

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

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Michael Williams, José Ramírez-Garofalo, Aixa Torres, and
Melissa Carty,

Index No. 164002/2025

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,

**Opposition to Respondents’
and Intervenors’ Motions to
Dismiss the Petition and
Reply Memorandum of Law in
Support of Petition**

Respondents,

-and-

Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

Intervenor-Respondents.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

PRELIMINARY STATEMENT..... 1

ARGUMENT 3

I. The New York Constitution’s racial vote dilution protections exceed those prescribed by the first *Gingles* precondition required under federal law. 3

A. The Court must decide in the first instance what standard governs Petitioners’ vote dilution claim under the New York Constitution. 4

B. Both the text and context of Article III, Section 4(c)(1) support the conclusion that the NY VRA framework—not the federal VRA standard—should govern Petitioners’ claim..... 5

II. Petitioners have demonstrated that the 2024 congressional map dilutes the voting strength of Black and Latino Staten Islanders, in violation of the New York Constitution. 9

A. Voting within CD-11 is racially polarized, and the Black and Latino voters’ candidate of choice is usually defeated..... 9

B. The totality of circumstances factors support the conclusion that Black and Latino Staten Islanders have less opportunity to elect their candidate of choice than other voters. 13

III. Petitioners’ Illustrative Map demonstrates that the racial vote dilution in CD-11 can be remedied. 16

A. The Illustrative Map complies with the Constitution’s redistricting criteria. 17

B. The Illustrative Map is not a partisan gerrymander. 20

C. The Illustrative Map is not a racial gerrymander. 22

IV. Respondents’ and Intervenors’ argument that the NY VRA’s standards violate the U.S. Constitution and thus cannot be applied here, should be rejected. 25

A. The NY VRA does not trigger strict scrutiny review. 26

B. The remedies available under the NY VRA do not require strict scrutiny. 29

V. The Elections Clause does not bar Petitioners’ claim..... 32

VI. Laches does not bar the relief Petitioners seek. 33

CONCLUSION35

TABLE OF AUTHORITIES

CASES

<i>Abbott v. Perez</i> , 585 U.S. 579 (2018)	10, 24
<i>Adarand Constructors, Inc. v. Pena</i> , 515 U.S. 200 (1995)	26
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023)	31
<i>Am. Transit Ins. Co. v. Sartor</i> , 3 N.Y.3d 71 (2004)	32
<i>Ambrogio & Caterina Giannone Fam. Ltd. P'ship v. 7th Heaven USA Inc.</i> , 954 N.Y.S.2d 757 (N.Y. Dist. Ct. 2012)	34
<i>Amedure v. State</i> , 210 A.D.3d 1134 (2022)	33
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009)	<i>passim</i>
<i>Bethune-Hill v. Va. State Bd. of Elections</i> , 580 U.S. 178 (2017)	23, 30
<i>Bush v. Vera</i> , 517 U.S. 952 (1996)	18, 22, 23, 30
<i>Chatfield v. League of Women Voters of Mich.</i> , 589 U.S. 1031 (2019)	34
<i>Clarke v. Town of Newburgh</i> , 237 A.D.3d 14 (2025)	<i>passim</i>
<i>Coads v. Nassau County</i> , 86 Misc. 3d 627 (Sup. Ct. Nassau Cnty. 2024)	10 12, 27, 29, 31
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017)	10
<i>Crawford v. Bd. of Educ.</i> , 458 U.S. 527 (1982)	25, 26

<i>Easley v. Cromartie</i> , 532 U.S. 234 (2001)	23
<i>Eccles v. Shamrock Cap. Advisors, LLC</i> , 42 N.Y.3d 321 (2024)	3
<i>Erlenbaugh v. United States</i> , 409 U.S. 239 (1972)	7
<i>Garza v. Cnty. of Los Angeles</i> , 918 F.2d 763 (9th Cir. 1990)	34
<i>Golden v. Clark</i> , 76 N.Y.2d 618 (1990)	28
<i>Grove v. Emison</i> , 507 U.S. 25 (1993)	31
<i>Haberman v. Haberman</i> , 216 A.D.2d 525 (2nd Dept. 1995)	33
<i>Harkenrider v. Hochul</i> , 38 N.Y.3d 494 (2022)	3, 20, 21
<i>Higginson v. Becerra</i> , 786 F. App'x 705 (9th Cir. 2019)	27
<i>Kuhn v. Town of Johnstown</i> , 248 A.D.2d 828 (3d Dept. 1998)	33
<i>Lallave v. Martinez</i> , 635 F. Supp. 3d 173 (E.D.N.Y. 2022)	7
<i>Large v. Fremont County</i> , 670 F.3d 1133 (10th Cir. 2012)	8
<i>League of Women Voters of Mich. v. Benson</i> , 373 F. Supp. 3d 867 (E.D. Mich. 2019)	34
<i>Leon v. Martinez</i> , 84 N.Y.3d 83 (1994)	3
<i>LULAC v. Perry</i> , 548 U.S. 399 (2006)	13, 18, 25, 31
<i>Matter of Schneider v. Rockefeller</i> , 31 N.Y.2d 420 (1972)	18, 19

<i>Miller v. Bd. of Comm'rs of Miller Cnty.</i> , 45 F. Supp. 2d 1369 (M.D. Ga. 1998)	34
<i>Miller v. Johnson</i> , 515 U.S. 900 (1995)	22, 30
<i>Moore v. Harper</i> , 600 U.S. 1 (2023)	32
<i>N.Y. State Club Ass'n v. City of New York</i> , 69 N.Y.2d 211 (1987)	30
<i>NAACP, Inc. v. City of Niagara Falls</i> , 65 F.3d 1002 (2d Cir. 1995)	10
<i>NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.</i> , 462 F. Supp. 3d 368 (S.D.N.Y. 2020)	11
<i>Nixon v. Kent County</i> , 76 F.3d 1381 (6th Cir. 1996)	6
<i>Ohio A. Philip Randolph Inst. v. Smith</i> , 335 F. Supp. 3d 988 (S.D. Ohio 2018)	35
<i>Orange County v. Ellsworth</i> , 98 A.D. 275 (App. Div. 2d Dept. 1904)	8
<i>People ex rel. Adsit v. Allen</i> , 42 N.Y. 378 (1870)	32
<i>People v. LaValle</i> , 3 N.Y.3d 88 (2004)	32
<i>People v. Stultz</i> , 2 N.Y.3d 277 (2004)	8
<i>Rose v. Sec'y</i> , 87 F.4th 469, 477 (11th Cir. 2023)	25
<i>Sanchez v. City of Modesto</i> , 145 Cal. App. 4th 660 (2006)	26, 27, 28, 29
<i>Saratoga Cnty. Chamber of Com, Inc. v. Pataki</i> , 100 N.Y.2d 801 (2003)	33
<i>South Carolina v. Katzenbach</i> , 383 U.S. 301 (1966)	30

<i>Taberski v. Taberski</i> , 197 A.D.3d 871 (4th Dept. 2021)	33
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986)	5, 10
<i>Transport Workers Union of Am., AFL-CIO v. N.Y. City Transit Auth.</i> , 341 F. Supp. 2d 432 (S.D.N.Y. 2004)	35
<i>United States v. Skrmetti</i> , 605 U.S. ___, 145 S. Ct. 1816 (2025)	26, 27, 28

