SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

Michal Williams; José Ramírez-Garofalo; Aixa Torres; and Melissa Carty,

Petitioners,

-against-

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; Raymond J. Riley, III, in his official capacity as Co-Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner 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; Anthony J. Casale, in his official capacity as 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.

----------X

Index No. 164002/2025

Hon. Jeffrey H. Pearlman

Motion Seq.

MEMORANDUM OF LAW IN SUPPORT OF PROPOSED INTERVENOR-RESPONDENTS CONGRESSWOMAN NICOLE MALLIOTAKIS' AND INDIVIDUAL VOTERS EDWARD L. LAI, JOEL MEDINA, SOLOMON B. REEVES, ANGELA SISTO, AND FAITH TOGBA'S MOTION FOR LEAVE TO INTERVENE

(*Counsel for Congresswoman Malliotakis and the Individual Voters listed on the following page*)

TROUTMAN PEPPER LOCKE LLP

Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

Counsel for Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Rules

Other Authorities

PRELIMINARY STATEMENT[1]

Petitioners claim that the current boundaries of New York's 11th Congressional District, as drawn by the Legislature in its bipartisan 2024 Congressional Map, unconstitutionally dilute the voting strength of Black and Latino voters. Petitioners ask this Court to force the Legislature to draw a new congressional map that reconfigures the 11th Congressional District as a "minority influence district" prior to the upcoming 2026 election. NYSCEF Doc. No.1 ("Pet") ¶ 13. Congresswoman Nicole Malliotakis—the duly elected Representative to the U.S. House of Representatives for New York's 11th Congressional District, and a candidate for reelection to this seat in the 2026 election—along with Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, "Individual Voters"), who are political supporters of Congresswoman Malliotakis, now move to intervene to defend against Petitioners' claim and preserve the existing contours of the 11th Congressional District.

Congresswoman Malliotakis and the Individual Voters are entitled to intervene as of right. First, their Motion is timely, filed mere days after Petitioners filed their Petition. Second, they all have direct and substantial interests in maintaining the existing contours of the 11th Congressional District, which are at stake in this case. Congresswoman Malliotakis has invested substantial time and resources in forming relationships with her constituents and understanding their interests in order to fulfill effectively her duty to represent those interests in Congress, and the Individual Voters have likewise invested substantial time and resources campaigning and voting for Congresswoman Malliotakis. This case threatens to impair substantially those interests, as Petitioners ask this Court to order a redrawing of the 11th Congressional District's boundaries.

[1] Pursuant to CPLR 1014, Congresswoman Malliotakis' and the Individual Voters' Proposed Answer to the Petition is attached to the Affirmation of Bennet J. Moskowitz in Support of Proposed Intervenor-Respondents Congresswoman Malliotakis' and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba's Motion For Leave To Intervene ("Moskowitz Aff.") as Exhibit A.

Finally, none of the existing parties can adequately represent these unique interests of Congresswoman Malliotakis and the Individual Voters.

Alternatively, the Court should grant Congresswoman Malliotakis and the Individual Voters permissive intervention. Their Motion is timely; their participation here would not threaten to unduly delay or prejudice the existing parties; and, as Congresswoman Malliotakis' and the Individual Voters' attached, proposed Answer demonstrates, they seek to raise defenses that share common questions of fact and law with the claim Petitioners raise in their Petition.

This Court should grant Proposed Intervenor-Respondents' Motion To Intervene as of right under CPLR 1012, or permissively under CPLR 1013.

BACKGROUND

A. Following the release of the 2020 federal census, "[d]ue to shifts in New York's population, the state lost a congressional seat and other districts were malapportioned, undisputedly rendering the 2012 congressional apportionment [of the State]—developed by a federal court following a legislative impasse—unconstitutional and necessitating the drawing of new district lines." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022) (citation omitted). The resulting 2020 redistricting process was New York's "first opportunity" to have its "district lines [ ] be drawn under the new [Independent Redistricting Commission ('IRC')] procedures established by the 2014 constitutional amendments" to the New York Constitution. *Id.* Those Amendments created a mandatory redistricting process vesting primary authority to conduct redistricting following each decennial census in the newly created IRC and established procedural and substantive safeguards against gerrymandering. *See* N.Y. Const. art. III, §§ 4(c)(5), 5-b; *Harkenrider*, 38 N.Y.3d at 503–04.

Although the IRC initially abided by the constitutional process to redistrict the State following the 2020 Census, the IRC's process proceeded to break down. *Harkenrider*, 38 N.Y.3d at 504. Eventually, the IRC announced that it had deadlocked and would not be able to submit proposed maps to the Legislature, as the Constitution required. *Id.* at 504–05. So, in response, the Legislature purported to adopt its own congressional redistricting plan, which Governor Hochul signed into law on February 3, 2022. *See id.* at 505.

