’s requested relief was unavailable there, *see* Sup. Ct. R. 23.3. Here, both the Court of Appeals and the Appellate Division have denied Applicants’ motions for the emergency relief that they have now requested from this Court in their Application here. *Supra* pp.12–13. And the Appellate Division has simultaneously denied Applicants’ motion for leave to appeal to the Court of Appeals in the first instance. Suppl.App.102–03. Unlike in *Yeshiva*, neither court suggested any other avenue of immediate relief is available.

II. The *Williams* Respondents Have No Plausible Argument That The Trial Court’s Order Here Complies With This Court’s Case Law

A. Prohibiting A State From Running Elections Until It Racially Gerrymanders A Particular District Is Clearly Unconstitutional

1. This Court will likely grant certiorari and reverse because the trial court’s order prohibits New York from holding its congressional elections until it racially gerrymanders CD11, in violation of the Equal Protection Clause. Stay Appl.17–25; *see also* US.SG.Br.10–19. And because the trial court did not even attempt to address the Equal Protection Clause or this Court’s jurisprudence interpreting that Clause,

its disregard for this Court’s caselaw makes this a more egregious equal-protection violation than that which prompted this Court’s summary reversal in *Wisconsin Legislature v. Wisconsin Elections Commission*, 595 U.S. 398 (2002). Stay Appl.20–21; accord US.SG.Br.4. Neither the trial court nor the *Williams* Respondents attempted to show that a race-based reconfiguration of CD11 satisfies strict scrutiny, as was the *Williams* Respondents’ burden. Stay Appl.22–25; accord US.SG.Br.17–19. The *Williams* Respondents presented, at best, only “generalized assertion[s] of past discrimination,” and not the requisite evidence that race-based action is “necessary” to remediate “*identified* discrimination.” Stay Appl.22–23 (citing *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996)); see also US.SG.Br.18. Regarding strict scrutiny’s narrow-tailoring requirement, the *Williams* Respondents likewise failed even to explain how redrawing a district where Black and Latino voters comprise 23% of the district and already win at least 25% of elections, with the goal of increasing Black and Latino electoral success, is narrowly tailored to achieving anything but an unconstitutional race-based preference. Stay Appl.23–25. Nor did they show that Black and Latino voters are insufficiently represented in Congress either in the State of New York or in New York City in particular, a showing that the Justices who favored crossover districts in dissent in *Bartlett v. Strickland*, 556 U.S. 1 (2009), would have required. Stay Appl.23–24 (citing *Bartlett*, 556 U.S. at 28–30 (Souter, J., dissenting, joined by Stevens, Ginsburg, and Breyer, JJ.)).

2. The Attorney General briefly, AG Resp.21–22, and the *Williams* Respondents at greater length, *Williams* Resp.43–53, rest their argument on the

same erroneous premise: strict scrutiny does not apply because the trial court’s order mandates mere “awareness of race,” *Williams* Resp.48, or consideration of race as only “one factor among [] many,” AG.Resp.22. But the order *mandates* that the IRC adopt a new map that “add[s] Black and Latino voters from elsewhere” into CD11 in order to increase the success of Black and Latino voters in contested primaries and general elections. App.13a. When a mapdrawer has an express racial reason for redrawing a district, which the IRC will necessarily have here, the mapdrawer is not simply “aware of racial considerations” but rather is “motivated by them.” *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (plurality op.); *accord* US.SG.Br.10–16.

That is also why it does not matter whether the racial gerrymander that the trial court ordered the IRC to draw ultimately complies with other state criteria or not. *Contra Williams* Resp.48; AG.Resp.21. As this Court explained in *Bethune-Hill*, “[r]ace may predominate even when a reapportionment plan respects traditional principles . . . if race was the criterion that, in the [mapdrawer’s] view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made.” 590 U.S. at 189 (citations omitted).⁵ Here, the *only* way the IRC can comply with the trial court’s order is to make race the criterion that “cannot be compromised,” *id.*; if the IRC does not adopt a map that “add[s] Black and

⁵ That is why in *Wisconsin Legislature*, this Court summarily reversed the Wisconsin Supreme Court’s race-based map drawing a particular number of majority-minority districts without any need to address the Wisconsin Governor’s argument that the map also complied with traditional redistricting criteria. *Compare Wis. Legislature*, 595 U.S. at 401–04, *with* Opp’n To Appl. From Resp’t Governor Tony Evers at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022).

Latino voters from elsewhere” into CD11 in order to increase Black and Latino electoral success in contested primaries and general elections, it would be in violation of the court’s order. App.13a, 15a, 17a.

