No. 25-

IN THE

Supreme Court of the United States

PETER S. KOSINSKI, IN HIS OFFICIAL CAPACITY AS CO-CHAIR AND COMMISSIONER OF THE BOARD OF ELECTIONS OF THE STATE OF NEW YORK, *et al.*,

Applicants,

v.

MICHAEL WILLIAMS, *et al.*,

Respondents.

ON EMERGENCY APPLICATION FOR STAY TO THE SUPREME COURT FOR THE STATE OF NEW YORK, NEW YORK COUNTY

EMERGENCY APPLICATION FOR INTERIM STAY AND STAY PENDING APPEAL

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PARTIES TO THE PROCEEDING

Applicants are Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, "Applicants"). Applicants are the Respondents before the Supreme Court of the State of New York for New York County.

Respondents are Michael Williams, Jose Ramirez-Garofalo, Aixa Torres, and Melissa Carty (collectively, "Petitioners"). Respondents are Petitioners before the Supreme Court of the State of New York for New York County.

Respondents also include Board of Elections of the State of New York, Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board of Elections of the State of New York, Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York, Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York, Kathy Hochul, in her official capacity as Governor of New York, Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the New York State Senate, Carl E. Heastie, in his official capacity as Speaker of the New York State Assembly, and Letitia James, in her official capacity as Attorney General of New York. Respondents are Petitioners before the Supreme Court of the State of New York for New York County.

Respondents are also Congresswomen Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, "Intervenor-

Applicants"). Respondents are Intervenor-Respondents before the Supreme Court of the State of New York for New York County.

Respondents are also Nicholas O. Stephanopoulos and New York Civil Liberties Union Foundation. Respondents are amici before the Supreme Court of the State of New York for New York County.

PROCEEDINGS BELOW

- *Michael Williams et al. v. Board of Elections of the State of New York et al.*, No. 164002/2025 (N.Y. Sup. Ct.): granting Petitioners' petition, finding that New York's 2024 congressional map for CD-11 violated New York Constitution by diluting the votes of Black and Latino voters, and ordering the Independent Redistricting Commission to reconvene to complete a new congressional map. The order was entered on January 22, 2026.

- *Michael Williams et al. v. Board of Elections of the State of New York et al.*, No. 2026-00384 (N.Y. App. Div.): Appellate Division, First Department has failed to rule on Applicants' pending motion for interim stay and stay pending appeal. The stay application was filed on January 28, 2026.

- *Michael Williams et al. v. Board of Elections of the State of New York et al.*, No. APL-2026-00010 (N.Y.): denial of motion for interim stay and stay pending appeal as academic because the New York Court of Appeals transferred appeal to the Appellate Division, First Department. The order was entered on February 11, 2026.

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TO THE HONORABLE SONIA SOTOMAYOR, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE SECOND CIRCUIT

On the eve of the election season, the trial court declared that the decades-old configuration of the 11th Congressional District ("CD-11") is unconstitutional under Article III, § 4(c)(1) of the NY Constitution based on a novel, explicitly race-based standard. The trial court also enjoined "any" election until the Independent Redistricting Commission ("IRC") (which was only added as a party on February 11, 2026) completes a new map of CD-11 that complies with this race-based standard. Unless this Court issues a stay by February 23, 2026, New York's congressional elections will be thrown into chaos and uncertainty.

The irreparable harm resulting from the trial court's Decision and Order is immediate and profound. Applicants are responsible for administering congressional elections in New York. App. 1976. By enjoining all election activity, the trial court's ruling will disrupt the timely and orderly administration of the 2026 election cycle, which is set to commence with designating petitions on February 24, 2026. App. 3670. If this Court does not stay the trial court's injunction by February 23, 2026, New York's elections are guaranteed to be delayed and disrupted. This chaos and uncertainty not only jeopardizes the rights of candidates and political parties to participate in a timely and fair electoral process, but also risks disenfranchising voters who may be left without clear information about their districts or representation. Moreover, the abrupt halt to election preparations erodes public confidence in the integrity and reliability of New York's electoral system, causing confusion and diminishing trust in the democratic process. These harms cannot be

remedied after the fact because the loss of a fair and orderly election process is, by its nature, irreparable. If this Court acts to stay the trial court's prohibitory injunction by February 23, 2026, New York's congressional elections may proceed on time under a lawfully enacted map.

