No. 25A915

IN THE

Supreme Court of the United States

PETER KOSINSKI, *et al.*,

Applicants,

v.

MICHAEL WILLIAMS, *et al.*,

Respondents.

ON EMERGENCY APPLICATION FOR STAY TO THE COURT OF APPEALS OF NEW YORK

REPLY BRIEF

CULLEN AND DYKMAN LLP
EOIN Ó MUIMHNEACHÁIN, ESQ.
(Counsel of Record)
NICHOLAS J. FASO, ESQ.
CHRISTOPHER E. BUCKEY, ESQ.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9425
emoynihan@cullenllp.com

Attorneys for Applicants Peter Kosinski, Anthony J. Casale, and Raymond J. Riley, III

390680

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

REPLY

Applicants are entitled to relief from this Court because the New York appellate courts have refused to grant stay relief before Applicants, voters, and candidates statewide suffer irreparable harm through disruption of the 2026 election.

I. Without a stay, irreparable harm is guaranteed.

The opposition briefs recklessly downplay the nature and scope of the irreparable harm that will befall Applicants, candidates, voters, and the public absent a stay of the trial court's injunction. Petitioners and the Attorney General attempt to recast the trial court's order as a routine judicial intervention that poses no threat to orderly elections. That characterization is belied by the facts on the ground: the trial court's injunction has brought New York's election machinery to a standstill, and the harm will compound with each passing day.

Under the trial court's order, Applicants are enjoined from "conducting any election" under the 2024 Congressional Map "or otherwise giving any effect to the boundaries of the map as drawn." App. 18. At the same time, the remedial portion of the order has yet to be proposed. The result is that New York currently has *no* congressional map under which to conduct the 2026 elections.

This is not a theoretical problem. As Applicant Raymond J. Riley, III, Co-Executive Director of the New York State Board of Elections, has attested, the 2026 congressional election cycle formally commences on February 24, 2026—the first day candidates may circulate designating petitions pursuant to New York Election Law

§ 6-134(4). App. 1970, 3670. Without a stay, candidates and voters cannot reliably proceed with petitioning because the existing map has been declared unlawful.

The opposition briefs entirely ignore a critical statutory deadline that falls today: the publication of enrollment lists under New York Election Law § 5-604. That statute requires the Board of Elections to "cause to be published for each election district a complete list of the registered voters of each election district." N.Y. Elec. Law § 5-604(1). These lists must be published "before the twenty-first day of February." *Id.* The trial court's injunction, however, prevents the Board of Elections from publishing enrollment lists and signature requirements by congressional district.

This is not a ministerial deadline that can simply be ignored. The enrollment lists are foundational documents for the ballot-access process. They enable candidates to identify registered voters by party affiliation and congressional district so that designating petitions may be properly prepared and circulated. Without knowing which voters reside in which congressional district, candidates cannot reliably circulate petitions to the correct voters and the entire ballot-access process grinds to a halt.

This cascading statutory violation exemplifies the chaos the trial court's order has wrought. And it is not limited to § 5-604. The NYSBOE must also designate polling places and perform countless other administrative tasks—all of which depend on knowing the boundaries of congressional districts. App. 1971-72, 1977-78. The trial court's injunction has paralyzed this entire apparatus.

This Court has repeatedly held that voter disenfranchisement and the disruption of orderly elections constitute irreparable harm. *See Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025) (granting interim stay when district court enjoined use of congressional map). This Court considers evidence of a state's inability to conduct elections "pursuant to a statute enacted by the Legislature" to constitute "serious[ ] and irreparabl[e] harm." *Abbott v. Perez*, 585 U.S. 579, 602–03 (2018).

The harm here is not speculative. It is immediate and concrete. Candidates who wish to run for Congress in 2026 cannot begin circulating designating petitions without knowing their district boundaries. Voters cannot be informed of their congressional districts. Election administrators cannot perform the preparatory work that state law requires. This chaos will reverberate through every aspect of New York's congressional elections—not just in CD-11, but statewide, because the trial court's injunction prohibits any election under the 2024 Map.