The *Williams* Respondents claim that it would be “premature” to consider any equal-protection arguments now, *Williams* Resp.44–46; AG.Resp.21–22, but the trial court’s mandate that New York racially gerrymander CD11 before it may hold congressional elections itself violates the Equal Protection Clause, regardless of how the IRC ultimately reconfigures CD11 to comply with that race-based mandate. Stay Appl.20–25; *see also* US.SG.Br.13–16. To quote the *Williams* Respondents’ cited authority, “any remedial district” that the IRC adopts in compliance with the trial court’s order will “necessarily” violate the Equal Protection Clause, *Williams* Resp.46 (quoting *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), *rev’d on other grounds*, 375 So. 3d 335 (Fla. Dist. Ct. App. 2023)), because any compliant permutation must “add[] Black and Latino voters [into CD11] from elsewhere” to increase Black and Latino voters’ electoral success in CD11, App.13a, 15a.

Although the *Williams* Respondents argue that the trial court’s order is the same as an order to draw “a remedial district created under the federal VRA,” *Williams* Resp.50, this backfires badly. This Court has long assumed that compliance with Section 2 of the VRA’s requirements when drawing a majority-minority remedial district furthers a compelling interest, thereby satisfying strict scrutiny. *See Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Bartlett*, 556 U.S. at 21 (plurality op.).

Because Section 2 mandates race-based redistricting in certain cases, the logical consequence of this Court’s assumption is that the Court would subject Section 2 to strict scrutiny. While the *Williams* Respondents attempt to avoid this conclusion by relying on this Court’s plurality opinion in *Bush v. Vera*, *Williams* Resp.50 (citing *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality op.)), that plurality opinion was issued before *Abbott* and *Bartlett* and, in any event, explicitly acknowledged that this Court had already “reserv[ed] th[e] question” of whether “all cases of intentional creation of majority-minority districts” trigger “[s]trict scrutiny,” *Vera*, 517 U.S. at 958 (plurality op.) (citing *Shaw v. Hunt*, 509 U.S. 630, 649 (1996)).

The *Williams* Respondents assert that the trial court’s race-based redistricting mandate satisfies strict scrutiny simply because it furthers a compelling interest of ordering compliance with a *state* constitutional provision. *Williams* Resp.51. That too fails. Although this Court has assumed that compliance with Section 2 furthers a compelling state interest, *see supra* pp.18–19; *see also Williams* Resp.51, this Court has never recognized that compliance with a state law thereby constitutes a compelling interest for purposes of strict-scrutiny review under the Fourteenth Amendment, *see Cooper v. Harris*, 581 U.S. 285, 292 (2017). Such an approach would contradict the Fourteenth Amendment’s purpose, which is to prohibit the States’ race-based action (a point that the *Williams* Respondents do not address). *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989) (plurality op.). States are not “free to decide” when race-based “remedies are appropriate.” *Id.* So, while Congress may use race-based laws to redress “societal discrimination,” the States do not share

that authority, *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 226 (2023) (“*SFFA*”)—and they cannot employ the “odious” function, *id.* at 208, of “pick[ing] winners and losers based on the color of [their citizens’] skin,” *id.* at 229.

But even if mere compliance with a state constitutional provision could provide a compelling interest under some circumstances, it could not possibly provide a compelling interest on the facts of this case. The unrebutted evidence here—including from the *Williams* Respondents’ lead expert—shows that Black and Latino voters already enjoy proportional electoral success in CD11, and more than proportionate electoral success in the region around CD11 and in New York State. Stay Appl.10–12, 24–25. The *Williams* Respondents do not acknowledge or dispute this point in their Opposition. Whatever else may be said about state interests to remedy vote dilution beyond what Section 2 of the VRA already prohibits, States obviously do not have any compelling interest in ensuring that minority voters have a *greater* than proportionate chance to elect their candidates of choice than other voters. *See generally Johnson v. De Grandy*, 512 U.S. 997, 1025 (1994) (O’Connor, J., concurring).

Finally, the *Williams* Respondents’ narrow-tailoring argument misunderstands their heavy burden under strict-scrutiny review. *Williams* Resp.52–53. To survive such review, the *Williams* Respondents must show that race-based redistricting is “*necessary*,” *SFFA*, 600 U.S. at 206–07 (emphasis added; citations omitted), to remedy specific, identified instances of discrimination in CD11, *City of*

Richmond, 488 U.S. at 510 (plurality op.); Stay Appl.23–25. The *Williams* Respondents make no effort to demonstrate why race-neutral measures would fail to increase the electoral influence of Black and Latino voters in CD11—even if such an increase were necessary, given that these voters already enjoy proportional electoral success in CD11, and more than that throughout New York City and the State, Stay Appl.24–25. Nor do they even attempt to respond to Applicants’ point that under the state- or region-wide analysis that the dissenting Justices in *Bartlett* would require, Black and Latino voters are not underrepresented across the State as a whole or in New York City, which is fatal to any cross-over claim even under the *Bartlett* dissent’s approach. Compare Stay Appl.23–25, with *Williams* Resp.52–53.