Certain citizen voters then challenged that congressional map in the Steuben County Supreme Court that same day, and the Court of Appeals ultimately reviewed that challenge in *Harkenrider*. *Id.* There, the Court of Appeals held that the Legislature's congressional map was both procedurally and substantively unconstitutional. *Id.* at 508–20.

Then, to cure the procedural violation, the Court of Appeals instructed the Steuben County Supreme Court to "adopt constitutional maps" itself. *Id.* at 524. The Steuben County Supreme Court did so on remand, adopting the *Harkenrider* Map. *See Harkenrider* No.670 at 1–2, 4; *see also Harkenrider* No.696 at 1 (adopting modified map correcting certain technical violations).[2] As particularly relevant here, the *Harkenrider* Map kept the boundaries of the 11th Congressional District largely in-line with the boundaries that had obtained for decades. *Compare Harkenrider* No.670 at 30 (also providing link to map file), *with* Moskowitz Aff., Ex.B (2012 New York City Congressional District Map), Moskowitz Aff., Ex.C (2002 New York City Congressional District Map, numbering the general area covered by the current 11th Congressional District as the 13th Congressional District), *and* Moskowitz Aff., Ex.D (1997 New York City Congressional District Map, adopting same numbering as the 2002 map). The *Harkenrider* Map governed New York's

[2] All citations to e-filings in *Harkenrider v. Hochul*, Index No.E2022-0116CV (Sup. Ct., Steuben Cnty.), may be found at https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=kmywkTvfcaoSsQ66zseQsg==&display=all (all webpages last accessed Oct. 31, 2025). Such documents are cited as "*Harkenrider* No.__."

2022 congressional elections. *See Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 363–64 (2023).

B. After the Steuben County Supreme Court adopted the *Harkenrider* Map, certain petitioners—represented by the same Counsel as Petitioners here—initiated a special proceeding seeking to replace the *Harkenrider* Map for subsequent congressional elections in New York. *Id.* at 355. In particular, those petitioners claimed that the New York Courts should remedy the breakdown of the IRC process that necessitated the adoption of the *Harkenrider* Map by ordering the IRC to reconvene and submit a new proposed redistricting map to the Legislature under the 2014 Amendments. *See id.* The Court of Appeals ultimately reviewed this challenge in *Hoffman* and agreed with these petitioners, holding that "the IRC should comply with its constitutional mandate [under the 2014 Amendments] by submitting to the legislature . . . [a] congressional redistricting plan and implementing legislation," *id.* at 370, which plan was to govern congressional elections in New York beginning in 2024.

C. Following *Hoffman*, the IRC proposed a congressional redistricting map to replace the *Harkenrider* Map and submitted it to the Legislature, pursuant to the 2014 Amendments. *See* 2024 NY Senate Bill S8639; 2024 NY Assembly Bill A9304; *see also* Moskowitz Aff., Ex.E (N.Y. State Indep. Redistricting Comm'n, *Congressional Plan 2024*[3]). Although the IRC had deadlocked along party lines only two years earlier, leading to the *Harkenrider* litigation, *supra* p.3, the IRC overwhelmingly approved this 2024 proposal in a 9-1 vote. Moskowitz Aff., Ex.F (Nicolas Fandos, *A Redistricting Surprise in New York: A Map That Plays Few Favorites*, N.Y. Times (Feb. 15, 2024)[4]). The IRC's proposal only slightly modified the *Harkenrider* Map, without altering the 11th Congressional District at issue here. *See id.* The IRC's Republican Chairman lauded the

[3] Available at https://www.nyirc.gov/storage/plans/20240215/congressional_plan.pdf.
[4] Available at https://www.nytimes.com/2024/02/15/nyregion/redistricting-congressional-districts-ny.html.

IRC's affirmative vote in favor of its proposed map as a "historic moment," while his Democratic counterpart declared that the approval of the proposed map represented a "victory for the commission process." *Id.*

The Legislature, for its part, then made modest changes to the IRC's proposed map, *see* Moskowitz Aff., Ex.G (Nicolas Fandos, *Democrats Propose N.Y. Congressional Map With Slight Tilt in Their Favor*, N.Y. Times (Feb. 27, 2024)), and sent that proposal to the Governor for her approval, *see* 2023 NY Senate Bill S8653A; 2023 NY Assembly Bill A9310. As particularly relevant here, the Legislature's proposed map did not alter the 11th Congressional District either. *See* Moskowitz Aff., Ex.G (Fandos, *Democrats Propose N.Y. Congressional Map With Slight Tilt in Their Favor*, *supra*) (discussing the Legislature's modest changes to the IRC's proposed map). Further, large, bipartisan majorities of the Senate (45-17) and the Assembly (118-30) voted in favor of the proposed congressional map. *See* 2023 NY Senate Bill S8653A (providing Senate floor vote details); 2023 NY Assembly Bill A9310 (same, as to Assembly). On February 28, 2024, Governor Hochul signed the proposed congressional map drawn by the Legislature into law. N.Y. State Law §§ 110–12 ("the 2024 Congressional Map"). Thus, beginning with the 2024 elections, New York was to hold its congressional elections under a redistricting map drawn by the Legislature and signed by the Governor.