Petitioners' suggestion that Applicants face "no harm at all" is demonstrably false. Petitioners' Opp. at 62. The harm is occurring *now*—with each passing day, critical deadlines are missed, administrative tasks remain undone, and the prospect of a timely and orderly election recedes further. As this Court recognized in *Bost v. Illinois State Bd. of Elections*, 146 S. Ct. 513, 516–17 (2026), "late-breaking, court-ordered rule changes can result in voter confusion and consequent incentive to remain away from the polls, and thus undermine the confidence in the integrity of our electoral processes essential to the functioning of our participatory democracy." *Bost*,

146 S. Ct. at 521 (internal citations and punctuation omitted). The trial court's order is precisely the kind of "late-breaking" judicial intervention that this Court has repeatedly cautioned against.

Finally, the equities weigh decisively against Petitioners because they manufactured the exigency they now invoke. Petitioners waited nineteen months after the 2024 Congressional Map was enacted to file suit. App. 514. Had they filed promptly, this matter could have been fully litigated through New York's appellate courts—and potentially to this Court—well before the 2026 election cycle.

Instead, Petitioners sat on their rights while an entire election was conducted under the 2024 Map, then filed suit in late October 2025—less than four months before the petitioning period was to begin. Having created this time pressure, Petitioners cannot now invoke it to justify circumventing appellate review. *See Benisek v. Lamone*, 585 U.S. 155, 160 (2018) (per curiam) (noting that the plaintiffs' "unnecessary, years-long delay in asking for preliminary injunctive relief weighed against their request").

A. Petitioners' alleged harm is speculative and does not outweigh the concrete harm to Applicants, candidates, and voters

Petitioners contend that they will suffer irreparable harm from a stay because they will be forced to vote in an election conducted under an allegedly unlawful map. Petitioners' Opp. at 62–66. But this harm is both speculative and modest compared to the concrete, immediate harm Applicants face.

First, Petitioners' alleged vote dilution has existed—by their own account—for decades under substantially the same district configuration. App. 4. A brief

continuation of the status quo while appellate review proceeds causes no incremental harm to Petitioners that did not exist before they filed suit. In contrast, the harm to Applicants, candidates, and voters from disrupting the 2026 election is immediate, concrete, and affects millions of New Yorkers.

Second, even if Petitioners ultimately prevail, remedial maps can be drawn through an orderly process for the 2028 election cycle. The harm to Petitioners from one additional election under the current map—if there is any such harm—can be remedied. The harm to Applicants and the public from election chaos and confusion—particularly under an order directing racial gerrymandering—cannot.

Third, Petitioners' claim of harm depends entirely on the assumption that the trial court's order will be affirmed on appeal. But as explained elsewhere in this brief, the trial court's order is deeply flawed—a conclusion shared by the very *amici* whose legal theory the trial court purported to adopt. If the order is reversed, Petitioners will have suffered no cognizable harm from voting under the current map, but the harm to Applicants and the public from disrupting an entire election cycle will be irreversible. *Abbott v. Perez*, 585 U.S. 579, 602-603 (2018); *Wise v. Lipscomb*, 434 U.S. 1329, 1333-1334 (1977); *Karcher v. Daggett*, 455 U.S. 1303, 1306-1307 (1982) (granting a stay because "applicants would plainly suffer irreparable harm were the stay not granted" in redistricting case).

B. The public interest overwhelmingly favors a stay

The public has a paramount interest in the orderly administration of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006) (per curiam) (emphasizing importance

of avoiding voter confusion); *Democratic Nat'l Comm. v. Wis. State Legis.*, 141 S. Ct. 28, 31 (2020) (Kavanaugh, J., concurring in denial of application to vacate stay) ("When an election is close at hand, the rules of the road should be clear and settled."). Here, the trial court's order has created precisely the kind of chaos and uncertainty that undermines public confidence in elections. Voters do not know what congressional district they will be voting in. Candidates do not know where to campaign or circulate petitions. Election administrators cannot perform their statutory duties. This uncertainty will persist until either this Court grants a stay or the Appellate Division rules—and there is no guarantee when that will occur.

A stay from this Court would preserve the *status quo* and restore certainty immediately. The 2024 Congressional Map has already been implemented statewide. Voter lists, election districts, and precincts are already in place. If this Court stays the trial court's injunction, the election can proceed on schedule under clear, settled rules, which is exactly what the public interest demands.

For all these reasons, Applicants will suffer irreparable harm absent a stay, the balance of equities tips sharply in Applicants' favor, and the public interest weighs overwhelmingly in favor of granting the requested relief.

II. This Court has jurisdiction.

A. This case falls squarely within this Court's well-established jurisdiction for granting a stay of state court orders, and Applicants have exhausted their state court remedies.