B. Adopting And Applying A Test That No Party Urged Or Submitted Evidence Tailored To Egregiously Violates This Court’s Due Process Clause Jurisprudence

1. The trial court violated due process by adjudicating this case under a standard that the *Williams* Respondents never proposed, no party submitted evidence on, and the trial court announced for the first time after trial. See Stay Appl.27–31. The parties litigated the *Williams* Respondents’ sole claim under one legal theory: that the NYVRA’s vote-dilution standards should govern their claim and require a “minority influence district” in CD11. *Id.* at 27 (citation omitted). But after Applicants developed and presented expert reports and testimony at trial refuting the *Williams* Respondents’ claim under those standards, the trial court ruled based upon a materially different standard announced for the first time after trial. *Id.* at 27–29. The trial court’s standard requires a plaintiff to make a threshold showing of a reasonable alternative district where (i) Black and Latino voters “are able to

select their candidates of choice in the primary election,” (ii) those candidates “win more often than not” in the general election, and (iii) Black and Latino voters’ “influence” is “increase[d]” such that these voters “are decisive in the selection of candidates,” App.15a, while also satisfying a version of the totality-of-the-circumstances inquiry similar to the second step of *Thornburg v. Gingles*, 478 U.S. 30 (1986), see App.7a–13a. This test requires a different threshold liability showing and makes primary-election data essential, whereas the NYVRA says nothing about assessing such data. See Stay Appl.28–29. Unsurprisingly, no party submitted evidence on multiple elements of this new test. *Id.* at 28–29. The trial court’s approach violates basic principles of fairness to litigants and requires reversal. *Id.* at 27–31. Even the *amici* below who proposed the trial court’s crossover-district test agreed that the trial court made a “serious mistake” by not requiring the *Williams* Respondents to satisfy critical elements of their test. *Id.* at 30 (quoting App.439a).

2. The Attorney General does not dispute Applicants’ due-process argument. See AG.Resp.18. She agrees that the trial court’s three-element test is a threshold showing that a plaintiff is “required” to make in order to “establish[]” a “claim” under the trial court’s crossover-district standard. *Id.* at 19. Although the Attorney General insists that the trial court must have somehow “found these criteria satisfied” before imposing liability, *id.* at 7, she does not disagree with Applicants’ argument that the trial court’s actions here violated the Due Process Clause, see generally *id.*, where no party advanced the trial court’s crossover-district test and the *Williams* Respondents did not present (and Applicants did not have any opportunity to rebut) evidence

tailored to that test, Stay Appl.29–30. The trial court’s failure to give the parties notice and an opportunity to submit evidence on necessary elements of the court’s new crossover-district standard violates the Due Process Clause, regardless of whether the trial court somehow found that the *Williams* Respondents satisfied that test. See *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020); *Reich v. Collins*, 513 U.S. 106, 111 (1994).

The *Williams* Respondents, for their part, concede that they neither urged the trial court’s three-element test nor presented any evidence under it. See *Williams* Resp.41. They instead claim—contrary to the Attorney General’s position and the position of the *amici* Professors who urged the trial court to adopt this test—that the trial court provided these three elements as simply voluntary suggested “principles for the IRC to consider” in crafting a remedial map. *Id.*; see *id.* at 37–39. That argument misunderstands both the trial court’s test and the nature of vote-dilution claims.

Although the *Williams* Respondents acknowledge that they “never introduced evidence below about the influence of Staten Island’s minority voters over congressional primary elections,” they contend that the trial court “never held that it was [their] burden to prove minority primary-election control as an element of a constitutional vote-dilution claim.” *Williams* Resp.41. But that is just what the trial court held, as reflected in the plain language of its order. The trial court expressly held that the *Williams* Respondents “*must*” satisfy the trial court’s three-pronged standard for crossover-districts. App.13a (emphasis added); see App.13a–15a. More

specifically, the court explained that “a redrawing of the congressional lines” is not a “proper remedy” unless a petitioner “*first* show[s] that minority voters make up a sufficient portion of the district’s population,” which a petitioner may do in the crossover context by meeting the three-pronged crossover-district test. App.13a–15a (emphasis added). This holding follows from “the very concept of vote dilution” itself, which requires the “existence of an ‘undiluted’ practice against which the fact of dilution may be measured.” See *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 480 (1997); *Hall v. Hall*, 512 U.S. 874, 880 (1994) (plurality op.). As the *amici* Professors explained below, the trial court’s test required the *Williams* Respondents to show a reasonable alternative to CD11 where Black and Latino voters “are able to select their candidates of their choice in the primary election” and “these candidates [are] usually [] victorious in the general election,” App.435a, to establish “*liability*” for vote dilution, App.430a–31a (emphasis added). The *Williams* Respondents’ suggestion that the *amici* Professors “quarrel only with the remedial portion of the trial court’s order,” *Williams* Resp.43, is egregiously false, as the Professors clearly stated that the trial court “made a serious mistake” by failing to apply its test and examine whether the *Williams* Respondents’ “demonstrative district,” App.439a, satisfied the crossover-district standard “*before* [imposing] *liability*,” App.429a (first emphasis added).