The trial court's Decision and Order also is deeply flawed because it violates Applicants' due process rights. This entire proceeding rests on Petitioners' position that the standard for an Article III, § 4(c)(1) vote dilution claim is the New York Voting Rights Act ("NYVRA"), which was adopted eight years *after* Article III, § 4(c)(1), and which directs apportionment for local elections on explicitly race-based grounds. Petitioners alleged that the configuration of CD-11 is unconstitutional under the NYVRA standard because it dilutes the "influence" of Black and Latino voters. App. 512. The trial court rejected the NYVRA standard out of hand, holding that application of the NYVRA standard to the NY Constitution "is impermissible." App. 5. At that point, the trial court should have dismissed this proceeding. Erroneously, however, it did not and proceeded, without any input from the parties, to adopt an *Amici's explicitly race-based standard* for Article III, § 4(c)(1) claims. App. 15. Since Applicants were denied the opportunity to litigate any standard other than the one advanced by Petitioners, due process and the principle of party presentation require reversal of the Decision and Order.

Finally, the dispositive basis of the trial court's remedy—"adding Black and Latino voters from elsewhere"—is on its face racial, which triggered strict scrutiny analysis under the Equal Protection Clause of the Fourteenth Amendment. The trial

court barred Applicants from holding congressional elections until New York adopts its court-ordered racial gerrymander. App. 13. Despite extensive briefing on this issue from Applicants and Intervenor-Applicants, neither the trial court nor Petitioners addressed this issue, let alone demonstrated that this race-based remedy serves a compelling state interest or is narrowly tailored to achieve that interest, much less how the trial court's order complies with this Court's equal protection jurisprudence. Thus, the Decision and Order violates the Equal Protection Clause and must be reversed. For these reasons, this Court would likely grant review and reverse.

DECISIONS BELOW

Applicants seek an interim stay and a stay pending appeal of the trial court's decision and order, entered on January 21, 2026. The trial court's decision and order is reproduced at App. 1-18. The New York Court of Appeals' denial of a stay pending appeal is reproduced at App. 20-21.

JURISDICTION

The trial court entered its order on January 21, 2026. App. 3665. Applicants timely appealed to the New York State Court of Appeals and the Appellate Division, First Department on January 26, 2026. App. 3665-68. Just two days later, on January 28, 2026, Applicants filed motions in both courts seeking an interim stay and a stay pending appeal. App. 479. One day later, the New York State Court of Appeals denied Applicants' motion for an interim stay. On February 11, 2026, the Court of Appeals dismissed the appeal, and denied the stay motion as academic, on the basis that the Court of Appeals lacks jurisdiction. App. 20-21. To date, the Appellate Division, First

Judicial Department for the Supreme Court of the State of New York has not ruled on Applicants' motion. And, critically, since the Court of Appeals has determined it lacks jurisdiction, Appellants cannot seek stay relief from that court in the event the Appellate Division declines to issue a stay.

This Court has jurisdiction over this application under 28 U.S.C. §§ 1257(a), 1651(a), and 2283. Under 28 U.S.C. § 1257(a), this Court has jurisdiction over "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution." Under 28 U.S.C. 1651(a), this Court "may issue all writs necessary or appropriate in aid of [its] . . . jurisdiction[]." And under 28 U.S.C. § 2283, this Court may issue an injunction "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

A stay of the trial court's order would be in aid of this Court's jurisdiction over Applicants' appeal. 28 U.S.C. §§ 1257(a), 1651(a), and 2283.

BACKGROUND

This proceeding arises from a constitutional challenge to New York's 2024 Congressional Map under Article III, Section 4(c)(1) of the New York State Constitution. On January 21, 2026, the Supreme Court, New York County (Pearlman, J.), issued a Decision and Order declaring that the decades-old configuration of CD-11 unconstitutionally dilutes the voting strength of Black and Latino voters, and it enjoined Applicants from conducting any election under the current map. App. 18. The Court further directed the non-party Independent Redistricting Commission to

reconvene and complete a new congressional map by February 6, 2026. *Id.* Applicants now seek an interim stay and stay pending appeal.

At the outset of the trial court proceedings, Applicants requested that Justice Pearlman recuse himself because, among other things, he disclosed multiple relationships to parties to the proceeding, including previously serving as counsel and chief of staff to Respondent Governor Kathy Hochul, and also as counsel and chief of staff to Respondent Senate Majority Leader Andrea Stewart-Cousins, both Democratic politicians. Applicants argued that, even in the absence of actual bias, New York law requires recusal where a judge's impartiality might reasonably be questioned. App. 3733-3735. Justice Pearlman denied the motion in a decision that did not address whether his relationships created an appearance of partiality. App. 3863-3868.

The Decision and Order presents grave legal errors and threatens immediate, irreparable harm to the orderly administration of the 2026 election cycle, which is set to commence on February 24, 2026, when candidates may begin circulating designating petitions. App. 16. A stay is essential to prevent chaos and confusion in New York's electoral system.

I. Petitioners' claims as pleaded below

Petitioners initiated this special proceeding on October 27, 2025—some nineteen months after the 2024 Congressional Map was enacted into law. The Petition asserted a single claim: that the configuration of CD-11, which encompasses all of Staten Island and a portion of southern Brooklyn, violates the prohibition

against racial vote dilution set forth in Article III, Section 4(c)(1) of the New York Constitution. App. 511-512.