Petitioners' arguments that this Court lacks jurisdiction are misconceived. The law is clear. 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." In turn, 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.

As "this Court does have potential appellate jurisdiction over federal questions raised in state court proceedings" after a final judgment has issued, it has the "authority to issue injunctions" against state-court decisions prior to final judgment that are "necessary in aid of its jurisdiction" pursuant to 28 U.S.C. § 2283. The exercise of this Court's All Writs Act jurisdiction to impose a stay now is crucial to preserve its jurisdiction to ultimately consider an appeal of a final judgment by the highest court in New York in which the matter can be decided in due course. *F.T.C. v. Dean Foods Co.*, 384 U.S. 597 (1966). This Court has held repeatedly that state court litigants are free "in certain emergency circumstances [to] seek such relief from this Court." *Volkswagenwerk A.G. v. Falzon*, 461 U.S. 1303 (1983) (O'Connor, J., in chambers); *accord N.J. Transit Corp. v. Colt*, 146 S. Ct. 74 (2025). The irreparable harm that will be caused to Applicants and New York's voters and prospective candidates if an immediate stay is not granted, as further elaborated upon above, amount to extraordinary circumstances justifying the intervention of this Court

pursuant to Sup. Ct. R. 23.3. *Abbott v. Perez*, 585 U.S. 579, 602-603 (2018); *Abbott v. League of United Latin Am. Citizens*, 146 S. Ct. 418, 419 (2025).

Any conceivable doubt regarding the validity of applying this jurisdictional framework to this case was eliminated yesterday when the Appellate Division, First Department denied Applicants' motion for a stay and for leave to appeal to the New York State Court of Appeals, New York's highest court. Petitioners' Supp. App. 102-103. The Court of Appeals already declined jurisdiction on unrelated grounds on February 11, 2026, App. 20, meaning that, contrary to Petitioners' claims, Applicants have exhausted all state court remedies. *See* N.Y. C.P.L.R. § 5601; N.Y. Const. art. VI, § 3(b); *Lumsby v. Donovan*, 10 N.Y.3d 951 (2008). The Court of Appeals does not have a state-law equivalent of the All Writs Act authority that this Court has, and its authority is strictly limited by the New York Constitution, N.Y. Const. art. VI, § 3(a); *Ocean Accident & Guarantee Corp., Ltd v. Otis Elevator Co.*, 291 N.Y. 254, 255 (1943) (*per curiam*).

Petitioners blithely contend that "Applicants have a clear avenue to seek jurisdictionally-proper relief from New York's highest court." Petitioners' Opp. at 24. But Petitioners willfully ignore that Applicants *have already* sought permission to appeal to the Court of Appeals and were denied that relief. Petitioners' Sup. App. 102-103.

Finally, Applicants also sought relief from the Court of Appeals itself. Applicants promptly filed notices of appeal to the Court of Appeals on January 26, 2026. App. 3667, and motions for a stay on January 28, 2026. App. 479. After rejecting

Applicants' request for an interim stay, App. 476, the Court of Appeals directed full briefing on those motions. App. 469. On February 11, 2026, the Court of Appeals dismissed Applicants' appeals because, in the Court of Appeals' view, it lacked jurisdiction over a direct appeal from the trial court's order, App. 20, and denied the stay motions as "academic." App. 21.

Thus, Applicants have sought both permission to appeal to the Court of Appeals and direct relief from that court. Now, only this Court can grant the emergency relief that is necessary to maintain the status quo and ensure an orderly appellate process. Nevertheless, Petitioners appear content to let this case languish in purgatory until elections commence under a court-ordered racial gerrymander and it is too late to seek relief from any court.

Petitioners' contention that this case could potentially be resolved on state law grounds is irrelevant. The inquiry is whether the order on appeal, if upheld, will raise federal questions, and it clearly will. Since this Court's federal question jurisdiction will necessarily be impacted upon a state-court affirmance, a stay is within this Court's power to grant under 28 U.S.C. § 1651(a) and is necessary to protect its 28 U.S.C. § 1257(a) jurisdiction. *Patterson v. Superior Ct. of California In & For Fresno Cnty.*, 420 U.S. 1301, (1975) (ordering stay of state court proceedings because "applicants may well suffer a deprivation of constitutional rights which can never be adequately redressed").