C. Congresswoman Nicole Malliotakis is the incumbent elected Congresswoman from New York's 11th Congressional District. Affirmation of Congresswoman Nicole Malliotakis ("Malliotakis Aff.") ¶ 2. Congresswoman Malliotakis is the daughter of immigrants—her father is from Greece and her mother is a Cuban refugee of the Castro dictatorship—and she is the first Hispanic and minority to represent this District. *Id.* ¶ 3. The 11th Congressional District covers all of Staten Island and parts of Southern Brooklyn, *see* N.Y. State Law § 111, and

Congresswoman Malliotakis is the only elected Republican member of Congress representing a part of New York City, *see* N.Y. State GIS Clearinghouse, GIS Data, *NYS Congressional Districts* (Oct. 7, 2025).[5] Congresswoman Malliotakis first won election to the U.S. House of Representatives to represent the 11th Congressional District in 2020; she won reelection in 2022, under the *Harkenrider* Map; and then she won reelection again in 2024, under the 2024 Congressional Map. Malliotakis Aff. ¶ 2. Congresswoman Malliotakis intends to seek reelection to the House of Representatives to continue to represent her constituents in the 11th Congressional District in New York's upcoming 2026 election. *Id.* ¶ 6.

The Individual Voters, for their part, are all citizen voters from New York's 11th Congressional District who support Congresswoman Malliotakis. *See* Affirmation of Edward L. Lai ("Lai Aff.") ¶¶ 2–10; Affirmation of Joel Medina ("Medina Aff.") ¶¶ 2–10; Affirmation of Solomon B. Reeves ("Reeves Aff.") ¶¶ 2–8; Affirmation of Angela Sisto ("Sisto Aff.") ¶¶ 2–8; Affirmation of Faith Togba ("Togba Aff.") ¶¶ 2–8. Each Individual Voter has spent significant time and resources during the 2020, 2022, and/or 2024 election cycles campaigning for Congresswoman Malliotakis. Lai Aff. ¶ 8; Medina Aff. ¶ 7; Reeves Aff. ¶ 7; Sisto Aff. ¶ 6; Togba Aff. ¶ 6. Further, each of the Individual Voters intends and expects to do the same in the upcoming 2026 election cycle, again spending considerable time and resources campaigning for Congresswoman Malliotakis. Lai Aff. ¶ 10; Medina Aff. ¶ 9; Reeves Aff. ¶ 9; Sisto Aff. ¶ 8; Togba Aff. ¶ 8.

D. On October 27, 2025, Petitioners filed their one-count Petition to initiate this special proceeding, naming as Respondents the Board of Elections of the State Of New York ("the Board") and certain state officials, in their official capacities. Pet. at 1. Petitioners allege that they are

[5] Available at https://data.gis.ny.gov/datasets/sharegisny::nys-congressional-districts/explore?location=42.014901%2C-73.856965%2C6.00.

registered voters residing in either the 11th Congressional District or the 10th Congressional District. *Id.* ¶¶ 14–18. Petitioners' single claim is that the 11th Congressional District, as drawn by the Legislature in the 2024 Congressional Map, dilutes the votes of Black and Latino voters, in violation of the New York Constitution. *Id.* ¶¶ 96–102. Petitioners claim that the 11th Congressional District, as drawn in the 2024 Congressional Map, reduces the "influence" that Black and Latino voters "could" have in elections in the 11th Congressional District. *Id.* ¶¶ 100–02. Petitioners request a declaration that the 2024 Congressional Map unlawfully dilutes the votes of Black and Latino voters in the 11th Congressional District; an injunction against New York using the 2024 Congressional Map for any future elections; an order that the Legislature adopt a valid congressional redistricting map that "create[s] a minority influence district in CD-11 that complies with traditional redistricting criteria"; and the holding of all necessary proceedings to order that a valid map is in place for new congressional districts in New York. *Id.* at 27–28.