In any event, that even the parties who oppose the Application here cannot agree amongst themselves over what test the trial court actually adopted and applied underscores the due-process failings that occur when a court deviates from the party-

presentation principle. *See Sineneng-Smith*, 590 U.S. at 375; *Clark v. Sweeney*, 607 U.S. 7, 9–10 (2025) (per curiam). These concerns are why courts should “rely on *the parties* to frame the issues for decision,” *Sineneng-Smith*, 590 U.S. at 375 (citation omitted) (emphasis added), and not “reconfigure” the applicable legal framework “midcourse” during litigation, *Reich*, 513 U.S. at 111, especially without providing the parties “notice” and an “opportunity” to object to and “introduce evidence” under that framework, *Hormel v. Helvering*, 312 U.S. 552, 556 (1941); *see United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *Celotex Corp. v. Catrett*, 477 U.S. 317, 326 (1986).

Regardless of whether the *Williams* Respondents “exclusively argue[d that] the NYVRA applied” below, *Williams* Resp.38—which they very clearly did, *see* Stay Appl.7–13, 27–29—they indisputably did *not* advocate for the crossover-district standard that the trial court adopted here. Nor is that standard “more or less identical” to the NYVRA framework that the *Williams* Respondents proposed, *contra Williams* Resp.39. The NYVRA’s “racially polarized voting” and “totality of the circumstances” showings do not require plaintiffs to present any “categories of evidence” even remotely resembling the evidence necessary to satisfy the trial court’s three-element liability showing, *contra Williams* Resp.38–39; *see* Stay Appl.27–29, as demonstrated by the *Williams* Respondents’ failure to make any evidentiary showing relevant to this standard, *see* Stay Appl.30–31; *supra* p.22. The *Williams* Respondents’ reference to a footnote in their pre-trial brief bragging that they could “satisfy any possible [vote-dilution] standard,” *Williams* Resp.38, does not cure the

due-process issue here. A reference to “any possible standard” is insufficient to put Applicants on notice that they would need to defend against any possible standard that the trial court could ultimately adopt.

The *Williams* Respondents’ reliance on their illustrative map also does nothing to help their cause. *See Williams* Resp.41–42. It is undisputed that the *Williams* Respondents’ proposed map accomplished its dramatic increase in Black- and Latino-preferred candidates’ success by moving overwhelmingly Democratic White voters into CD11 from Lower Manhattan, contrary to the trial court’s directive that a lawful crossover district must “add[] Black and Latino voters from elsewhere” into CD11 in order to increase the success of Black and Latino voters in contested primaries and general elections. App.13a. The trial court itself recognized that the *Williams* Respondents’ approach was primarily concerned with partisan engineering rather than the creation of a crossover district under the trial court’s conception, where *minority* voters are “decisive” in contested primaries. App.15a.

Finally, the *Williams* Respondents’ effort to recast Applicants as arguing that courts cannot adopt a legal standard that differs from the parties’ submissions in any respect, *see Williams* Resp.32–36, fails. Applicants’ due process objection is more specific: the parties tried this case under one legal standard—the *Williams* Respondents’ Article-III-Section-4-equals-NYVRA theory—and the trial court decided this case under a different one. *See Stay* Appl.27–31. It is this situation that Applicants argue violates due process. *See Sineneng-Smith*, 590 U.S. at 375; *Clark*, 607 U.S. at 9; *Bowie v. City of Columbia*, 378 U.S. 347, 352 (1964).