CONSTITUTIONAL PROVISIONS

N.Y. Const. art. III, § 4	1, 17, 20, 21, 35
N.Y. Const. art. III, § 5	2 16
U.S. Const. art. I, § 4	32

STATUTES

52 U.S.C. § 10301	5, 30
Cal. Elec. Code § 14025	27
Conn. Gen. Stat. § 9-9-368i	27
N.Y. Elec. Law § 17-206	<i>passim</i>
Or. Rev. Stat. § 255.400	27
Va. Code § 24.2.125	27
Wash. Rev. Code 29A.92.005	27

OTHER AUTHORITIES

Clifford Michel, <i>Their Anti-Racism Marches Were Twisted in a \$4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote</i> (Nov. 22, 2020), available at https://www.thecity.nyc/2020/11/22/anti-racism-marches-young-leaders-of-staten-island-voter-registration/	16
<i>Traffic on the Verrazano-Narrows Bridge</i> , https://www.verrazano-narrows-bridge.com/traffic (last accessed Dec. 18, 2025)	19

PRELIMINARY STATEMENT

Absent relief from this Court, the current configuration of CD-11 will continue to perpetuate the unlawful dilution of Black and Latino voting strength on Staten Island, in violation of Article III, Section 4(c)(1) of the New York Constitution. Petitioners' evidence demonstrates that the Black and Latino voting-age populations on Staten Island have steadily increased over the past several decades. But these voters are routinely denied the ability to influence elections or elect their candidate of choice at the congressional level because of a confluence of significant racially polarized voting and a history of racial discrimination and other disparities that impact voting and persist to this day. Petitioners have presented an Illustrative Map that cures the unlawful racial vote dilution in CD-11 and complies with the traditional redistricting criteria set forth in the State Constitution. For the reasons set forth herein and in Petitioners' opening brief, the Court should issue an order declaring that the current configuration of CD-11 violates the Constitution and requiring the Legislature to promptly redraw the map.

Respondents Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III, ("Respondents") and Intervenor-Respondents Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba ("Intervenors") move to dismiss the Petition, but their threshold argument does not warrant dismissal. Petitioners have stated a claim of unconstitutional racial vote dilution and provided a legal standard—the standard set forth in the John R. Lewis Voting Rights Act (the "NY VRA")—under which to evaluate that claim. Unlike the *Gingles* factors, which govern Section 2 VRA claims, the NY VRA standard reflects the language of the vote dilution provision in the New York Constitution and the context in which it was enacted. Applying that standard also ensures consistent standards for identifying and remedying minority vote dilution across New York's congressional and local district maps.

On the merits, Respondents' and Intervenor's attempts to rebut Petitioners' evidence of racial vote dilution (and the cumulative opinions of their experts) collapse under scrutiny. Under the standard articulated in the NY VRA, Petitioners' expert, Dr. Palmer, has demonstrated that Black and Latino candidates of choice are usually defeated and voting is racially polarized voting in CD-11. *See generally* NYSCEF Doc. No. ("Doc.") 60 ("Palmer"). Petitioners have separately established that the totality of the circumstances demonstrate that Blacks and Latinos have less ability than other members of the electorate to influence elections or elect candidates of their choice. Doc. 61 ("Sugrue"). Respondents' and Intervenor's criticisms do not meaningfully change these conclusions. Nor do Respondents' attacks on the Illustrative Map hold any water. Petitioners' proposed remedy is not a racial or partisan gerrymander; it complies with the Constitution's other redistricting criteria and racial considerations do not predominate vis-à-vis those criteria. Nor is the map driven by partisan intent. And Respondents' arguments that the NY VRA is allegedly unconstitutional or subject to strict scrutiny have been squarely rejected. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14 (2025), *aff'd*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025). Finally, neither the Elections Clause nor Laches serve as a bar to relief here.

For these reasons and those stated below, the Court should deny Respondents' and Intervenor's Motions to Dismiss and proceed to a hearing on the merits. Following that hearing, Petitioners respectfully request that the Court invalidate the 2024 congressional map and remand to the Legislature, which will then "have a full and reasonable opportunity to correct the law's legal infirmities" by creating a district in which Black and Latino Staten Islanders have an opportunity to influence elections and elect a representative of their choice in CD-11. N.Y. Const. art. III, § 5.

ARGUMENT

I. The New York Constitution’s racial vote dilution protections exceed those prescribed by the first *Gingles* precondition required under federal law.

Respondents’ and Intervenors’ motions to dismiss should be denied because Petitioners have properly alleged a claim of unlawful dilution of Black and Latino voters in New York’s 11th congressional district under Article III, Section 4(c)(1) of the State Constitution. Respondents and Intervenors claim that this case can be decided as a matter of law, without a hearing on the merits, because the *Gingles* standards for federal Voting Rights Act claims should govern Petitioners’ claim, and those standards do not permit relief in the form of a new district comprised of less than a majority single-race minority population. However, as Petitioners explained in their opening memorandum (at 14-19), both the language and the context of the vote dilution protections enshrined in the New York Constitution support the conclusion that they sweep more broadly than federal law. Petitioners’ allegations of vote dilution are therefore more than sufficient for this case to proceed to the scheduled hearing on the merits. *See Eccles v. Shamrock Cap. Advisors, LLC*, 42 N.Y.3d 321, 342 (2024) (at the motion-to-dismiss stage, the court “determine[s] only whether the facts as alleged fit within any cognizable legal theory” (quoting *Leon v. Martinez*, 84 N.Y.3d 83, 87–88 (1994))).¹

¹ Respondents claim that because Petitioners “allege only that the 2024 map for CD-11 violates one of the ‘principles’ under Article III, § 4(c), namely, § 4(c)(1),” Petitioners fail to meet their burden to demonstrate that “every conceivable application” of the law is unconstitutional, and therefore Petitioners’ claim should be dismissed, Doc. 122 at 11–12 (emphasis added). Under that unsupported theory, a petitioner could never bring a standalone racial vote dilution claim; instead, the petitioner would be required to allege (and presumably prove) that *all* of the constitutional requirements set forth in Article III have been violated. That is not the law and is plainly contradicted by the Court of Appeals’ decision in *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521 (2022) (finding congressional map unconstitutional under Article III where Petitioners alleged a violation of only two of the principles under Article III, § 4(c)).

A. The Court must decide in the first instance what standard governs Petitioners' vote dilution claim under the New York Constitution.

As a threshold matter, the Court should disregard Respondents' argument that Petitioners ask the Court to "amend retroactively" or "modify" the State Constitution to incorporate the NY VRA's standards. Doc. 115 at 2; Doc. 122 at 18. That mischaracterizes Petitioners' argument. Indeed, Petitioners' argument that the NY VRA standards should apply is, structurally, no different than Respondents' and Intervenor's view that the federal VRA standards should govern the inquiry. The question of what legal standard governs vote dilution claims under the New York Constitution is one of first impression. Article III, Section 4(c)(1) expressly guards against minority vote dilution, requiring that all congressional "[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." But New York courts have yet to interpret this provision, and so this Court must decide precisely how to evaluate a claim under this provision in the first instance.