The centerpiece of Petitioners' legal theory was that the NYVRA, a state statute applicable only to local redistricting and enacted in 2022—eight years after the 2014 constitutional redistricting amendments took effect—provides the analytical framework for evaluating claims under Article III, Section 4(c)(1). App. 499, 511. Petitioners alleged that the NYVRA requires the creation of coalition and minority influence districts in which racial minorities can form coalitions with other racial minorities and White voters to influence elections and elect representatives of their choice. App. 497-98, 512. Petitioners expressly conceded that their vote dilution claim fails under federal law and that Black and Latino voters in CD-11 cannot constitute a majority in any reasonably configured single-member district. App. 896-97.

Petitioners alleged that the Black and Latino population on Staten Island has grown significantly since 1980 while the White population has declined, yet the current configuration of CD-11 purportedly perpetuates the alleged dilution of minority voting strength. App. 499-500. They alleged that voting is racially polarized in CD-11, that there is a history of discrimination affecting Black and Latino residents, and that racial appeals continue to be made in political campaigns. App. 502-511. Based upon these allegations, Petitioners sought a declaration that the 2024 Congressional Map violates Article III, Section 4(c)(1), a permanent injunction barring Applicants from using the 2024 Map in any future elections, and an order

directing that a new map be adopted pairing Staten Island with portions of lower Manhattan to create what Petitioners styled a minority influence district. App. 512-13.

The relief Petitioners sought is unprecedented. They asked the Court to dismantle a district configuration that has existed since 1980—linking Staten Island with portions of Brooklyn—and replace it with a novel configuration linking Staten Island across open water to lower Manhattan. Significantly, Petitioners' illustrative map only increased Black Citizen Voting Age Population ("CVAP") by about 1% and Hispanic CVAP by less than 1%. App. 907-08.

II. The trial evidence

The trial court conducted an expedited evidentiary hearing over several days in early January 2026.

A. Petitioners' evidence

Petitioners' principal expert on racially polarized voting was Dr. Maxwell Palmer, a tenured professor of political science at Boston University. App. 668. Dr. Palmer testified that he analyzed twenty elections from 2017 to 2024 and concluded that voting in CD-11 is racially polarized, meaning that Black and Latino voters supported the same candidates of choice while White voters cohesively opposed those candidates. App. 671-72.

Critically, Dr. Palmer's analysis was limited to general elections and did not include any analysis of primary elections. This limitation should have proved fatal to Petitioners' case under the standard ultimately adopted by the trial court, which requires that minority voters be decisive in primary elections. Dr. Palmer also

conceded on cross-examination that he did not attempt to determine the cause of the polarization he observed, testifying that assessing why voters might prefer different candidates was not the purpose of his analysis. App. 775.

Petitioners' demography expert, William S. Cooper, prepared the illustrative map that Petitioners offered as their proposed remedy. App. 811. Mr. Cooper did not analyze any election results. App. 912-13. Mr. Cooper's illustrative plan would increase White non-Hispanic citizen voting age population by approximately 2.6 percentage points while only marginally increasing Black and Hispanic CVAP. App. 1132. He further conceded that he did not analyze whether his illustrative plan would constitute an unconstitutional partisan gerrymander under Article III, Section 4(c)(5), which prohibits drawing districts to discourage competition or favor particular political parties. App. 913.

B. Applicants' evidence

Applicants offered the testimony of Dr. John Alford, a tenured professor of political science at Rice University with extensive experience testifying in redistricting and voting rights cases. App. 1286-87. Dr. Alford accepted Dr. Palmer's methodology and used his data in forming his own conclusions. App. 1288. His analysis went beyond merely verifying Dr. Palmer's statistical results. In addition, he examined the race of the candidates in each election Dr. Palmer studied and reached a fundamentally different conclusion about the nature of the polarization. App. 1287-88, 1290, 1293-95.

Applicants' demography expert, Thomas Bryan, an applied demographer with three decades of experience including service at the U.S. Census Bureau, provided extensive analysis of Petitioners' proposed illustrative district. App. 1060-61. Mr. Bryan demonstrated that Petitioners' proposed remedy—linking Staten Island with lower Manhattan—would degrade traditional redistricting criteria. App. 1120-21. His analysis showed that the Illustrative Plan is less geographically compact than the existing CD-11 and separates rather than unites communities of interest, including splitting the cohesive Chinese-American community in Chinatown. App. 1119-20.

Mr. Bryan's analysis further revealed the disproportionate harm Petitioners' plan would inflict upon Asian voters. Approximately 57.1 percent of Asian citizen voting age population would be moved out of CD-11 under Petitioners' plan, compared to only about 31.5 percent of total population. App. 1112. The Illustrative Plan would reduce Asian CVAP in CD-11 by roughly 4.6 percentage points, from about seventeen percent to approximately twelve percent—a significant diminution of Asian electoral influence that Petitioners' theory of vote dilution protection ignores entirely. App. 1133.