Petitioners' reliance on *Yeshiva Univ. v. Yu Pride All.*, 143 S. Ct. 1 (2022) is misplaced. In *Yeshiva*, the applicants failed to file a motion with New York's

Appellate Division for permission to appeal to the New York Court of Appeals. *Id.* By contrast, here, Applicants have already sought permission from the Appellate Division to appeal to the Court of Appeals and been denied. Petitioners' Supp. App. 102-103.

III. A stay is warranted because this Court is likely to reverse.

A. The trial court's adoption of an unbriefed legal standard after the close of evidence violated due process

Petitioners' opposition to Applicants' due process argument rests on three contentions: (1) that the trial court had an "independent duty" to construe Article III, § 4(c)(1) and was therefore free to adopt any standard it saw fit; (2) that Petitioners presented "ample evidence," Petitioners' Opp. at 31-43, on racially polarized voting and the totality-of-the-circumstances factors, and therefore Applicants can claim "no conceivable prejudice" *id.* at 32; and (3) that Applicants' due process argument is really a state law question "masquerading as a federal constitutional question." Petitioners' Opp. at 32-43. Each of these contentions is meritless.

Petitioners' lead argument conflates two fundamentally different judicial functions: construing the meaning of a legal provision placed before the court, and adopting an entirely new legal standard—with new evidentiary requirements—that no party briefed or submitted evidence on. The former is a routine exercise of judicial authority, the latter is a violation of the Due Process Clause.

This Court has recognized that courts are "not limited to the particular legal theories advanced by the parties, but rather retain[] the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin.*

Servs., Inc., 500 U.S. 90, 99 (1991). But this Court has simultaneously and repeatedly held that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," under which courts rely on "[t]he parties [to] frame the issues for decision" and serve as "neutral arbiter[s] of matters the parties present." *Clark v. Sweeney*, 607 U.S. 7, 9 (2025) (per curiam) (internal citation and punctuation omitted).

These principles are not in tension. A court may independently construe the meaning of a legal provision. What it may not do is adopt a wholly new legal *standard* with wholly new *evidentiary requirements* after the close of evidence, without notice to the parties and without affording them an opportunity to present arguments and proof tailored to that standard.

A court's independent judgment about what a provision *means* is a far cry from inventing a three-pronged evidentiary test—drawn from *amici*—that requires proof of facts no party placed in evidence. The trial court did not merely construe Article III, § 4(c)(1). It adopted a novel standard for evaluating "crossover districts" that demands specific factual proof—particularly regarding primary elections—that no party presented because no party litigated this standard.

The trial court's action is thus far closer to the judicial overreach this Court condemned in *Clark* and *Sineneng-Smith* than to the routine statutory construction blessed in *Kamen*. In *Clark*, this Court summarily reversed where the Fourth Circuit "devised a new [claim]" instead of "ruling on th[e] claim" the parties presented, calling the court's "radical transformation" of the case a departure from the party-

presentation principle "so drastic[] . . . as to constitute an abuse of discretion." 607 U.S. 7, 9–10 (internal citation and punctuation omitted). In *Sineneng-Smith*, this Court reversed the Ninth Circuit for "radical[ly] transform[ing]" a criminal case by appointing amici to brief constitutional arguments the defendant had never raised. 590 U.S. 371, 380 (2020). Here, the trial court did precisely what this Court has forbidden by taking a legal theory advanced only by *amici*, adopting it as the governing standard, and then ruling in Petitioners' favor without ever assessing whether they had satisfied the standard's requirements.

Petitioners' argument that Applicants suffered "no conceivable prejudice" because Petitioners presented evidence of racially polarized voting and the totality of circumstances is a remarkable exercise in misdirection. Petitioners' Opp. at 39. The question is not whether Petitioners presented *some* evidence on *some* topics that *overlap* with the trial court's standard. The question is whether Petitioners proved their case under the standard the trial court actually applied—and whether Applicants had a meaningful opportunity to contest that proof. The answer to both questions is no.

Petitioners' assertion that Applicants had an "opportunity to attack" the evidence through "responsive expert witnesses who addressed these precise topics," Petitioners' Opp. at 38, is precisely backward. Applicants' experts addressed the topics *the parties actually litigated*—the NYVRA standard—not the crossover district standard the trial court adopted without notice. Applicants' experts had no reason to

analyze primary election data because the NYVRA standard does not turn on primary election data, let alone whether minority voters will be decisive in primary elections.

The prejudice to Applicants is thus not merely "conceivable"—it is manifest and concrete. Applicants were denied the opportunity to present evidence and argument on the very standard that determined the outcome of the case. This is precisely the kind of bait-and-switch that violates due process.