This Court’s decisions in *Sineneng-Smith* and *Clark* underscore this point. *Sineneng-Smith* faulted an appellate panel for permitting *amici* to “radical[ly] transform[]” the case by injecting new constitutional theories into it. 590 U.S. at 380. Similarly, in *Clark*, this Court summarily reversed the Fourth Circuit because it “grant[ed] relief on a claim that [the defendant] never asserted and that the State never had the chance to address.” 607 U.S. at 9. Here, the trial court adopted an *amici*-crafted crossover-district framework that the *Williams* Respondents did not assert without requiring the *Williams* Respondents to prove that framework’s elements or giving Applicants a chance to refute such a showing. See Stay Appl.27–31. That is just the type of non-adversarial doctrinal transformation that this Court has warned against. See *Sineneng-Smith*, 590 U.S. at 375, 380; *Clark*, 607 U.S. at 9–10. The *Williams* Respondents claim that *Sineneng-Smith* is inapposite because the lower court there adjudicated a legal theory introduced by *amici* that the defendant “had never so much as ‘hint[ed]’ at,” *Williams* Resp.34 (citation omitted), but that is exactly what the trial court did here, see Stay Appl.13–14, 27–31. While the *Williams* Respondents similarly suggest that *Clark* “is nothing like this case,” *Williams* Resp.35, it is clear that the trial court “devised a new” legal standard—its *amici*-derived crossover-district test—that the *Williams* Respondents “never asserted” and then decided this case under that standard without ever giving Applicants “the chance to address” it, *Clark*, 607 U.S. at 9. “Instead of ruling on” the *Williams* Respondents’ NYVRA-based influence-district “claim,” the trial court indeed “devised a new one” and adjudicated that claim instead. *Id.*

None of the other cases that the *Williams* Respondents cite address a situation where the court adjudicated the case under a new standard that it adopted after the close of evidence. Instead, those cases just recognize courts' inherent duty to interpret the law, see *Williams* Resp.32–34 (citing, e.g., *Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006), *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024), and *O'Reilly v. City of New York*, 205 A.D. 888, 892 (2d Dep't 1923)), or their authority to consider unpreserved legal issues in some situations, *Williams* Resp.32, 35 (citing, e.g., *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991)), and none authorizes a court to adopt a fact-intensive, *amici*-derived liability standard post-trial and then enter judgment without even requesting any evidence satisfying that new standard.

C. Reading An Atextual Crossover-District Mandate Into The New York Constitution And Then Applying That Mandate Without Notice To The Parties Violates the Elections Clause Under *Moore v. Harper*

1. The trial court's order writing a crossover-district mandate into the New York Constitution—a standard that no party briefed and that has no basis in the constitutional text—“transgress[es] the ordinary bounds of judicial review,” *Moore*, 600 U.S. at 36, and so “distort[s] state law beyond what a fair reading require[s]” “in a federal election case,” *id.* at 38 (Kavanaugh, J., concurring) (citation omitted), violating the Elections Clause under *Moore*, Stay Appl.31–37. The trial court's encroachment on the Legislature's constitutional authority over congressional redistricting is not grounded in any preexisting New York standard or case law. Stay Appl.36–37. To the contrary, the trial court's decision to rewrite the New York Constitution to create an unprecedented crossover-district mandate and thereby

invalidate a duly enacted congressional plan mid-decade “exceed[s] ‘the limits of reasonable’ interpretation of state law” and “[dis]respect[s] . . . the constitutionally prescribed role of state *legislatures*” “in a federal election case,” *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted)—in contravention of the Elections Clause, Stay Appl.36–37. And the trial court also violated the Elections Clause by adopting its standard without notice to the parties, such that they could submit evidence under that standard. Stay Appl.36–37.

2. The Attorney General only references the Elections Clause in support of her claim that this Court should allow the New York courts to “balance the interests of voters, candidates, and the public” regarding the “purely state-law election-calendar date[s]” because the Elections Clause “grants to *States* authority to regulate the times, places, and manner of holding congressional elections.” AG.Resp.13 (emphasis added) (citing *Smiley v. Holm*, 285 U.S. 355, 366–67 (1932); and U.S. Const. art. I, § 4, cl. 1). But the Elections Clause gives “the *Legislature*” of each State—not state courts—the power to “prescribe[]” the “Times, Places and Manner of holding” congressional elections. U.S. Const. art. I, § 4, cl. 1 (emphasis added). And the trial court’s order blocks the Legislature’s lawful prescription of the manner of elections.

The *Williams* Respondents, for their part, attempt to evade this Court’s decision in *Moore*. According to these Respondents, Applicants’ argument is merely a “disagreement with the trial court’s interpretation of the New York Constitution” that is “beyond this Court’s remit.” *Williams* Resp.53. This mischaracterizes Applicants’ Elections Clause objection to the trial court’s order, which is that the

order is so clearly wrong and unreasonable based upon preexisting New York law that it “transgress[es] . . . the ordinary bounds of judicial review” under *Moore*, 600 U.S. at 36 (majority op.). While the *Williams* Respondents criticize Applicants for invoking Justice Kavanaugh’s admonition that state courts not “impermissibly distort[]” state law, *id.* at 38 (Kavanaugh, J., concurring) (citation omitted); see *Williams* Resp.Br.55, his reasoning is consistent with the majority’s clear requirement that state courts stay within “the bounds of ordinary judicial review,” *Moore*, 600 U.S. at 36 (majority op.), when dealing with legislatively adopted rules for congressional elections. In any event, Justice Kavanaugh explained that there are essentially three standards that this Court may adopt for Elections Clause cases, “and all three standards convey essentially the same point: Federal court review of a state court’s interpretation of state law in a federal election case should be deferential, but deference is not abdication.” *Id.* at 38–39 (Kavanaugh, J., concurring). And he noted there would be no “material difference in [the] application” of any of those standards. *Id.* at 39 n.1.