III. The trial court's Decision and Order violated fundamental principles of due process

A fundamental due process error infected the proceeding below. Petitioners exclusively argued that the NYVRA's standards should be applied to Article III, § 4, and Applicants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy to that theory. When the trial court rejected the NYVRA standard as impermissible, due process and the principle of party

presentation required dismissal. Instead, without any notice to the parties and without requesting supplemental briefing on the applicable legal standard, the trial court adopted an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims—a standard for which no party had advocated and that Applicants were denied any opportunity to litigate.

The trial court agreed with Applicants that applying the NYVRA's standard in this proceeding would be impermissible. App. 5. The Court found that Article III, § 4(c)(1)'s text directly contradicts Petitioners' argument since the NYVRA was enacted years after the constitutional provision took effect. *Id.* The Court further agreed that the exclusion of state legislation from Article III, § 4(c)(1)'s text was intentional and that there is no legislative history suggesting that the constitutional provision should be influenced by subsequently enacted legislation. *Id.*

At that point, the trial court should have dismissed the proceeding. Instead, the trial court proceeded without any input from the parties to adopt an entirely new, explicitly race-based standard proposed by *amici*. App. 15.

The Court adopted a novel three-pronged standard for so-called crossover districts. App. 15. Under this standard, a reconstituted district "adding Black and Latino voters from elsewhere" is required when: first, minority voters are able to select their candidates of choice in the primary election; second, these candidates must usually be victorious in the general election; and third, the reconstituted district should increase the influence of minority voters such that they are decisive in the selection of candidates. App. 13-15.

The trial court violated Applicants' due process rights by granting relief absent any proof that a reconstituted district satisfying its novel standard is even possible. Petitioners failed to offer, and the trial court did not find, any evidence that Black and Latino voters could be decisive in primary elections, let alone any evidence showing Black and Latino voters could influence primary election outcomes under their Illustrative Plan. Dr. Palmer confined his analysis to general elections and did not analyze a single primary election. Mr. Cooper did not analyze election results at all. App. 912-13. In fact, the premise of Petitioners' Illustrative Map was to add White Democrats from lower Manhattan with only negligible increases to the Black and Latino voter population.

Despite the conspicuous lack of proof that any such reconstituted district is possible, the trial court put the cart before the horse and declared the 2024 Map unconstitutional. App. 18. It then directed the IRC to complete this racial re-draw without any evidence that it is possible to create a map that complies with that Order. App. 18.

Critically, the trial court rejected the entire remedial approach proposed by Petitioners. App. 15-16. Instead, it ordered the IRC to reconvene and propose new congressional district lines that add Black and Latino voters to CD-11 in a number sufficient to make them "decisive" in primary elections. App. 18. The Court further enjoined Applicants from conducting any election under the 2024 Congressional Map or otherwise giving any effect to the boundaries of the map as drawn. App. 18. This

injunction, though purportedly directed at CD-11, applies to any election conducted under the current map—meaning the injunction effectively operates statewide.

Applicants filed a Notice of Appeal on January 26, 2026, which pursuant to CPLR 5519(a)(1) automatically stayed the executory portions of the order—specifically, the directive to the IRC to reconvene by February 6, 2026. The automatic stay does not apply, however, to the declaratory and prohibitory injunctive portions of the order, including the injunction barring any election under the 2024 Map. As a result of the automatic stay of the remedial process coupled with the ongoing injunction, an untenable situation has emerged: it is now clear that a remedial map cannot be proposed, let alone enacted, by February 23, 2026, yet the Board of Elections remains enjoined from preparing for elections under the existing map.

The accompanying declaration of Applicant Raymond J. Riley, III establishes that the 2026 election calendar formally commences on February 24, 2026—less than two weeks away—which is the first day candidates may circulate designating petitions pursuant to New York Election Law Section 6-134(4). In the event a new map were adopted, the Board of Elections and local boards must perform substantial preparatory work before petitioning may begin, including processing voter registrations to publish the list of registered voters by congressional district, designating polling places, and preparing to receive ballot access documents. App. 1977-78. Thus, if a new map were adopted, it would be impossible for the election process to commence timely. If this Court were to stay the trial court's injunction

enjoining the election by February 23, 2026, the election season may start on time on February 24, 2026 under the existing, lawfully enacted map. App. 3670.

Since the trial court's injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11. The entire statewide congressional election apparatus has thus been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins.

For these reasons, set forth in further detail below, this Court should issue an interim stay of the trial court's order, grant a stay of the order, and grant such and further relief as is just and equitable.