ARGUMENT

CPLR 1012 provides that "any person" is entitled to "intervention as of right" "in any action" where, among other things, "the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." CPLR 1012(a)(2). Under CPLR 1013, the Court may also, in its "discretion," permit "any person" to intervene "in any action" upon a "timely motion" "when the person's claim or defense and the main action have a common question of law or fact" and "the intervention will [not] unduly delay the determination of the action or prejudice the substantial rights of any party." CPLR 1013. "Intervention is liberally allowed by courts," and "[d]istinctions between intervention as of right and discretionary intervention are no longer sharply applied." *Yuppie Puppy Pet Prods., Inc. v. St. Smart Realty, LLC*, 77 A.D.3d 197, 201 (1st Dep't 2010) (citation omitted); *see Berkoski v. Bd. of Trs. of Inc.*

Southampton, 67 A.D.3d 840, 843 (2d Dep't 2009) (recognizing that "under liberal rules of construction" "whether intervention is sought as a matter of right under CPLR 1012(a), or as a matter of discretion under CPLR 1013 is of little practical significance") (citations omitted). Thus, under either standard, "[a] timely motion for leave to intervene should be granted when the intervenor has a real and substantial interest in the outcome of the proceedings." *Windward Bora, LLC v. Home Funds Direct*, 236 A.D.3d 975, 978 (2d Dep't 2025) (citation omitted); *see Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201 (courts should permit intervention where parties "have a bona fide interest in an issue involved in th[e] action"); *Harrison v. Mary Bain Ests., Inc.*, 152 N.Y.S.2d 239, 241 (Sup. Ct., Bronx Cnty. 1956), *aff'd*, 2 A.D.2d 670 (1st Dep't 1956) ("[A]s a general rule, a third party will be permitted to intervene if his interests will be jeopardized by his absence."). "CPLR 1012 and 1013 provide for intervention in an 'action' which, by definition, includes [a] special proceeding," so those rules are "[ ]applicable to this special proceeding" and govern the Court's intervention analysis here. *In re Long Island Coll. Hosp.*, 980 N.Y.S.2d 276, at *5 (Table) (Sup. Ct., Kings Cnty. Oct. 8, 2013) (citing CPLR 105(b)).

I. Congresswoman Malliotakis And The Individual Voters Are Entitled To Intervene As Of Right Under CPLR 1012, Given Their Direct And Substantial Interest In Protecting The Current Boundaries Of The 11th Congressional District

A movant must satisfy three elements to intervene as of right under CPLR 1012: (1) the motion must be "timely"; (2) the movant "has a real, substantial interest in the outcome of this litigation"; and (3) the existing parties' representation of the movant's interest "is or may be inadequate." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 200–01. Congresswoman Malliotakis and the Individual Voters satisfy each of these three elements.

A. *This Motion is timely*. In determining whether a motion to intervene is timely, "courts do not engage in mere mechanical measurements of time, but consider whether the delay in seeking intervention would cause a delay in resolution of the action or otherwise prejudice a party." *Id.*

at 201 (citations omitted). "Another factor is the extent of the time lag between the making of the motion and the proposed intervenor's acquisition of knowledge of the circumstances upon which the motion for leave to intervene is based." *U.S. Bank N.A. v. France*, 239 A.D.3d 1017, 1019 (2d Dep't 2025) (citations omitted). "Where . . . there is no 'showing of prejudice resulting from delay in seeking intervention, [a] motion [to intervene] should not be denied as untimely.'" *Jones v. Town of Carroll*, 158 A.D.3d 1325, 1328 (4th Dep't 2018) (citation omitted). This Motion is timely as Congresswoman Malliotakis and the Individual Voters filed it the same week as Petitioners filed the Petition, *see* Pet., and before the deadline for Respondents to file their responses to the Petition, *see* CPLR 403. So, "the time lag between the making of th[is] motion" and when Congresswoman Malliotakis and the Individual Voters became aware "of the circumstances upon which the motion . . . is based"—*i.e.*, the Petition—is minimal. *U.S. Bank N.A.*, 239 A.D.3d at 1019 (citations omitted). None of the Respondents have filed a responsive pleading in this case yet, and discovery has not begun, so the current parties could not suffer any "prejudice resulting from [any] delay in seeking intervention." *Jones*, 158 A.D.3d at 1328. Allowing Congresswoman Malliotakis and the Individual Voters to participate in this litigation in such a manner would not "unduly delay the determination of th[is] action or prejudice the substantial rights of any party" in any way. CPLR 1013.

B. *Congresswoman Malliotakis and the Individual Voters have direct, substantial interests in the outcome of this litigation, which could substantially impair those interests.* Congresswoman Malliotakis and the Individual Voters clearly have "real, substantial interest[s] in the outcome of this litigation." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201 (citations omitted).