The trial court’s atextual interpretation of Article III, Section 4 disregarded New York’s established principles of constitutional interpretation under *Moore*, and the *Williams* Respondents do not show otherwise. See *Williams* Resp.55–56. Absent from the trial court’s order was any textual analysis of Article III, Section 4 that could justify reading a crossover-district mandate into the New York Constitution. And, given that Article III, Section 4 is “modeled after” Section 2 of the VRA, the trial court departed from New York law by failing to construe Article III, Section 4 consistent

with this Court's precedent. *See Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (N.Y. Sup. Ct. Yates Cnty. 1938); *Zakrzewska v. New Sch.*, 14 N.Y.3d 469, 479 (2010).

The *Williams* Respondents' arguments suffer from the same fatal flaws. Like the trial court, they fail to explain how the extremely minor textual difference between Section 2 of the VRA and Article III, Section 4 of the New York Constitution even arguably supports writing a crossover-district mandate into Article III, Section 4. *See Williams* Resp.Br.56. That is especially fatal to their position given that New York adopted Article III, Section 4 with nearly identical language to Section 2 *after* this Court decided that Section 2's guarantee of an equal "opportunity" to elect a candidate of choice did not mandate crossover districts. *See Bartlett*, 556 U.S. at 21 (plurality op.). It is simply not a "fair reading," *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted), to find that New Yorkers intended to deviate from this Court's unambiguous conclusion that Section 2's language does not permit crossover claims.

Nor can the *Williams* Respondents save the trial court's order by relying on the NYVRA, which is the 2022 statute that they unsuccessfully urged the trial court to constitutionalize before that court adopted its three-element test. *Williams* Resp.56–57 (citing N.Y. Elec. Law § 17-200); *see Stay* Appl.7–9. New York's well-established principles of construction prohibited the trial court from retroactively amending the New York Constitution's language adopted in 2014 governing congressional districts to reflect statutory language enacted eight years later related to localities. *See Sgaglione v. Levitt*, 37 N.Y.2d 507, 514 (1975). Such an approach has no analogue in

any prior New York case, so it clearly “transgress[ed] the ordinary bounds of judicial review,” *Moore*, 600 U.S. at 36 (majority op.), and “impermissibly distort[ed]’ state law ‘beyond what a fair reading required,’” *id.* at 38 (Kavanaugh, J., concurring) (citation omitted), in a federal election case.

The *Williams* Respondents also observe that this Court stated in *Bartlett* that “States that wish to draw crossover districts are free to do so where no other prohibition exists.” *Williams* Resp.56 (quoting *Bartlett*, 556 U.S. at 14 (plurality op.)). That is a red herring. While a State may draw what turns out to be a crossover district with a general “aware[ness] of racial considerations” or “racial demographics,” *Milligan*, 599 U.S. at 30 (citations omitted), a State *cannot* draw such districts “with race as the predominant factor motivating the legislature’s decision,” *Bartlett*, 556 U.S. at 22 (plurality op.). Here, as discussed, the trial court’s sole reason for ordering the redraw of CD11 is race. *Supra* pp.15–18. The *Williams* Respondents fail to acknowledge the reasoning of the controlling *Bartlett* plurality, which warned about the serious constitutional concerns surrounding a mandate to adopt crossover districts. *Bartlett*, 556 U.S. at 21 (plurality op.). Indeed, the *Williams* Respondents cannot even square the trial court’s approach with the lead dissent in *Bartlett*, which supported reading a crossover mandate into Section 2 but noted that such a mandate only makes sense if that mandate addresses “the overall”—“normally, statewide”—“effect of a multidistrict plan.” *Id.* at 28–30 (Souter, J., dissenting). In any event, even entertaining the extremely dubious premise that a State could constitutionally adopt a crossover-district mandate consistent with the Equal Protection Clause

(perhaps with the *Bartlett* dissent’s safeguards), New York clearly did not adopt such a mandate for congressional districts. To the contrary, after *Bartlett* held that Section 2 does not mandate crossover districts, New York adopted nearly identical language to Section 2 in Article III, Section 4. *See* Stay Appl.34.