REASONS FOR GRANTING THE APPLICATION

"In deciding whether to issue a stay," this Court considers: "(1) whether the applicant is likely to succeed on the merits, (2) whether it will suffer irreparable injury without a stay, (3) whether the stay will substantially injure the other parties interested in the proceedings, and (4) where the public interest lies." *Ohio v. EPA*, 603 U.S. 279, 291 (2024). Justices of this Court have also considered whether there is "'a reasonable probability' that this Court will grant certiorari [and] . . . will then reverse the decision below." *Maryland v. King*, 567 U.S. 1301, 1302 (2012) (Roberts, J.) (quoting *Conkright v. Frommert,* 556 U.S. 1401, 1402, (2009) (GINSBURG, J., in chambers)).

Applicants filed a Notice of Appeal from the Order on January 26, 2026. App. 3665-68. Pursuant to CPLR 5519(a)(1), Applicants' appeal automatically stayed "all proceedings to enforce the judgment or order appealed from pending the appeal." N.Y. C.P.L.R. 5519 (McKinney). The automatic stay applies to the "executory" portions of the order appealed from—that is, those directives that "command a person to do an act." *Matter of Kar-McVeigh, LLC v. Zoning Bd. of Appeals of Town of Riverhead*, 93 A.D.3d 797, 799, 941 N.Y.S.2d 170 (2012) (quoting *Pokoik v. Dep't of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 15, 641 N.Y.S.2d 881 (1996)). Thus, the automatic stay applies to the portion of the Order directing the IRC to "reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026." App. 18; *Hoffmann*, 41 N.Y.3d at 341 (holding that "the Appellate Division's order [directing the IRC to "commence its duties forthwith"] was automatically stayed pursuant to CPLR 5519 (a) (1)" and denying motion to vacate the stay).

The automatic stay does not apply, however, to the non-executory portions of the Decision and Order, including the declaration that CD-11 is unconstitutional and the prohibitory injunction enjoining Applicants "from conducting any election [under the 2024 Congressional Map] . . . or otherwise giving any effect to the boundaries of the map as drawn." App. 18.

I. This Court is likely to grant review and reverse

A. The trial court's rejection of Petitioners' proposed NYVRA violated principles of due process because it adopted a novel, unbriefed standard that Applicants were denied an opportunity to litigate

Petitioners exclusively argued that the NYVRA's standards should be applied to Article III, § 4, and they structured their pleadings, proof, and requested remedy around the NYVRA's unique features. Petitioners argued that the NYVRA "requires the creation of coalition and minority influence districts, or districts in which racial minorities can form coalitions with other racial minorities and white voters to influence elections and elect representatives of their choice." App. 497-98. Petitioners did not offer any alternative standard and effectively conceded that their dilution claim fails under federal law.

Applicants challenged that argument as pleaded and demonstrated that this proceeding must be dismissed because: (1) the plain and unambiguous terms of Article III, § 4(c)(1) expressly require it to be interpreted in accordance with federal statutes and not New York State statutes, including the NYVRA; (2) as a matter of law, the NYVRA cannot modify Article III, § 4, as Petitioners claimed in their Petition and supporting papers; and, (3) under settled canons of constitutional and statutory construction there is an irrefutable inference that the Legislature intended to omit congressional elections from the analytical framework contained in the NYVRA. Since Petitioners did not offer any other standard to be applied to their Article III, § 4(c)(1) claim, Applicants did not address any other standard (other than the governing federal law), much less offer arguments and proof on any other standard.

The trial court agreed with Applicants and held that applying the NYVRA's standard in this proceeding would be "impermissible." App. 5. It found that Article III, § 4(c)(1)'s text directly contradicts Petitioners' argument since the NYVRA was enacted years after Article III, § 4(c)(1). App. 5. Additionally, the trial court agreed with Applicants that the exclusion of "state legislation," such as the NYVRA, from Article III, § 4(c)(1)'s text was intentional and there is no legislative history suggesting that Article III, § 4(c)(1) "should be influenced by legislation that would be passed after" the constitutional enactment took effect. App. 5.

Despite rejecting the only standard advanced by Petitioners and briefed by the parties, the trial court adopted an entirely new standard for vote dilution claims under Article III, § 4(c)(1), which was proposed by *amici*. App. 15. This violated due process and the principle of party presentation, which constrained adjudication of this case to the arguments and facts the parties actually advanced.

This Court has made clear that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," under which courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)).[1] As another recent decision put it, "courts call balls and strikes; they don't get a turn at bat." *Clark*

[1] This rule applies "in both civil and criminal cases, in the first instance and on appeal." *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243).

v. Sweeney, 607 U.S. 7, 7 (2025) (internal punctuation omitted) (quoting *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724 (2020)).