Congresswoman Malliotakis is the duly elected Representative to the U.S. House of Representatives from New York's 11th Congressional District, and she intends to be a candidate

for reelection from that same district in 2026. Malliotakis Aff. ¶¶ 2, 6. Congresswoman Malliotakis has the solemn duty to "serv[e] [her] constituents and support[ ] legislation that will benefit the district and individuals and groups therein," *McCormick v. United States*, 500 U.S. 257, 272 (1991), which requires her to kindle the "relationship between" herself as "representative" and her "constituent[s]" so that she may more effectively serve them in the House, *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (citation omitted). Congresswoman Malliotakis has invested substantial time and resources to develop relationships with and understands the needs of the citizens in her district. Malliotakis Aff. ¶ 5. Her relationships with her constituents and her intent to run for reelection in 2026 gives her "real, substantial interest[s] in the outcome of this litigation." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201 (citations omitted). Petitioners challenge the existing lines of Congresswoman Malliotakis' District and ask the Court to force the Legislature to replace the current congressional map containing her district that the Legislature enacted in 2024. *See* Pet. ¶¶ 96–102; *id.* at 27–28. That map was to govern the 2026 election when Congresswoman Malliotakis will be running for reelection. *See* N.Y. State Law §§ 110–12. Thus, Petitioners' challenge "affect[s] the Congress[woman] directly and substantially" because the "contours of the maps" for New York's 11th Congressional District "determin[e] which constituents the Congress[woman] must court for votes and represent in the legislature." *Johnson*, 902 F.3d at 579; *see* Malliotakis Aff. ¶¶ 5–7. Accordingly, Congresswoman Malliotakis "has a real, substantial interest in the outcome of this litigation" and any judgment in this matter could "substantially impair[ ] th[at] interest." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201–02 (citations omitted).

New York and federal courts regularly permit legislators to intervene in redistricting actions challenging the maps of the districts that they represent. *See, e.g., Wolpoff v. Cuomo*, 80

N.Y.2d 70, 76 (1992); *Orans v. Rockefeller*, 262 N.Y.S.2d 893, 897–98 (Sup. Ct., N.Y. Cnty. 1965); *Wright v. Rockefeller*, 211 F. Supp. 460, 461 (S.D.N.Y. 1962), *aff'd*, 376 U.S. 52 (1964); *Johnson*, 902 F.3d at 579; Order, *Hunter v. Bostelmann*, No.3:21-cv-512, Dkt.60 at 3–4 (W.D. Wis. Sept. 16, 2021); Order, *Baldus v. Members of Wis. Gov't Accountability Bd.*, No.11-cv-562, 2011 WL 5834275, at *2 (E.D. Wis. Nov. 21, 2011); *Ohio A. Philip Randolph Inst. v. Smith*, No.1:18-cv-357, 2018 WL 8805953, at *1 (S.D. Ohio Aug. 16, 2018); *see also Hoblock v. Albany Cnty. Bd. of Elections*, 233 F.R.D. 95, 99 (N.D.N.Y. 2005) (permitting state legislative candidates to intervene in election-related matter and recognizing that "[c]andidates have a personal interest in winning and holding office").

The Individual Voters likewise possess "a bona fide interest in an issue involved in th[is] action," the outcome of which could "substantially impair[ ] th[at] interest." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201–02 (citations omitted). The Individual Voters are New Yorkers who vote in New York elections, reside within the 11th Congressional District as drawn by New York's existing congressional map, and would be directly affected if this Court were to force the Legislature redraw the 11th Congressional District. Lai Aff. ¶¶ 2–11; Medina Aff. ¶¶ 2–10; Reeves Aff. ¶¶ 2–9; Sisto Aff. ¶¶ 2–9; Togba Aff. ¶¶ 2–9. Each of the Individual Voters campaigned and voted for Congresswoman Malliotakis who was elected from the current congressional map, and they intend to campaign for her reelection during the 2026 election cycle. Lai Aff. ¶¶ 7–10; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–8; Togba Aff. ¶¶ 5–8. These political activities give the Individual Voters an interest in this case, as evidenced by the fact that federal courts regularly allow individual voters to intervene to protect their interests in the contours of the congressional district in which they reside. *See, e.g., Johnson v. Mortham,* 915 F. Supp. 1529, 1536 (N.D. Fla. 1995) ("Registered voters have . . . a sufficiently substantial