Petitioners allege that the current configuration of CD-11, which includes all of Staten Island and part of Brooklyn, dilutes the voting power of Black and Latino Staten Islanders, who together comprise a meaningful segment of the district's voting age population. *See generally* Doc. 1. A district that instead combines Staten Island with a compact segment of lower Manhattan, on the other hand, would remedy the violation of Petitioners' rights by affording the district's Black and Latino voting population an equal opportunity to elect their candidate of choice with the assistance of crossover voters from the White majority.² Petitioners' Illustrative Map offers one

² In Petitioners' view, it is less than clear whether New York law strictly adheres to the federal redistricting taxonomy the Amici identify and explain in their briefs. Petitioners have been clear that they seek a remedy that will offer Black and Latino Staten Islanders the opportunity to form a

way to draw such a district. In light of the remedy Petitioners seek, the threshold issue for the Court is straightforward: whether Article III, § 4(c)(1), unlike federal law, is sufficiently broad to afford relief to petitioners that show vote dilution that can be remedied with a new district that creates minority-voter opportunity *without* a majority-minority population.³ For the reasons Petitioners set forth in their opening memorandum (at 14-19), and as explained in further detail below, the answer is yes. And the NY VRA—which likewise does not require proof that a majority-minority district can be drawn in the challenged area—thus offers a better framework to evaluate Petitioners’ claim than Section 2 of the VRA.

B. Both the text and context of Article III, Section 4(c)(1) support the conclusion that the NY VRA framework—not the federal VRA standard—should govern Petitioners’ claim.

For several reasons, Respondents’ argument that federal VRA principles should guide the Court’s inquiry should fail. First, textual differences between Article III, § 4(c)(1) and Section 2 of the VRA support Petitioners’ view that the New York Constitution sweeps more broadly than federal law. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Supreme Court held that under Section 2, an individual minority group must “demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district,” the first *Gingles* precondition. *Id.* at 50. The first *Gingles* precondition captures the statutory language in Section 2 that prohibits political processes that “are not equally open to participation by members of *a class* of citizens,” such that “*its* members have less opportunity than other members of the electorate to participate in the political process and to elect candidates of their choice.” 52 U.S.C. § 10301(b)

coalition to influence elections and elect their candidates of choice with the assistance of crossover voters from the White majority. *See* Doc. 1 ¶¶ 91–95; Doc. 63 at 3.

³ It is Petitioners’ understanding that Respondents request that the Court decide this threshold question raised in the pending motions to dismiss before a merits hearing is held in this matter.

(emphasis added). After *Gingles*, the *en banc* Sixth Circuit underscored that the text of Section 2 does not permit lawsuits seeking coalition districts where one minority group comprises less than a majority, explaining that if Congress had “intended to sanction [such] suits, the statute would” refer to “*the classes* of citizens protected.” *Nixon v. Kent County*, 76 F.3d 1381, 1386–87 (6th Cir. 1996); see Doc. 95 at 4. That language—which was illustrative in the context of the Sixth Circuit case—is precisely the language the People of New York adopted when they voted in favor of Article III, Section 4(c)(1), which prohibits diluting the ability of “racial or minority language groups” from “elect[ing] representatives of *their* choice.” New York’s decision to meaningfully vary from the federal VRA’s purportedly narrower scope compels likewise departing from the correspondingly narrower *Gingles* preconditions that come with it.

Indeed, the State Respondents—Governor Kathy Hochul, Senate Majority Leader and President *Pro Tempore* of the New York State Senate Andrea Stewart-Cousins, Speaker of the New York State Assembly Carl E. Heastie, and Attorney General Letitia James—agree that petitioners bringing constitutional vote dilution claims are not limited to the requirements of federal law. “[T]he relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law.” State Resp’ts’ Br. at 3. Reading Article III in line with the federal VRA would render Section 4(c)(1) “a redundancy and the will of New York voters in voting for them would be read out of the State Constitution.” *Id.*

Second, the Legislature’s later passage of the NY VRA further underscores why the federal VRA offers the wrong framework for constitutional vote dilution claims, and why the NY VRA’s broader standards omitting the first *Gingles* factor are the correct option. Neither Respondents nor Intervenor dispute, as Petitioners argue in their opening brief (at 16–18), that the NY VRA offers

broader relief than the federal VRA—specifically in that it does not require plaintiffs to satisfy the first *Gingles* factor. *See Clarke*, 237 A.D.3d at 38 (“[T]he NYVRA specifically allows for remedies that might allow for minorities to elect their candidates of choice or influence the outcome of elections without their constituting a majority in a single-member district.”). But they miss that the statute credits the State’s *Constitution* with that choice. As Petitioners explain in their opening brief (at 15), the Legislature enacted the NY VRA in express “recognition [of] . . . the constitutional guarantee[] . . . against the denial or abridgement of the voting rights” of racial minority groups—that is, Article III, § 4(c)(1). N.Y. Elec. Law § 17-200. In other words, Section 17-200 tells us what it is doing: expounding directly on the State Constitution’s voting rights protections.

And like the state constitutional protections against racial vote dilution, the NY VRA is designed to ensure equal “opportunity” for minority voters to elect candidates of their choice. To do so, the NY VRA likewise prohibits any law or other rule from being adopted “that results in a denial or abridgement of the right of members of a protected class to vote.” N.Y. Elec. Law § 17-206(1)(a). The NY VRA’s definition of vote dilution—which eschews the first *Gingles* requirement and exceeds the minimum requirements of the federal VRA—in turn sets out the Legislature’s view that equal “opportunity” does not include a requirement that plaintiffs prove that a majority-minority district is an available alternative. In this way, the NY VRA acts as “a legislative interpretation” of the Constitution itself. *See Lallave v. Martinez*, 635 F. Supp. 3d 173, 188 (E.D.N.Y. 2022) (“[A] later act can be regarded as a legislative interpretation of an earlier act in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting, and is therefore entitled to great weight in resolving any ambiguities and doubts.” (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972))). Moreover, laws—both constitutional

and statutory—on the same subjects should be interpreted *in pari materia*. See *Orange County v. Ellsworth*, 98 A.D. 275, 279 (App. Div. 2d Dept. 1904) (“[C]onstitutional or statutory provisions which relate to the same subject, being *in pari materia*, shall be construed together.”).⁴

Respondents also argue that the New York Constitution is necessarily “governed by federal law,” and not the NY VRA, because Article III, § 4 notes that state redistricting criteria remain “[s]ubject to the requirements of the federal constitution and statutes.” Doc. 122 at 15. Respondents misunderstand the provision they cite. There is no question that the federal constitution and VRA set “a floor” for the minimum protections states must afford voters. See *People v. Stultz*, 2 N.Y.3d 277, 284 n.12 (2004). But the U.S. Supreme Court has expressly recognized that states may go further, and it has recognized the benefits of doing so.⁵ *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (“States that wish to draw crossover districts are free to do so where no other prohibition exists.”). Article III, § 4 recognizes this floor, but nothing in its plain language does anything to bind or restrict the Constitution’s reach to *federal* redistricting standards. Nor do the standards that New York imposes conflict with federal standards; they simply provide greater protections—as the Supreme Court has recognized they may. See, e.g., *Large v. Fremont County*, 670 F.3d 1133, 1145 (10th Cir. 2012) (noting that “the Supremacy

⁴ To the extent Respondents or Intervenor contend that these principles do not apply as between constitutional provisions and later-enacted statutes on the same subject, the Redistricting Amendments, though ultimately enacted by voters, originated in the Legislature. See Assemb. Bill No. A2086, 2013-14 Reg. Sess. (N.Y. Jan. 9, 2013); S.B. No. S2107, 2013-14 Reg. Sess. (N.Y. Jan. 10, 2013).