While the party presentation principle is "not ironclad," courts are limited to a "modest initiating role" reserved for narrow circumstances. *Sineneng-Smith*, 590 U.S. at 376. For example, a court may depart from the rule to correct "an evident miscalculation" of a statute of limitations to prevent an unintentional waiver," *Day v. McDonough*, 547 U.S. 198, 202 (2006), or "to protect a *pro se* litigant's rights." *Greenlaw v. United States*, 554 U.S. 237, 244 (2008). None of the narrow exceptions applies here, and the trial court's "drastic[]" departure from the principle "constitute[s] an abuse of discretion." *Sineneng-Smith*, 590 U.S. at 375.

Here, the trial court's creation of a new standard unrelated to any of the standards actually litigated by the parties has worked a manifest injustice to Applicants in violation of the Due Process Clause. The NYVRA standard articulated by Petitioners determined the elements they had to plead and prove, the evidence the parties marshalled, and the remedial possibilities the Court could consider. Petitioners chose a specific standard, and Applicants litigated this case in reliance on Petitioners' choice and the way they framed their case. Applicants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy and presentation to that theory. As a matter of due process, the trial court cannot reject the only standard litigated by the parties and adopt something wholly new.

To be clear, Petitioners framed the NYVRA as the standard for vote dilution claims under Article III, § 4(c)(1). App. 499, 511-12. Due process then constrained the trial court from adopting its own standard, particularly since it did not request supplemental briefing from the parties regarding the standard to be applied for claims under Article III, § 4(c)(1).[2] By adopting a new, entirely unbriefed standard without notice and after the trial record has been closed, the trial court "radical[ly] transformed" this case. *See Sineneng-Smith*, 590 U.S. at 380.

The trial court's decision upends this entire framework and has drawn sharp criticism from election law experts and civil rights groups alike. For example, the *amici* who proposed the trial court's adopted standard, Harvard Law School Professors Nicholas Stephanopoulos and Ruth Greenwood, and who support the development of racial vote dilution claims under the New York Constitution, felt compelled to advise the New York Court of Appeals that the trial court's Order is erroneous. App. 56-80. As they explain, the trial court "***went astray***," "***made a serious mistake in its decision***," and "***failed to apply its own standard*** before imposing liability." App. 62, 71, 78 (emphasis added). This is because the trial court incorrectly "believed that vote dilution liability could be proven solely based on racially polarized voting, historical and ongoing discrimination, and a lack of current representation for minority voters—without determining whether a coalition crossover district could

[2] By contrast, the trial court did request supplemental briefing from the parties on available remedies. Inexplicably, the trial court did not disclose its intent to adopt an un-briefed standard and did not request briefing on the issue. Now, after a trial and with the election season at our doorstep, that error cannot be remedied.

actually be drawn." App. 62. The trial court's approach, they add, "***is at odds with both the concept of, and the case law on, vote dilution***" because "a group's representation can be deemed diluted only if a showing has been made that a reasonable alternative policy would improve the group's representation." App. 62. Applicants made this same point in their moving papers. App. 2023-27. For this reason, Professors Greenwood and Stephanopoulos agree that "***Congressional District 11 should not be invalidated*** unless and until a court concludes that this standard has been met." App. 63 (emphasis added).

This error is so egregious that another set of *amici*—"national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims," including the New York Civil Liberties Union, the NAACP Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Asian American Legal Defense and Education Fund—also argue that Supreme Court's Order is fundamentally flawed. App. 360. These civil rights and racial justice *amici* agree with Applicants and Professors Greenwood and Stephanopoulos that Supreme Court "***ignored an essential prerequisite to proving vote dilution: evidence that there is an effective remedy for the alleged dilution***." App. 361 (emphasis added). They likewise explain that a crossover vote dilution claim "requires proof from a petitioner that it is possible to draw a reasonable crossover district that would enable the minority group to elect their candidates of choice." App. 363. "But Supreme Court skipped this necessary step in its liability analysis." App. 363. As the *amici* explain, "a viable remedy confirms the congressional map is the actual cause of the racial dilution,

ensures the voter dilution can be adequately redressed in a manner that comports with state and federal laws, and prevents partisan manipulation. App. 360-61.

In sum, the trial court's adoption of the *amici* standard violated Applicants' due process rights in multiple respects. First, the trial court rejected the only standard actually litigated by the parties—the NYVRA—yet proceeded to adopt an entirely new, unbriefed standard without notice or opportunity for Applicants to respond. Second, the trial court granted relief without any evidence that a reconstituted district satisfying its novel standard is even possible, as Petitioners offered no proof that Black and Latino voters could be decisive in primary elections. Third, even the *amici* who proposed the standard have confirmed that the trial court failed to apply the standard before imposing liability. Because the trial court's decision fundamentally deprived Applicants of due process, this Court is likely to grant review and reverse.