Petitioners' final gambit is to recharacterize Applicants' due process argument as "a thinly disguised assignment of error to the trial court on a question of state law." Petitioners' Opp. at 42. This misapprehends the nature of Applicants' argument. Applicants do not ask this Court to determine the correct interpretation of Article III, § 4(c)(1)—that is indeed a question for New York's courts. Applicants' argument is that the *process* by which the trial court arrived at its interpretation violated the Fourteenth Amendment's guarantee of fundamental fairness.

The Due Process Clause "imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair." *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981). Those standards require "notice and opportunity for hearing appropriate to the nature of the case." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950). A state court does not immunize itself from federal due process scrutiny merely because it was construing state law. *See Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964) (holding that due process prohibits courts from denying litigants "the right of fair warning" through unforeseeable applications of state law). The question whether a court violated due process by adopting an

unbriefed legal standard, declining to require proof under that standard, and denying the opposing party any opportunity to present arguments or evidence on that standard is a quintessentially federal question—and it is one this Court has addressed repeatedly and recently, in *Clark* and *Sineneng-Smith*.

For these reasons, Applicants have demonstrated a likelihood of success on the merits of their due process claim. The trial court violated the principle of party presentation, denied Applicants notice and an opportunity to be heard on the standard that determined the case, and imposed liability without requiring Petitioners to satisfy the very test the court adopted. This Court is likely to grant review and reverse.

B. The trial court's directive to racially gerrymander CD-11 violates the Equal Protection Clause and the harm is not premature.

Petitioners' contention that the equal protection violation is "premature" willfully ignores the trial court's clear directive that the IRC racially gerrymander CD-11. Petitioners' Opp. at 43-46. The trial court's directive was unequivocal: the only possible way to remedy the purported voter dilution is by "adding Black and Latino voters from elsewhere." App. 13. Thus, any proposed map must be drawn with the predominate purpose of adding voters based solely on their race, and if the IRC complies, then there will be no question as to the intent behind the new map. *Cooper v. Harris*, 581 U.S. 285,300-301 (2017) (using mandates from legislators regarding racial targets to demonstrate race predominated drawing of map).

Petitioners attempt to circumvent this reality by arguing the "New York Constitution requires the IRC, as well as the Legislature, to consider traditional

redistricting criteria, placing them on equal footing with the State's prohibition on vote dilution." Petitioners' Opp. at 45. But this ignores that the trial court ordered the IRC to redraw the CD-11 map in accordance with a race-based standard wherein the race criterion cannot be "compromised." *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U.S. 178, 189 (2017). Because the trial court has the power to enforce its order directing that Black and Latino voters be added to CD-11, there can be no equal footing.

Accordingly, this Court need not await the drawing of a new map to determine whether there has been an equal protection violation. It is inevitable. "Where the inevitability of the operation of a statute against certain individuals is patent, it is irrelevant to the existence of a justiciable controversy that there will be a time delay before the disputed provisions will come into effect." *Blanchette v. Connecticut Gen. Ins. Corps.*, 419 U.S. 102, 143 (1974) (collecting cases); *see also Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010) (finding claim ripe for review when the party seeking review would suffer hardship if the court withheld consideration).

Neither *Singleton v. Allen*, 691 F. Supp. 3d 1343, 1354 (N.D. Ala. 2023) nor *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *1 (Fla.Cir.Ct. Sep. 02, 2023) are dispositive. Neither case involved an explicit mandate requiring the map drawer to add voters to a district based solely on their race. In *Singleton*, the special master was given the discretion to remedy the vote dilution by creating "an additional district in which Black voters either comprise

a voting-age majority or otherwise have an opportunity to elect a representative of their choice." *Singleton*, 690 F. Supp. 3d at 1294. Thus, the special master was given discretion to draw a map without voters' racial makeup predominating. Similarly, in *Black Voters Matter*, the trial court did not order the Legislature to draw a specific district map or impose any racial targets. *Black Voters Matter Capacity Bldg. Institute, Inc.*, 2023 WL 5695485 at *18.

Since any map drawn in compliance with the trial court's order would necessarily use race as the predominating factor, the equal protection violation is ripe.

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 20, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: /s/ *Eoin Ó Muimhneacháin*
Eoin Ó Muimhneacháin, Esq.
(Counsel of Record)
Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9425
emoynihan@cullenllp.com

Attorneys for Applicants Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III