⁵ Respondents’ further argument that Article III, § 4(c) is not “subject to . . . the requirements of state ‘statutes,’” is a straw man. As explained above, Petitioners do not contend that the NY VRA directly *governs* the constitutional claim here. Of course, statutes must adhere to the State Constitution—not the other way around.

Clause appropriately works to suspend” state laws that *conflict* with VRA remedies because such laws “are an unavoidable obstacle to the vindication of [a] federal right”).

II. Petitioners have demonstrated that the 2024 congressional map dilutes the voting strength of Black and Latino Staten Islanders, in violation of the New York Constitution.

Applying the NY VRA’s framework, Petitioners have established racial vote dilution by showing that Black and Latino Staten Islanders’ preferred candidates are usually defeated and both that (i) voting is racially polarized in CD-11, *see* Doc. 63 at 20–22, and (ii) under the totality of the circumstances the ability of Black and Latino Staten Islanders to elect candidates of their choice or influence the outcome of elections in CD-11 is impaired, *see* Doc. 63 at 22–31. Respondents and Intervenor fail to effectively rebut either of these showings.

A. Voting within CD-11 is racially polarized, and the Black and Latino voters’ candidate of choice is usually defeated.

With their opening memorandum, Petitioners offered the expert analysis of Dr. Max Palmer to show that voting in the core of CD-11 is racially polarized and, the White majority voting bloc routinely defeats the Black and Latino–preferred candidate. Respondents cannot rebut this evidence under well-established vote dilution standards. Recognizing this shortcoming, Respondents and Intervenor instead try to change the standard, arguing that Petitioners must show that the minority-preferred candidate is usually defeated in, and that racially polarized voting exists throughout, a larger geographic area—in their view, the *entirety* of New York State, or at least all of New York City. Doc. 115 at 28. To that end, they fault Dr. Palmer’s analysis for assessing Black and Latino–preferred candidates’ prospects and racially polarized voting at the district-level only. Their argument is as novel as it is unsubstantiated.

1. Given their insistence that federal VRA standards should control, both Respondents and Intervenor are surprisingly coy about what federal law has to say on this issue. But, under the

third *Gingles* factor, Section 2 likewise requires plaintiffs to prove that the White majority will “usually . . . defeat the minority’s preferred candidate.” *NAACP, Inc. v. City of Niagara Falls*, 65 F.3d 1002, 1007 (2d Cir. 1995) (quoting *Gingles*, 478 U.S. at 50–51). And in the context of congressional redistricting, “redistricting analysis must take place at the district level.” *Abbott v. Perez*, 585 U.S. 579, 616 (2018). In *Cooper v. Harris*, 581 U.S. 285 (2017), for example, the Supreme Court evaluated bloc-voting in two congressional districts, and in turn, focused on evidence concerning past elections in those districts—specifically, voting patterns “in the area that would form the core of the redrawn” district. *Id.* at 302–07. The plaintiffs were not required to provide statewide proof.

There is no reason to apply a different requirement to Article III, § 4(c)(1). On this particular issue, New York courts have already recognized that the NY VRA’s requirement of showing racially polarized voting “merges the second and third *Gingles* preconditions—political cohesiveness and that the majority group votes as a bloc, and the NYVRA expressly requires a showing that the choice of the protected group ‘would usually be defeated.’” *See Coads v. Nassau County*, 86 Misc. 3d 627, 651–52, 654 (Sup. Ct. Nassau Cnty. 2024). While the first *Gingles* “precondition is not required for a claim under the NYVRA,” New York courts have already recognized that the NY VRA’s “usually defeated” threshold “mirrors the third *Gingles* precondition.” *Id.*

Dr. Palmer’s analysis complies with these standards. He focused on the existing boundaries of CD-11 and the Illustrative Map to ensure his results appropriately reflected bloc voting and electoral prospects “at the district level,” *Abbott*, 585 U.S. at 616, specifically “in the area that [will] form the core of” the new CD-11, *Cooper*, 581 U.S. at 304. In that area, Dr. Palmer found that voting is deeply (and in recent years, increasingly) racially polarized. Palmer ¶¶ 15–19. And

of the 20 elections Dr. Palmer analyzed, the Black and Latino–preferred candidate won only four times, and by very narrow margins. *Id.* ¶ 20.

Intervenors’ argument that the minimal electoral success Dr. Palmer identified defeats Petitioners’ claim (Doc. 115 at 26) is contrary to precedent. “Evidence of minority candidates’ success does not necessarily negate a finding of bloc voting.” *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 380 (S.D.N.Y. 2020) (cleaned up). And in any event, the narrow victories Dr. Palmer identified all occurred during the same 2018 election cycle; voting patterns in CD-11 have become increasingly polarized since then, as evidenced by an uninterrupted string of elections between 2019 and 2024 in which there is significant racially polarized voting and the Black and Latino–preferred candidate has been routinely defeated. *See* Palmer ¶ 20, fig. 3. To the extent Intervenors argue that minority-preferred candidates cannot be considered “usually defeated” if they win “49% of the races in the relevant jurisdiction,” the few electoral successes Dr. Palmer has identified here fall far below that mark.⁶

2. Unable to overcome Petitioners’ evidence, Intervenors and Respondents invent out of whole cloth a requirement that Petitioners demonstrate that the Black and Latino–preferred candidate is “usually defeated” by White majority bloc voting not just in the core of CD-11, but across New York’s entire 2024 Congressional Map or all of New York City. Doc. 115 at 21, 26; Doc. 122 at 36–37. The only support they offer is that “the NYVRA’s vote-dilution analysis is not district specific by its statutory text,” allowing plaintiffs to “reach all over the relevant jurisdiction”

⁶ Respondents’ and Intervenors’ experts do not effectively rebut Dr. Palmer’s conclusions, either. Dr. Alford relies entirely on Dr. Palmer’s analysis, but contends that partisanship explains the voting patterns Dr. Palmer observes—not race. But “this observation does not change the simple fact that Black and Hispanic voters prefer different candidates than White voters,” and “the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting.” Palmer Reply ¶ 4. Dr. Voss, meanwhile, attempts to nit-pick Dr. Palmer’s methodology, but his critiques are unfounded for the reasons Dr. Palmer explains in reply. *See id.* ¶¶ 6–19.

to form minority coalitions. Doc. 115 at 21. But that is decidedly not *this* case, which alleges unconstitutional vote dilution in a single congressional district. *See Coads*, 86 Misc. 3d at 654 (“[T]he legal significance of racial bloc voting depends on the factual circumstances and must be based upon a practical, commonsense examination of all the evidence.”).