Finally, the *Williams* Respondents offer no answer to Applicants’ independent argument that the trial court’s decision to strike down a legislatively adopted congressional map based on a legal standard that no party raised or submitted evidence on likewise violates the Elections Clause. Stay Appl.36–37. Nor could they. The trial court’s bait-and-switch approach to this case undoubtedly “transgress[ed] the ordinary bounds of judicial review,” which violates the Elections Clause because this case involves congressional elections. *Moore*, 600 U.S. at 36 (majority op.).

III. The Equities All Call Out For An Immediate Stay

A. A stay of the trial court’s order pending this appeal is necessary to prevent Applicants and the public from suffering significant, irreparable harm. Stay Appl.37–40. Because New York’s appellate courts have declined to stay the trial court’s order, App.19a–21a; Supp.App.102–03, New York has no congressional map in place for the 2026 Congressional Election when petitioning is scheduled to begin on February 24. Following the trial court’s order, the congressional election cycle cannot go forward until after the IRC racially gerrymanders CD11, which will not survive appellate review. Stay Appl.37–38. Further, now that the Appellate Division has vacated the automatic stay of the portion of the trial court’s order requiring the IRC to reconvene and adopt a new map that satisfies the trial court’s unconstitutional

crossover-district test, *see* Suppl.App.102–03, the order explicitly mandates that the IRC engage in unconstitutional conduct, *see* IRC Comm’r Resp.5–7.

New York is without a congressional map under the trial court’s order, and there is no end in sight—including because once the IRC complies with the trial court’s unconstitutional mandate, the racial gerrymander it draws will be appealed and invalidated. Accordingly, “without a stay” pending appeal, *Ohio v. EPA*, 603 U.S. 279, 291 (2024), election officials, candidates, and voters across the State do not even know when they can begin to petition, prepare ballots, conduct voter outreach, or campaign in any of New York’s 26 congressional districts, or what district lines will govern CD11 and its adjacent districts, Stay Appl.39–40. The *Williams* Respondents, in contrast, will not suffer any prejudice if this Court issues a stay, as this situation is entirely the result of the *Williams* Respondents inexplicably waiting 18 months after the 2024 Congressional Map’s adoption to bring this challenge. *Id.* at 40.

B. Neither the *Williams* Respondents nor the Attorney General can rebut Applicants’ powerful showing on the equities. *See Williams* Resp.60–65; AG.Resp.20.

As a threshold matter, the *Williams* Respondents omit any discussion of their 18-month delay in bringing this lawsuit. A party whose own “unnecessary, years-long delay” caused its irreparable harm cannot later complain that it will suffer harm from the maintenance of the status quo. *Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (per curiam). If the *Williams* Respondents thought that they would suffer irreparable harm from having the 2026 Congressional Election run under the map that the Legislature adopted in 2024, *see Williams* Resp.62–65, they should have sued much

sooner. But even putting that delay aside, while the *Williams* Respondents claim that they are suffering harm from “the current configuration of CD-11,” *Williams* Resp.62–64, they do not explain what cognizable harm they could possibly be suffering where Black and Latino voters currently make up 23% of CD11’s population and their candidates of choice are already expected to win at least 25% of elections, under the *Williams* Respondents’ own expert’s numbers, *see* Stay Appl.24–25.

The *Williams* Respondents’ assertion that “it is Applicants—and not the trial court—whose conduct threatens to disrupt orderly elections in New York,” *Williams* Resp.60, is demonstrably wrong. If this Court grants a stay of the trial court’s order, then New York’s 2026 Congressional Election will take place as scheduled under the entirely constitutional, legislatively adopted map, as everyone expected would occur until the trial court’s erroneous order. The *Williams* Respondents assert that “[t]he trial court’s remedial order” will produce an IRC-designed map “in a manner that does not disrupt the upcoming primary elections,” *Williams* Resp.60, but petitioning is scheduled to begin on February 24. Nor can they explain how New York’s “upcoming primary elections” could proceed without “disrupt[ion],” *Williams* Resp.60, when any map that the IRC adopts to satisfy the trial court’s order would be immediately challenged and enjoined on appeal on the grounds that it is an unconstitutional racial gerrymander, *see supra* Part II.A. Absent this Court’s intervention, it may be months before New Yorkers know what the lines of CD11 and adjacent districts will be, and when the election deadlines for New York’s entire 26-district congressional map will take place.

Relatedly, while the *Williams* Respondents attempt to downplay these harms by claiming that “[t]he relief ordered here . . . pertain[s] to just a single congressional district rather than a statewide map,” *Williams* Resp.61, that misses the point in two respects. First, redrawing CD11 to “add[] Black and Latino voters from *elsewhere*,” App.13a, 15a (emphasis added), will require redrawing at least one adjacent district. And, second, the trial court has enjoined the New York Board of Elections from holding the election “or otherwise giving any effect to the boundaries” of the 2024 Congressional Map, App.18a, not just CD11, a point that neither the *Williams* Respondents nor the Attorney General dispute.