interest to intervene, in an action challenging the voting district in which the voters are registered."); *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 844–45 (5th Cir. 1993) (en banc) (holding that judges had standing as voters in county to intervene in action challenging judicial elections in that county); *Smith v. Bd. of Election Comm'rs for Chi.*, 103 F.R.D. 161, 162–63 (N.D. Ill. 1984). Petitioners seek to undo New York's existing congressional district map and replace it prior to "any further congressional elections," Pet. at 28; *see id.* ¶¶ 96–102; *id.* at 27–28, which will negatively impact the Individual Voters' campaign activities during the 2026 election cycle, *see* Lai Aff. ¶¶ 9–11; Medina Aff. ¶¶ 8–10; Reeves Aff. ¶¶ 8–9; Sisto Aff. ¶¶ 7–9; Togba Aff. ¶¶ 7–9. The outcome of this litigation also threatens to cause the Individual Voters to "suffer the special representational harms racial classifications can cause in the voting context" because Petitioners seek to racially reconfigure the 11th Congressional District by forcing the Legislature to "rel[y] on racial criteria" and subject the voters there to "racial classifications" in redrawing the District's lines. *United States v. Hays*, 515 U.S. 737, 744–45 (1995); *see Shaw v. Hunt*, 517 U.S. 899, 904 (1996). Thus, the Petition here puts the Individual Voters' interests in New York's congressional map directly at stake and the outcome of this matter stands to "substantially impair[ ] th[ose] interest[s]." *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 202.

C. *The existing parties do not adequately represent Congresswoman Malliotakis' and the Individual Voters' real and substantial interests in the outcome of this litigation.* Finally, intervention as of right requires that the movants have "a real and substantial interest in the outcome of the proceedings," *Wells Fargo Bank, Nat'l Ass'n v. McLean*, 70 A.D.3d 676, 677 (2d Dep't 2010), that "is or may" not be adequately represented by the existing parties, CPLR 1012(a)(2). This requirement is designed to "facilitate[ ] the disposal in one action of all the issues

involved, thus avoiding both court congestion and undue delay and expense to the parties." *Harrison*, 152 N.Y.S.2d at 241; *see N.Y. State Pub. Emp't Rels. Bd. v. Bd. of Educ. of Buffalo*, 46 A.D.2d 509, 513 (4th Dep't 1975), *aff'd*, 39 N.Y.2d 86 (1976) ("[F]ull intervention is required to insure complete litigation of [movant's] interests in the judicial forum[.]"). "Inadequacy of representation is generally assumed when the intervenor's interest is divergent from that of the parties to the suit," *State ex rel. Field v. Cronshaw*, 527 N.Y.S.2d 165, 167 (Sup. Ct., Nassau Cnty. 1988), and courts typically grant intervention where the movants' interests are "not identical" to those represented by the existing parties, *N.Y. State Pub. Emp't Rels. Bd.*, 46 A.D.2d at 513. The existing parties' representation of Congresswoman Malliotakis' and the Individual Voters' interests in this action is plainly "inadequate." CPLR 1012(a)(2).

Here, none of the existing parties represent Congresswoman Malliotakis' significant interest in her relationships with her constituents, which interest is closely tied to the contours of the 11th Congressional District. *See Johnson*, 902 F.3d at 579; *accord* Malliotakis Aff. ¶¶ 5–7. Congresswoman Malliotakis is an elected representative to the U.S. House of Representatives who intends to seek reelection in 2026, Malliotakis Aff. ¶¶ 2, 6, so she also has a distinct "representative interest" in this litigation that no parties share with her, *Johnson*, 902 F.3d at 579; *accord* Malliotakis Aff. ¶¶ 5–7. Similarly, none of the existing parties represent the Individual Voters' own personal interests in protecting their interests in their core political activities. *See supra* pp.11–12; *accord* Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9.

Petitioners' interests in this matter are squarely at odds with Congresswoman Malliotakis' and the Individual Voters' interests. Petitioners brought this Petition to have this Court "[d]eclare that the 2024 Congressional Map" is unconstitutional and "order the Legislature to adopt a valid

congressional redistricting plan" that reconfigures the 11th Congressional District as a new "minority influence district." Pet. at 28. Congresswoman Malliotakis' and the Individual Voters' interests, in direct contrast, are to preserve the existing contours of the 11th Congressional District, given Congresswoman Malliotakis' direct representative interests in the relationships she has built with her current constituents and the Individual Voters' interests in associating with like-minded individuals to campaign for Congresswoman Malliotakis' reelection, which interests are closely tied to the current boundaries of New York's congressional districts. *See* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9. Moreover, the Individual Voters do not wish to reside in a racially gerrymandered district and be subjected to a racial classification due to reliance on racial criteria in changing the boundaries of the 11th Congressional District, *see* Lai Aff. ¶ 11; Medina Aff. ¶ 10; Sisto Aff. ¶ 9; Togba Aff. ¶ 9, which is what Petitioners seek here, *see* Pet. at 27–28. Thus, Petitioners' interests here are not only "not identical" to Congresswoman Malliotakis' and the Individual Voters' interests, but are directly *adverse* to those interests. *See N.Y. State Pub. Emp't Rels. Bd.*, 46 A.D.2d at 513.

Respondents—the Board, the Board's directors and commissioners, Governor Kathy Hochul, Senate Majority Leader and President *Pro Tempore* Andrea Stewart-Cousins, Speaker Carl Heastie, and Attorney General Letitia James—also do not share Congresswoman Malliotakis' and the Individual Voters' interests here.