B. The trial court's remedy is inherently race-based, and the trial court failed to find that its remedy withstands strict scrutiny

The Equal Protection Clause "prevents a State, in the absence of 'sufficient justification,' from 'separating its citizens into different voting districts on the basis of race.'" *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (quoting *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 187 (2017)). When race is the "predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district" and "racial considerations predominated over others, the design of the district must withstand strict scrutiny." *Id.* at 292. In other words, strict scrutiny applies whenever race is the overriding consideration in

redistricting such that "traditional race-neutral districting principles" are "subordinated" to racial considerations. *Miller v. Johnson*, 515 U.S. 900, 916 (1995).

The trial court did not even attempt to disguise the racial basis of its remedy. The Decision and Order expressly states that "without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely." App. 13. This language alone establishes that race is the predominant—indeed, the determinative—factor in the redistricting remedy ordered by the court. The explicit goal is to reconfigure the district by relocating voters based on their race, which is precisely the kind of racial sorting the Equal Protection Clause strongly forbids. Worse yet, the trial court's order enjoins any congressional election in New York until this racial sorting is complete.

Moreover, the trial court's novel "three-pronged standard" for evaluating so-called "crossover districts" is facially race-based. Under this standard: (1) "minority voters" must be able to "select their candidates of choice in the primary election"; (2) "these candidates must usually be victorious in the general election"; and, (3) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates." App. 15. Each prong of this test turns entirely on the racial composition of the electorate. The standard mandates that district lines be drawn to ensure that minority voters—defined by race—achieve a specified level of electoral influence. This is not a race-neutral inquiry into traditional redistricting principles—it is an explicit racial classification that triggers strict scrutiny under established Supreme Court precedent. *Shaw v. Hunt*, 517 U.S. 899,

907 (1996) ("[S]trict scrutiny applies when race is the 'predominant' consideration in drawing the district lines") (quoting *Miller*, 515 U.S. at 916)); *Bush v. Vera*, 517 U.S. 952, 959 (1996) (plurality opinion) (same).

There can be no dispute that race was the trial court's predominant consideration. It openly declared that its remedy is designed to "add[] Black and Latino voters from elsewhere." App. 13. The trial court's candid acknowledgment of racial motivation satisfies the predominance inquiry and squarely subjects the Decision and Order to strict scrutiny.

C. Neither Petitioners nor the Court identified a compelling state interest or that race-based redistricting is a narrowly tailored remedy

Neither Petitioners nor the Court attempted to identify a compelling government interest, let alone that their remedy is narrowly tailored to achieve that interest. In fact, despite extensive pre- and post-trial briefing on this issue, the trial court failed to even address this argument.

"Any exception to the Equal Protection Clause's guarantee must survive a *daunting* two-step examination known as 'strict scrutiny.'" *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (emphasis added) ("*SFFA*"). To survive this daunting inquiry, a race-based redistricting plan must serve a "compelling state interest," *Miller*, 515 U.S. at 904, and be supported by a "strong basis in evidence." *Shaw v. Hunt*, 517 U.S. at 910 (internal citation and punctuation omitted). "A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides

no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy." *Shaw v. Hunt*, 517 U.S. at 909 (internal citation and punctuation omitted) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 498 (1989)).

Here, while Petitioners offered generalized allegations of past discriminatory practices, they failed to present a strong basis in evidence, let alone any evidence that a new redistricting plan can remedy that past discrimination.

Even assuming Petitioners or the trial court had identified a compelling state interest in race-based redistricting, they utterly failed to show that their race-based redistricting plan is "narrowly tailored to achieve [that] compelling interest." *Miller*, 515 U.S. at 920. This requirement means that the use of race must not go "beyond what was reasonably necessary." *Shaw v. Reno,* 509 U.S. 630, 655 (1993); *see also SFFA*, 600 U.S. at 207.

The trial court's redistricting standard cannot be narrowly tailored because it is untethered to any limiting principle. *SFFA*, 600 U.S. at 207. It explicitly requires "adding Black and Latino voters from elsewhere" and its "three-pronged standard" demands that district lines be drawn to guarantee that minority voters are "decisive" in primary elections and that their candidates "usually" prevail in general elections. App. 13, 15. Neither Petitioners nor the trial court provided any evidence or argument as to why sorting voters by race is "necessary" to remedy any past discrimination. Moreover, they failed to even examine whether a race-neutral remedy is unavailable.

In *Alabama Legislative Black Caucus v. Alabama*, this Court held that the State of Alabama erred by asking "How can we maintain present minority

percentages in majority-minority districts?" rather than asking "To what extent must we preserve existing minority percentages in order to maintain the minority's present ability to elect the candidate of its choice?" 575 U.S. 254, 279 (2015). This Court observed that asking the "wrong question may well have led to the wrong answer," resulting in a redistricting plan that was not narrowly tailored. *Id.*

Here, the trial court committed the same error by adopting a mechanical standard that mandates a specific level of minority electoral influence—*i.e.*, that minority voters must be "decisive" and minority-preferred candidates must "usually" win—without regard to whether such a drastic remedy is necessary to cure any actual constitutional violation.