Both the *Williams* Respondents and the Attorney General argue that there is sufficient time to allow the state courts to review the trial court’s order on the merits before the upcoming election. *Williams* Resp.61–62; AG.Resp.13–14, 20. But that would mean indefinitely delaying the federal congressional election cycle across the State of New York, based upon an order that plainly violates the U.S. Constitution. If this Court does not step in by February 23, New York’s congressional election across all 26 congressional districts will not begin on time and the IRC will be forced, under the trial court’s order, to draw a racial gerrymander that will surely be overturned on appeal—meaning that New Yorkers could well spend many months without any certainty as to when the congressional election in any districts will begin, and what the boundaries of CD11 and any adjacent district(s) will be.

Although this Court could wait and see if the state courts rein in this chaos at some point in the coming weeks and months by issuing a final

merits decision—while making clear that there would be no problem under *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), with Applicants returning to this Court after further action by the New York courts—there is, respectfully, no reason to impose that chaos for over 12 million New York voters, where the trial court’s order is so clearly unconstitutional and where delay will inject additional uncertainty into federal elections that should be governed by the Elections Clause, not a state trial court. By contrast, a stay would eliminate “voter confusion,” *id.* at 4–5, by ensuring that New York has a congressional district map in time for the beginning of the petitioning process on February 24, Stay Appl.38–40; see S.G.Br.24. And while the *Williams* Respondents assert that “Applicants [] insist” that the February 24 deadline “is simply too inviolable,” *Williams* Resp.61, that mischaracterizes Applicants’ position. As Applicants have explained, the February 24 deadline is the date on which a map needs to be in place to avoid uncertainty and chaos in the election timeline. Stay App.1, 3–4, 38–39.

The *Williams* Respondents’ repeated reference to the litigation and orders in *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022), *Williams* Resp.4, 18, 46 n.11, 61, does not support their position. Petitioner-respondents in that case filed their lawsuit *the very same night* that the Legislature adopted the 2022 congressional map, arguing that the map violated New York’s anti-gerrymandering amendment. That challenge was meritorious, ultimately prevailing at the Court of Appeals. Here, the *Williams* Respondents waited 18 months to bring their lawsuit and the trial court’s decision

violates the U.S. Constitution several times over, with no chance that the decision survives appellate review. The petitioners-respondents in *Harkenrider* moved as quickly as possible to limit uncertainty during the election cycle, and the New York courts' decision to change election deadlines reflected that dispatch and the need to "adopt constitutional maps with all due haste" before the 2022 election. 38 N.Y.3d at 524. The *Williams* Respondents here took 18 months to bring their lawsuit and still cannot explain the reason for their delay, and their lawsuit seeks to impose racial discrimination on Applicants in violation of the U.S. Constitution.

Finally, according to the *Williams* Respondents, Applicants "present weak evidence of irreparable harm," *Williams* Resp.64, but that wrong. Absent a stay pending appeal, Applicants will not be able to start the 2026 election cycle at all using the lawful 2024 Congressional Map when the election calendar begins on February 24. *Supra* pp.33–34. And Applicants' harm based upon the trial court's order requiring that they be placed into a racially gerrymandered district is not "speculative" or "premature," *contra Williams* Resp.65—rather, as explained above, any version of CD11 drawn pursuant to the trial court's order will be an unconstitutional racial gerrymander, *see supra* Part II.A. Further, given that such a racial gerrymander will ultimately be struck down on appeal, Applicants cannot rely on either the 2024 Congressional Map or any map drawn pursuant to the trial court's order—leaving Applicants without any of the information they need regarding the governing district lines for CD11 before petitioning, ballot preparation, and voter outreach can begin, as scheduled, next Tuesday. *Supra* pp.33–34.

CONCLUSION

This Court should stay the Order of the Supreme Court of the State Of New York, New York County.

Respectfully submitted,

BENNET J. MOSKOWITZ
ELIZABETH A. LOIZIDES
TROUTMAN PEPPER LOCKE LLP
875 Third Avenue
New York, NY 10022

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/s/ Misha Tseytlin
MISHA TSEYTLIN
Counsel of Record
KEVIN M. LEROY
JEFF P. JOHNSON
KAITLIN O'DONNELL
CARSON A. COX
LAUREN H. MILLER
DYLAN J. DEWITT
TROUTMAN PEPPER LOCKE LLP
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240
misha.tseytlin@troutman.com

Attorneys for Applicants