Intervenors’ parade of horrors, which suggests that only their approach would short-stop a “never-ending cycle of jurisdictions being forced to draw new districts to benefit different racial groups,” Doc. 115 at 23–24, is based on incorrect assumptions and premised upon layers of speculation regarding combinations of districts not presently before the Court. For example, according to Intervenors and their expert Dr. Trende, White voters would have viable vote dilution claims in Districts 5, 8, and 9. *Id.*; *see also* Trende at 10–12. But that conclusion assumed that “a separate expert report,” specifically, Mr. Voss’s report, “demonstrates racially polarized voting in the area covered by district 5, 8, and 9.” *Id.* at 10. It does not. As Dr. Palmer explains, “White voters are not cohesive in their support for either candidate” in the one election Mr. Voss examines, and thus there was “not evidence of racially polarized voting in these districts.” Palmer Reply ¶ 21.⁷

Moreover, it is Intervenors’ approach that produces untenable outcomes. Intervenors’ and Respondents’ approach would render protections against minority vote dilution (at least at the congressional level) effectively obsolete throughout the state of New York—or at least New York City. By their telling, so long as *some* portion of the state’s minority population can elect their

⁷ Additionally, to the extent there are concerns about the potential for cyclical redistricting claims as a result of the NY VRA standard that permits plaintiffs to prove vote dilution by proving *either* racially polarized voting *or* the totality-of-the-circumstances factors, they are not relevant here. N.Y. Elec. Law § 17-206. The Court need not decide whether Article III, § 4(c)(1) incorporates the NY VRA’s either-or approach, as Petitioners make a showing under both standards. *See* Doc. 63 at 19-31. And in any event, those concerns are unrelated to Petitioners’ reading of the “usually defeated” standard or the Legislature’s decision to permit influence and crossover claims.

candidate of choice, there is no remedy if minority voters elsewhere in the state lack that opportunity. That is not the law. The Supreme Court has squarely “rejected the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater opportunity to others.” *LULAC v. Perry*, 548 U.S. 399, 429 (2006). The Court should not chart a different course here.

B. The totality of circumstances factors support the conclusion that Black and Latino Staten Islanders have less opportunity to elect their candidate of choice than other voters.

In their petition and opening brief, Petitioners demonstrated that “under the totality of the circumstances, the ability of [Black and Latino Staten Islanders] to elect candidates of their choice or influence the outcome of elections [in CD-11] is impaired,” N.Y. Elec. Law § 17-206(2)(b)(i), by adducing evidence that the majority of the non-exhaustive factors identified in N.Y. Elec. Law § 17-206(3) were satisfied. *See* Doc. 63 at 22–31; *see also* Sugrue at 3–52. Intervenors’ proffered expert, Joseph Borelli, fails to undercut Petitioners’ evidence. Instead, in many places, Mr. Borelli’s report supports Petitioners’ argument that the totality of the circumstances factors are satisfied.

Intervenors first concede—as they must—that Dr. Sugrue identifies significant “disparities in education, homeownership, and household income” between Blacks and Latinos as compared to Whites. In every aspect of life that bears on the totality factors, Black and Latino Staten Islanders are significantly disadvantaged as compared to Whites. *See, e.g.*, Sugrue at 14–35 (identifying disparities in housing, education, income, and voting); *see also id.* ¶ 79 & fig.9 (nearly 77 percent of Whites on Staten Island are homeowners, but less than 36 percent of Blacks and less than 44 percent of Latinos are homeowners); Borelli at 44 (showing Blacks and Latinos have incomes of less than two-thirds that of Whites); *id.*, tbls. 4–5 (demonstrating that, in 2022, White voter registration was 15 points higher than Latino voter registration and 9 points higher than Black

voter registration; and White turnout was almost 20 points higher than Latino turnout and 19 points higher than Black turnout; with similar disparities existing across all of the years of data presented).

Intervenors' primary rebuttal is that "significant progress has [been] made" in these areas. Doc. 115 at 31. But Mr. Borelli's own data belies this claim and confirms the more salient point: that there remain significant gaps between Blacks and Latinos and Whites along all of these socioeconomic metrics on Staten Island—disparities that diminish Black and Latino voters' ability to effectively participate in political activity. *See, e.g.*, Borelli, tbls. 38–39 (showing that as of 2024, there is a greater than 28-point gap between the percentage of Black Staten Islanders with a college degree and White Staten Islanders with a college degree; and for Latino Staten Islanders the gap is more than 47 points). And Intervenors' claims of progress are not supported by Mr. Borelli's data. For example, the gaps in college completion rates for Blacks and Latinos in Staten Island *increased* by 3.2 points and 2.3 points for each group respectively from 2015 to 2024. *See* Borelli, tbls. 38–39. The same is true of the disparities in high school graduation rates between these groups between 2015 and 2020. *See id.* Because "[e]ducational attainment is centrally related to groups' ability to participate in the political process and turn out to vote," Sugrue ¶ 26, Black and Latino Staten Islanders' educational disadvantage negatively impacts their ability to participate in the political process.

Intervenors' claim that Staten Island "has a homeownership rate more than two times greater than New York City's average," Doc. 115 at 31, is a non-sequitur. The relevant fact for purposes of the totality of the circumstances analysis is that Blacks and Latinos face 41 percent and 33 percent gaps in homeownership rates, respectively, compared to their White counterparts on Staten Island. Sugrue ¶ 79 & fig.9. As Dr. Sugrue reports, "[t]here is a broad consensus among scholars of citizen participation and voter behavior that there is a strong positive relationship

between rates of homeownership, political engagement, and voter turnout.” Sugrue Reply ¶ 35. Accordingly, these “[d]isparities in homeownership . . . on Staten Island have serious implications for the differential involvement of Blacks, Latinos, and whites in the political process.” *Id.*

Additionally, Mr. Borelli’s claims about the success of Black and Latino candidates being elected to office on Staten Island are exaggerated and in several places, factually incorrect.⁸ In its entire history, Staten Island has only had two Black city council members, a single Black representative to serve in the State Assembly, and Representative Nicole Malliotakis—decidedly *not* the candidate of choice for Black and Latino Staten Islanders—is the only Latina candidate ever elected in CD-11. Sugrue Reply ¶ 48. Both city council members have been elected to represent the North Shore, which is where Black and Latino voters are undisputably concentrated. *Id.*

Finally, despite decrying the supposed lack of examples of racial appeals in congressional campaigns on Staten Island, *see* Borelli at 52–53, Mr. Borelli’s report cites to an article that provides an example of a racial appeal involving the Young Leaders of Staten Island—a community organization founded in the wake of Eric Garner’s killing—in the 2020 election in CD-11. *See id.* at 48. The article reports that “[f]ootage of [a] peaceful march [organized by the Young Leaders]—interspersed with doctored images of police cars ablaze” formed “the centerpiece of an attack ad touting Assemblymember Nicole Malliotakis and trashing Rep. Max

⁸ For example, Mr. Borelli incorrectly reports that Staten Island has elected one Latino and two Black judges. *See* Borelli at 30 (reporting that Staten Islanders “elect[ed]” “[t]he Honorable Anne Thompson, a Black woman; the Honorable Tashanna Golden, a Black woman; [and] the Honorable Raymond Rodriguez, a Hispanic man”). In truth, Judge Ann Thompson, who ran in an uncontested race in 2022, is the only Black or Latino person ever elected to the bench on Staten Island. Sugrue Reply ¶ 49.

Rose.”⁹ “Linking candidates to Black criminality” as the advertisement does, “is a common strategy in electoral racial appeals.” Sugrue Reply ¶ 41. Indeed, “[c]ontrary to how they were depicted in the advertisements, the Young Leaders called for better police-community relations, opposed calls to defund the police,” *id.*, and aimed to “increase voter participation among the North Shore[of Staten Island]’s Black and brown residents.” Michel, *Anti-Racism Marches*.