The Board and its officers have no interest in the contours of any particular map; their interests in cases challenging New York's redistricting maps are solely in implementing the final redistricting legislation (either the law codifying the current map or a new law redrawing that map) as they carry out their statutory duties to administer and enforce New York's election laws. *See In re N.Y. State Bd. of Elections*, 49 A.D.2d 806, 806 (4th Dep't 1975) ("The Legislature has

conferred upon the State Board of Elections 'authority and responsibility for the execution and enforcement of all laws relating to the elective franchise.'"); N.Y. Elec. Law §§ 3-102, 3-104. Thus, the Board and Commissioners' interests here are "divergent from," *Cronshaw*, 527 N.Y.S.2d at 167, Congresswoman Malliotakis' and the Individual Voters' personal, direct, and significant interests in preserving the current boundaries of the 11th Congressional District and the existing New York congressional map, *see* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–10; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9.

For their parts, Governor Hochul's, Majority Leader Stewart-Cousins', Speaker Heastie's, and Attorney General James' interests in this case are institutionally different from Congresswoman Malliotakis' and the Individual Voters' direct, substantial, and personal interests in the current contours of the 11th Congressional District. *See* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–10; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9; *supra* pp.9–12. The Governor, legislative leaders, and the Attorney General do not share Congresswoman Malliotakis' direct representative interests in the relationships she has built with her current constituents or the Individual Voters' interests in associating with similarly minded people to campaign for Congresswoman Malliotakis' reelection. *See* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–10; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9. So, these Respondents' interests are "not identical" to, *N.Y. State Pub. Emp't Rels. Bd.*, 46 A.D.2d at 513, and are "divergent from," *Cronshaw*, 527 N.Y.S.2d at 167, Congresswoman Malliotakis' and the Individual Voters' interests here, which alone is sufficient to show that those Respondents' representation is inadequate in this matter. And, again, these divergent interests are why legislators are routinely granted intervention in redistricting cases even where other state officials are sued. *See, e.g.*, *Johnson*, 902 F.3d at 579; Order, *Hunter*, Dkt.60 at 3–4; Order, *Baldus*, 2011 WL

5834275, at *2; *Ohio A. Philip Randolph Inst.*, 2018 WL 8805953, at *1; *Wolpoff*, 80 N.Y.2d at 76; *Orans*, 262 N.Y.S.2d at 897–98; *Wright*, 211 F. Supp. at 461.

Further, if more is needed—which it is not—publicly available evidence shows that these Respondents' representation of Congresswoman Malliotakis' and the Individual Voters' interests here "may" be inadequate for additional reasons. CPLR 1012(a)(2). The Governor and legislative leader Respondents have made public statements showing that their interests are aligned with Petitioners' interests in this matter and directly adverse to Congresswoman Malliotakis' and the Individual Voters' interests here. Governor Hochul publicly announced during a press conference that she was "exploring with our leaders every option to redraw our State congressional lines as soon as possible" and that "[o]ur State Legislative Leaders, Carl Heastie, Majority Leader Andrea Stewart-Cousins, they're on board as are their members." Press Release, Gov. Kathy Hochul, *Governor Hochul Stands With Texas Legislators to Combat Trump-Backed Redistricting Power Grab* (Aug. 4, 2025).[6] Thus, Governor Hochul, Majority Leader Stewart-Cousins, and Speaker Heastie appear to share Petitioners' interests in invalidating and replacing New York's current congressional map, at least in part, in direct contrast to Congresswoman Malliotakis' and the Individual Voters' interests in preserving that map. *See* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–10; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9; *supra* pp.9–12. Similarly, the Attorney General has previously participated in redistricting matters solely to urge the court to *redraw* New York's congressional map, rather than seeking to defend it. *See* Moskowitz Aff., Ex.H (Br. for Kathy Hochul & Letitia James as *Amici Curiae* in Support of Affirmance, *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, Index No.APL-2023-00121 (N.Y. Oct. 23, 2023)). And the Attorney General is a prominent member of the state Democratic

[6] Available at https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-stands-texas-legislators-combat-trump.

Party's elected "leaders," which "leaders" and "members" Governor Hochul publicly indicated are "on board" "to redraw our State congressional lines as soon as possible." Gov. Hochul, *supra*. Thus, at minimum, Congresswoman Malliotakis and the Individual Voters have shown that the Governor, legislative leaders, and the Attorney General "may," CPLR 1012(a)(2), not adequately represent their "real, substantial interest[s]," *Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201, in preserving the current boundaries of New York's 11th Congressional District, *see* Malliotakis Aff. ¶¶ 5–7; Lai Aff. ¶¶ 7–11; Medina Aff. ¶¶ 6–10; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–9; Togba Aff. ¶¶ 5–9; *supra* pp.9–12.