Furthermore, the trial court's remedy disregards traditional redistricting principles entirely. As the Supreme Court held in *Bush v. Vera*, when a district is drawn on racial lines but is "far from compact," it cannot be narrowly tailored to any compelling interest because the Voting Rights Act ("VRA") "does not require a State to create, on predominantly racial lines, a district that is not reasonably compact." *Bush*, 517 U.S. 952, 979 (1996) (internal citation and punctuation omitted).

The trial court ordered redrawing of CD-11 under a standard that, by its own terms, requires racial considerations to predominate and it enjoined New York's congressional elections on this basis. It provided no analysis of whether its three-pronged test is the least restrictive means of addressing any alleged vote dilution, nor did it consider any other factor. Its failure to consider race-neutral alternatives, by definition, means it is not narrowly tailored.

Since neither Petitioners nor the trial court demonstrated that a race-based remedy serves a compelling state interest, and because the trial court's novel standard is not narrowly tailored to any permissible objective, the Decision and Order squarely departs from this Court's jurisprudence on an issue of great importance.

II. Applicants, candidates, and voters would be irreparably harmed in the absence of a stay and the equities weigh in favor of allowing election activities to proceed

It is well established that voter disenfranchisement constitutes irreparable harm. *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (granting interim stay when district court enjoined the use of a new congressional map in the 2026 elections); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 589 U.S. 423, 426 (2020).

Here, Applicants, voters, candidates, and the public at large stand to suffer irreparable harm without a stay. The trial court's order presents an untenable situation. While the trial court purported to declare only the configuration of CD-11 unconstitutional, it enjoined Applicants from conducting "any" election under the current map, meaning the injunction applies statewide. And although it directed the IRC to adopt a new map by February 6, 2026, that directive has been automatically stayed under CPLR 5519(a)(1) by Applicants' appeal of the order.

At this point, it is impossible for the IRC to propose a new map, and for the Legislature to adopt any such map, in time for petitioning to start on February 24, 2026.

As Mr. Riley further explains in support of this application, elections may timely commence if this Court issues a stay on or before February 23, 2026 and allows the election to proceed under the lawfully enacted map. App. 3670. This is because "the current map has already been implemented, meaning all voter lists, EDs, and precincts are already in place and ready to be used." App. 3670.

Significantly, since the Court's injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards of elections from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11—not merely the election for CD-11 itself.

This cascading effect means that the harm caused by the injunction is not limited to the voters and candidates in CD-11. Rather, the entire statewide congressional election apparatus has been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins. App. 1976-78. As Mr. Riley attests, this situation is untenable and will inevitably result in delay, disruption, and confusion that will prejudice voters and candidates across New York—regardless of the outcome of this appeal.

This chaos can be avoided. A stay of the injunctive portion of the Decision and Order would allow the NYSBOE and local boards of elections to continue preparing for the February 24, 2026 petitioning date under the current, legislatively adopted congressional map. App. 1977-78. As Mr. Riley explains, proceeding with preparations under existing district lines would allow the election process to continue

unencumbered in the event of a reversal. App. 1977. Candidates could continue to prepare for the election and plan to collect designating petitions under the adopted map, and boards of elections could move forward with their necessary administrative tasks for all offices and districts. App. 1977-78.

Simply put, with a stay, it would be possible for the election calendar to proceed without delay. Without a stay, regardless of the outcome of this appeal, delay and disruption are guaranteed.

Moreover, the equities cannot weigh in Petitioners' favor because they delayed bringing their lawsuit for nineteen months after the 2024 Map was enacted. Thus, the time pressure of this litigation was entirely of Petitioners' making, tipping the equities solidly in Applicants' favor. Under these circumstances, even if the Decision and Order stood a chance of being ultimately affirmed, the New York Court of Appeals has already instructed that it is preferable to allow elections to proceed in the normal course rather than injecting unnecessary chaos and confusion on the eve of an election cycle. *See Badillo v. Katz*, 32 N.Y.2d 825, 827 (1973) (finding that map was invalid but allowing elections to proceed under existing map "as a temporary measure"). In the unlikely event the Order is affirmed, new maps may be drawn through an orderly and timely process for the 2028 election cycle.

CONCLUSION

Applicants here satisfy these standards, and this Court should thus stay the Order of the New York County Supreme Court pending the resolution of Applicants' appeal on the merits. Applicants respectfully request a ruling by February 23, 2026 to allow petitioning to begin on February 24, 2026 in accordance with the current election schedule.

Dated: February 12, 2026
Albany, New York

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