In sum, Intervenors fail to offer any meaningful counter to Petitioners’ overwhelming evidence offered in support of the totality of the circumstances factors. The Court should find that the totality of the circumstances factors have been met.

III. Petitioners’ Illustrative Map demonstrates that the racial vote dilution in CD-11 can be remedied.

In their opening brief, along with the supporting expert report of expert demographer William Cooper, Petitioners offered an alternative configuration of CD-11 that would remedy the unconstitutional racial vote dilution and provide Black and Latino Staten Islanders “equitable access to fully participate in the electoral process.” *Clarke*, 237 A.D.3d at 39 (quoting N.Y. Elec. Law § 17-206(5)(a)). The Illustrative Map effectively eliminates racially polarized voting in CD-11, allows the significant population of Black and Latino voters to form an electoral coalition with crossover White voters to elect their candidate of choice, and complies with traditional redistricting criteria. Cooper ¶¶ 28–35; Palmer ¶¶ 21–26. The Illustrative Map is submitted for the sole purpose of showing that the racial vote dilution in CD-11 can be remedied. If this Court finds that the current configuration of CD-11 violates the Constitution, then the Legislature “shall have a full and reasonable opportunity to correct the law’s legal infirmities.” N.Y. Const. art. III, § 5.

⁹ Clifford Michel, *Their Anti-Racism Marches Were Twisted in a \$4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote* (Nov. 22, 2020), available at <https://www.thecity.nyc/2020/11/22/anti-racism-marches-young-leaders-of-staten-island-voter-registration/> (hereinafter “Michel, *Antiracism Marches*”), cited in Borelli at 48.

Respondents and Intervenors attack the Illustrative Map, but their arguments come up short. The Illustrative Map complies with the Constitution's other redistricting criteria and racial considerations do not predominate vis-à-vis those criteria. Nor is the map driven by partisan intent.

A. The Illustrative Map complies with the Constitution's redistricting criteria.

Respondents take aim at the Illustrative Map's adherence to two redistricting criteria set forth in the State Constitution—compactness and respect for communities of interest. *See* N.Y. Const. art. III, § 4(c)(4)–(5). For the reasons Petitioners explained in their opening memorandum (at 34–39), the Illustrative Map satisfies both criteria. Respondents' arguments to the contrary are meritless.

Compactness. Respondents first contend that the Illustrative Map is insufficiently compact, Doc. 122 at 29–31, and Intervenors (quite briefly) agree, Doc. 115 at 34. For several reasons, their arguments on compactness cannot disqualify the Illustrative Map as one possible remedy for the vote dilution Petitioners have proven here.

Respondents, Intervenors, and their respective experts—Thomas Bryan and Dr. Sean Trende—object that the Illustrative Map scores lower on compactness measures than the 2024 map. But this compactness score difference between the two maps principally stems from the longer stretch of uninterrupted (and uninhabited) water between Staten Island and Manhattan, compared to that between Staten Island and Brooklyn—even though both the Staten Island and Manhattan segments of the Illustrative Map are significantly compact on land. Cooper ¶¶ 54–56. By Respondents' and Intervenors' telling, this context is irrelevant, and the additional four miles of uninhabited water separating Staten Island from Manhattan, as compared to Brooklyn, is enough to “flunk compactness.” Doc. 122 at 29.

Respondents' and Intervenors' formalistic approach to assessing the Illustrative Map's compactness does not render the map improper. As Petitioners' expert demographer, Mr. Cooper,

explains, “[t]here is no bright line rule about what constitutes a compact district.” Cooper Reply ¶ 10. The Court of Appeals has recognized the same, particularly given New York’s “irregular boundaries, its islands, rivers, lakes and other geographical features,” which are “not susceptible of division into circular planes or squares.” *See Matter of Schneider v. Rockefeller*, 31 N.Y.2d 420, 430 (1972). Though lower than the current CD-11, the Illustrative Map’s compactness scores are still “within the norm in New York and in the nation.” Cooper Reply ¶ 10. Petitioners need only show that the Illustrative Map is as compact as practicable while correcting minority vote dilution. *See Bush v. Vera*, 517 U.S. 952, 977 (1996) (rejecting as “impossibly stringent” a requirement that a district drawn to remedy vote dilution have the “least possible amount of irregularity in shape”); *see also LULAC*, 548 U.S. at 494 (Roberts, C.J., dissenting).

Moreover, neither Respondents nor Intervenors offer a persuasive reason why the Court should discount the unique geographical context of *any* Staten Island congressional district. Because the Island’s population is too small to constitute its own congressional district, any district that includes Staten Island must necessarily extend across a body of water to another borough. Any congressional district encompassing Staten Island, therefore, will necessarily be at least somewhat oddly shaped. And the basic configuration Petitioners propose has both historical and contemporary precedent—Staten Island and Manhattan were joined in a congressional district prior to the 1980 census, Cooper ¶ 40, fig. 7, and they are currently joined in Assembly District 61, *id.* ¶ 39, Cooper Reply ¶ 14.

On this score, the only differences between joining Staten Island with Manhattan, instead of with Brooklyn, are (a) four additional miles of uninhabited water; and (b) the available method of transportation between the boroughs. While Mr. Bryan attempts to minimize the ferry’s role in connecting Staten Island with Manhattan, the Staten Island ferry has been a mainstay on the Island

since the early nineteenth century. On average, the ferry transports 45,000 people between the boroughs every day. Cooper Reply ¶ 13. Mr. Bryan’s report also upsells the contiguity between Staten Island and Brooklyn across the Verrazzano-Narrows Bridge with a misleading account of the respective commutes between boroughs. It is true that the Staten Island ferry ride takes 25 minutes, as compared to a 10-minute trip over the bridge, *without traffic*. Bryan ¶ 128. But for at least six hours of the day when New Yorkers are actively commuting between the boroughs, there is indeed heavy traffic over the bridge—and the Staten Island ferry is a recommended alternative route.¹⁰

In short, the Illustrative Map complies with the prohibition against racial vote dilution and is as compact as is practicable, particularly under the unique geographic realities. And it is perfectly appropriate for the Court—and ultimately the Legislature—to take those circumstances into account. *Cf. Schneider*, 31 N.Y.2d at 430 (“[T]he constitutional requirement of compactness is peripheral in its thrust, forbidding a complete departure, yet leaving to the determination and discretion of the Legislature the degree of compactness which is possible in the total representation picture.”).

Communities of Interest. Respondents alone contend that the Illustrative Map “disserves the Asian community” by “ballooning the Asian population in CD-10,” “slashing it in CD-11,” and “reattaching Chinatown to distant, demographically dissimilar Brooklyn neighborhoods.” Doc. 122 at 31–32 (citing Bryan ¶ 28). Respondents and Mr. Bryan overlook that in the 2024 Map, Chinatown is *already* joined with Sunset Park in Brooklyn. *See* Cooper ¶ 28, fig.1 (depicting 2024 map). Respondents and Mr. Bryan further disregard entirely the substantial evidence that

¹⁰ Traffic on the Verrazano-Narrows Bridge, <https://www.verrazano-narrows-bridge.com/traffic> (last accessed Dec. 18, 2025).

advocates from within the Chinese-American community presented to the IRC, and which Petitioners recounted in their opening memorandum (at 36–38), urging the Commission *not* to join Staten Island with the Brooklyn neighborhoods of Bensonhurst and Bath Beach. Petitioners’ Illustrative Map, unlike the current CD-11, unites Chinese-American communities of interest in Chinatown, Sunset Park, Bensonhurst, and Bath Beach.