II. Alternatively, This Court Should Grant Permissive Intervention To Congresswoman Malliotakis And The Individual Voters Under CPLR 1013 Because They Have A Real And Substantial Interest In New York's Congressional Map And Their Intervention Would Not Prejudice The Existing Parties

This Court may grant permissive intervention whenever: (1) the motion is "timely"; (2) the movant's "claim or defense and the main action have a common question of law or fact"; and (3) the movant's intervention will not "unduly delay the determination of the action or prejudice the substantial rights of any party." *See* CPLR 1013. Here, Congresswoman Malliotakis and the Individual Voters satisfy each of these requirements. As already explained above, Congresswoman Malliotakis' and the Individual Voters' Motion To Intervene is timely as they moved to intervene at the earliest possible stage in this litigation, *supra* pp.8–9, and their participation here will neither unduly delay the determination of this action nor prejudice the parties' substantial rights, *supra* p.9. As shown in Congresswoman Malliotakis' and the Individual Voters' simultaneously filed proposed Answer, they also seek to raise "defense[s]" that share "question[s] of law or fact" with "the main action." CPLR 1013. Specifically, if permitted intervention, Congresswoman Malliotakis and the Individual Voters intend to argue that Petitioners' constitutional challenge to New York's congressional map is time-barred under the

doctrine of laches, fails to state a claim, and seeks unconstitutional relief. For example, they would argue that Petitioners' lawsuit challenging the congressional map is untimely because it comes over a year after the legislation implementing the map was enacted and after the map has already governed the 2024 election cycle. Congresswoman Malliotakis and the Individual Voters would also intend to argue that Petitioners' claimed "minority influence district" theory, Pet. at 27, finds no grounding in the relevant provision of the New York Constitution, which mirrors Section 2 of the federal Voting Rights Act. Further, Congresswoman Malliotakis and the Individual Voters would argue that granting Petitioners' request for mid-decade redistricting to replace New York's congressional map with a legislatively enacted map creating a new minority influence district would violate the U.S. Constitution, including under the Fourteenth Amendment's Equal Protection Clause. Finally, if this Court were to (mis)interpret the New York Constitution as mandating Petitioners' influence-district-theory, Congresswoman Malliotakis and the Individual Voters would intend to argue that the claim fails on the merits here in any event. Thus, allowing Congresswoman Malliotakis and the Individual Voters to participate in this matter and pursue these defenses would not unduly delay or needlessly complicate this litigation, but rather would ensure a robust defense of the challenged congressional map, while bringing their unique points of view to bear on this important issue to the benefit of the Court.

At bottom, under either CPLR 1012 or 1013, this Court should grant Congresswoman Malliotakis' and the Individual Voters' Motion To Intervene because they have "real and substantial interest[s] in the outcome the proceedings." *Windward Bora, LLC*, 236 A.D.3d at 978 (citation omitted); *see Yuppie Puppy Pet Prods., Inc.*, 77 A.D.3d at 201–02. Congresswoman Malliotakis serves her constituents as an elected Representative, and she intends to run for reelection in 2026. Malliotakis Aff. ¶¶ 2, 6. Because the "contours of the maps" of New York's

congressional districts "determin[e] which constituents the Congress[woman] must court for votes and represent in the legislature," this case "directly and substantially" affects Congresswoman Malliotakis, who is not adequately represented by existing parties. *Johnson*, 902 F.3d at 579; *see* Malliotakis Aff. ¶¶ 5–7. Further, the Individual Voters invested substantial time and effort campaigning to elect Congresswoman Malliotakis, and each intends to do the same for the 2026 election, giving them a substantial interest in the existing congressional map due to their right to associate with like-minded people. *See* Lai Aff. ¶¶ 7–10; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–8; Togba Aff. ¶¶ 5–8; *supra* pp.11–12.

CONCLUSION

This Court should grant Proposed Intervenor-Respondents' Motion To Intervene as of right under CPLR 1012, or permissively under CPLR 1013.

Dated: New York, New York
October 31, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____

Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com

Misha Tseytlin, Reg. No.4642609
111 S. Wacker Dr., Suite 4100
Chicago, IL 60606
(608) 999-1240
misha.tseytlin@troutman.com

CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, it contains 5,888 words, excluding parts of the document exempted by Rule 202.8-b(b).

Dated: New York, New York
October 31, 2025

TROUTMAN PEPPER LOCKE LLP

By: _____

Bennet J. Moskowitz, Reg. No.4693842
875 Third Avenue
New York, New York 10022
(212) 704-6000
bennet.moskowitz@troutman.com