B. The Illustrative Map is not a partisan gerrymander.

Respondents argue more broadly that, if adopted, Petitioners’ Illustrative Map would amount to an unconstitutional partisan gerrymander. This argument is without support. The Illustrative Map was not drawn to increase Democratic performance; it was drawn to increase Black and Latino voters’ opportunity to elect their candidates of choice by forming a coalition with White crossover voters while complying with traditional districting criteria.

To prevail on a partisan gerrymandering claim, “[a challenger bears] the burden of proving beyond a reasonable doubt that [a] congressional district[] [was] drawn with a particular impermissible intent or motive—that is, to ‘discourage competition’ or to ‘favor[] or disfavor[] incumbents or other particular candidates or political parties.’” *Harkenrider*, 38 N.Y.3d at 518 (quoting N.Y. Const. art. III, § 4). And “[s]uch invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results.” *Id.* In *Harkenrider*, for example, “invidious partisan purpose” was inferred from “evidence of the largely one-party process used to enact the 2022 congressional map, a comparison of the 2022 congressional map to the 2012 congressional map,” and expert testimony that the map “was drawn to discourage competition.” *Id.* The Illustrative Map presents none of those circumstances.

Respondents’ argument that the Illustrative Map is a partisan gerrymander turns *Harkenrider* on its head. In that case, the Court invalidated the 2022 map where evidence

demonstrated that it “was drawn to discourage competition,” and the “State respondents’ experts . . . concededly did not take into account the reduction in competitive districts.” *Id.* at 520. The Illustrative Map, meanwhile, *increases* competition in CD-11, creating what Respondents themselves characterize as a “toss-up” district. Doc. 122 at 27. Ignoring *Harkenrider* entirely, Respondents counter that “Article III forbids drawing districts to encourage . . . competition.” *Id.* That does not accurately reflect the law. *See* N.Y. Const. art. III, § 4(c)(1)(5).

Respondents are left to argue that the population shifts between CD-11 in the 2024 map (a) are “inconsistent with a minority-protection remedy,” Doc. 122 at 28; and (b) “degrade[] compactness and communities of interest.” *Id.* at 29. For the reasons already explained, *supra* § III.A, the Illustrative Map respects traditional districting criteria, including compactness and communities of interest. And the argument that the proposed changes to CD-11’s population “are inconsistent with a bona fide minority-protection remedy,” Doc. 122 at 28, entirely ignores that the remedy Petitioners propose is a district that would provide the substantial Black and Latino voting population already within Staten Island an equal opportunity to elect their candidates of choice. The Black and Latino voting-age population in CD-11 already exceeded 20 percent, and under the Illustrative Map it climbs to approximately 25%. Cooper ¶ 50, fig.9; Cooper Reply ¶ 7, fig.9. This population is both substantial and influential, and it is sufficient to elect candidates of choice with the assistance of White crossover voters. This type of district has been described as one that can “diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal,” *Bartlett*, 556 U.S. at 23.

Trimmed of its misplaced criticisms of the Illustrative Map’s adherence to traditional redistricting principles, *see supra* § III.A, Respondents’ partisan-gerrymandering argument boils down to little more than a complaint that remedying racial vote dilution here would also tilt CD-

11's partisan balance. Although "[r]ace and party are fundamentally linked in American politics[,] the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting." Palmer Reply ¶ 4. And it cannot be the case that the Constitution's partisan-gerrymandering prohibition precludes otherwise necessary remedies for minority vote dilution that the Constitution *also* prohibits.

C. The Illustrative Map is not a racial gerrymander.

Intervenors take a different tack, arguing instead that the Illustrative Map, if enacted, would constitute an unconstitutional *racial* gerrymander. According to Intervenors, the Illustrative Map would be subject to strict scrutiny review because Petitioners have presented it with the "goal of giving Black and Latino voters the benefit of increased electoral 'influence' than under the prior map." Doc. 115 at 33. For that reason, and that reason alone, Intervenors insist the Court must conclude that the Equal Protection Clause would prohibit the Legislature from adopting the Illustrative Map on remand. As explained, the Legislature is not required to adopt the Illustrative Map on remand—only a map that remedies the unlawful vote dilution and "that complies with traditional redistricting criteria." *See* Doc. 1 at 28, § B. But in any event, well-settled precedent forecloses Intervenors' simplistic approach.

Intervenors' argument that the Illustrative Map would trigger strict scrutiny review flouts decades of precedent and disregards the record before the Court. The Supreme Court has held that "[s]trict scrutiny does not apply . . . to all cases of intentional creation of" minority opportunity districts. *Vera*, 517 U.S. at 958 (emphasis added). Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Id.* (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). Race "must be 'the predominant factor motivating the [] [redistricting] decision.'" *Id.* (quoting *Miller*, 515 U.S. at 916). But because "the decision to create a majority-minority district . . . is merely one of several essential ingredients" in

a holistic racial predominance analysis, *see Vera*, 517 U.S. at 962, a challenger cannot rely exclusively on the allegation that a remedial district was drawn to increase a minority group's ability to elect candidates of their choice in order to demonstrate that race predominated. The Supreme Court has continually reaffirmed that principle. *See e.g., Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017) ("the use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's districting decision.") (cleaned up).

Even more to the point, the Illustrative Map does not rely on "the use of an express racial target." *Bethune-Hill*, 580 U.S. at 192. The Supreme Court has recognized that districts like the one presented in the Illustrative Map "*diminish* the significance and influence of race by encouraging minority and majority voters to work together toward a common goal," *Bartlett*, 556 U.S. at 23 (emphasis added). Moreover, as Petitioners set out in detail in their opening brief (at 33–39), and as Mr. Cooper detailed in his report, Cooper ¶¶ 52–63, the Illustrative Map respects the other redistricting criteria in Article III, § 4, and indeed does a better job at preserving existing communities of interest than the 2024 map, *see* Doc. 63 at 35–39. The record before the Court is devoid of evidence that race impermissibly predominates in the Illustrative Map.

Intervenors' terse response that the Illustrative Map "plainly does not" satisfy traditional redistricting criteria fails for all the same reasons as Respondents' arguments, detailed above. *Supra* § III.A. Intervenors' additional point that the Illustrative Map "disregards communities of interest" because "Manhattan's largely White population does not have much in common with Staten Island's diverse community" is unsupported. Doc. 115 at 34. To reiterate, the Staten Island

ferry carries *tens of thousands* of people between the boroughs every single day. Cooper Reply ¶ 13. Moreover, Article III, § 4 does not require new congressional districts to *create* communities of interest. Put another way, the absence of a community of interest does not mean a map should *fail*. Intervenors' argument is particularly perplexing in light of testimony before the IRC making clear that there was no community of interest between Staten Island and the neighborhoods in Brooklyn with which the Island is currently joined—evidence Intervenors ignore entirely. *See* Doc. 63 at 35–39 (discussing Chinese American community of interest). For the reasons already explained, the Illustrative Map does a better job unifying communities of interest than the 2024 map, further undercutting Intervenors' claim of racial predominance.

Even if strict scrutiny were to apply, the Illustrative Map would meet that standard. In order to avoid “competing hazards of liability” under the Equal Protection Clause and states' obligation not to dilute minority voting strength, the Supreme Court has long “assumed that complying with the [federal] VRA is a compelling state interest,” and “a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has ‘good reasons’ for believing that its decision is necessary in order to comply with the VRA.” *Abbott*, 585 U.S. at 587. Intervenors respond that this rule applies only to the *federal* VRA, and the Supreme Court has never extended the presumption to state-level protections against minority vote dilution. This is a distinction without a difference. The Supreme Court has long made clear that states act well within their discretion to exceed the federal VRA's minimum protections. *Bartlett*, 556 U.S. at 24. And in *Clarke*, the Second Department expressly rejected the same argument Intervenors raise here: that vote-dilution standards which omit the first *Gingles* factor necessarily violate the Equal Protection Clause. *See* Doc. 115 at 37; *Clarke*, 237 A.D.3d at 37–38 (“[T]he NYVRA need not contain the first *Gingles* precondition . . . to survive a facial challenge to its constitutionality

under the Equal Protection Clause,” for the Supreme Court “has never said that the *Gingles* test was required by the constitution, as opposed to resulting from a statutory interpretation of section 2.”). Narrow tailoring will also be satisfied because a favorable ruling in this case necessarily demonstrates that the current boundaries of CD-11 result in unlawful vote dilution of Black and Latino voters in the region, and a remedy to comply with the State Constitution is required. *See Rose v. Sec’y*, 87 F.4th 469, 477 (11th Cir. 2023) (“In the context of [] single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-member districts to remove the plan’s dilutive effect.” (citing *LULAC*, 548 U.S. at 495 (Roberts, J., concurring))).

IV. Respondents’ and Intervenors’ argument that the NY VRA’s standards violate the U.S. Constitution and thus cannot be applied here, should be rejected.

Respondents and Intervenors further attack the Court’s reliance upon the NY VRA’s framework here by wrongly arguing that the NY VRA is unconstitutional on its face, *see* Doc. 122 at 22–26, or alternatively that compliance with it necessarily triggers strict scrutiny, *see* Doc. 115 at 32–34. Those arguments have been squarely rejected by the Second Department and should likewise be rejected here. *See Clarke*, 237 A.D.3d at 14 (rejecting challenge to NY VRA’s constitutionality under the Equal Protection Clause). First, Respondents and Intervenors claim that the NY VRA is subject to strict scrutiny because it relies on or is itself a racial classification. But that ignores binding precedent as to what constitutes a racial classification and is based on the false premise that the statute distributes benefits or burdens on the basis of individual racial classifications. *See, e.g., Crawford v. Bd. of Educ.*, 458 U.S. 527, 537 (1982). Like the Equal Protection Clause itself, and many other anti-discrimination laws, the NY VRA *precludes* discrimination on the basis of race and is race neutral, treating the claims of members of all racial groups the same.

Second, the NY VRA’s remedies do not require—and are not themselves—impermissible racial classifications that would always be subject to strict scrutiny. The statute provides race neutral remedies for vote dilution, including “new or revised . . . redistricting plans.” N.Y. Elec. Law § 17-206(5)(a)(iii). And the consideration of race in drawing a remedial districting plan does not, on its own, subject a plan to strict scrutiny. For “decades [the Supreme] Court and the lower federal courts . . . have authorized race-based redistricting as a remedy” to racial vote dilution under the Federal Voting Rights Act. But “[n]o court has ever suggested . . . that strict scrutiny applies to section 2” *Clarke*, 237 A.D.3d at 34 (quoting *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 682 (2006)). The same is true of remedies imposed under the NY VRA. Put simply, “strict scrutiny does not apply to all applications of the vote dilution provisions of the NYVRA.” *Id.* at 33. And even if the NY VRA were subject to strict scrutiny, it would survive because the interest in preventing racial vote dilution is a compelling state interest and the NY VRA is narrowly tailored to achieve that interest.

A. The NY VRA does not trigger strict scrutiny review.

The NY VRA is not itself a racial classification, nor does it require such classifications, so it is not subject to strict scrutiny. A “racial classification” that triggers strict scrutiny requires “unequal treatment” on the basis of race. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 224 (1995). A “law classifies based on [a suspect ground] for equal protection purposes when it prescribes one rule for [one group], and another for [a different group].” *United States v. Skrametti*, 605 U.S. ___, 145 S. Ct. 1816, 1856–57 (2025) (Alito, J., concurring in part and concurring in the judgment) (internal quotation marks and alterations omitted). By contrast, where a law “neither says nor implies that persons are to be treated differently on account of their race,” it is “not . . . a racial classification.” *Crawford*, 458 U.S. at 537. Indeed, it is “well settled” that a statute “designed ‘to eliminate racial disparities through race-neutral means’” does not “distribute[] burdens or

benefits on the basis of individual racial classifications.” *Clarke*, 237 A.D.3d at 32 (quoting *Higginson v. Becerra*, 786 F. App’x 705, 706 (9th Cir. 2019)).

The NY VRA does not treat members of different racial groups unequally, nor does it provide different rules for members of different racial groups. The statute is race neutral and “allow[s] members of all racial groups, including white voters, to bring vote dilution claims.” *Clarke*, 237 A.D.3d at 33; *see also Coads*, 86 Misc. 3d at 649–50 (concluding defendants’ facial challenge to the NY VRA failed because “[o]n its face, the NYVRA requires equal opportunity in electoral systems; it does not require race-based preference to confer a privilege upon a group of voters”). Like other anti-discrimination laws, the statute, by necessity, references race, but “[t]he Court has never suggested that mere reference to [a suspect classification] is sufficient to trigger heightened scrutiny.” *Skrmetti*, 145 S. Ct. at 1829.

This is consistent with the conclusions of all other courts that have considered the constitutionality of similar state VRAs.¹¹ The NY VRA was “modeled after very similar laws enacted in California and Washington.” *Clarke*, 237 A.D.3d at 22 (citing Cal. Elec. Code § 14025 *et seq.*; Wash. Rev. Code 29A.92.005 *et seq.*). And “[i]n upholding the California and Washington vote dilution statutes, courts have held that they were neither subject to strict scrutiny nor facially in violation of the Equal Protection Clause.” *Id.* Instead, they found that “[t]he creation of . . . liability [for vote dilution] does not constitute the imposition of a burden or conferral of a benefit on the basis of a racial classification.” *Sanchez*, 145 Cal. App. 4th at 681 (discussing California’s

¹¹ Legislatures across the country have exercised their inherent authority to broaden protections for voters beyond those guaranteed by federal law by enacting state-level Voting Rights Acts. *See* Cal. Elec. Code § 14025 *et seq.*; Conn. Gen. Stat. § 9-368i *et seq.*; Or. Rev. Stat. § 255.400 *et seq.*; Va. Code § 24.2-125 *et seq.*; Wash. Rev. Code § 29A.92 *et seq.* New York is no exception. *See Clarke*, 237 A.D.3d at 32 (noting that the NYVRA was enacted pursuant to the state’s “general police power” and “broad powers to determine the conditions under which the right of suffrage may be exercised”) (citations omitted).

VRA); *see also Portugal v Franklin County*, 1 Wash 3d 629, 647 (2023), *cert denied*, 144 S. Ct. 1343 (2024) (addressing Washington’s VRA). Because “there is no basis for imposing a heightened level of scrutiny,” the NY VRA is subject only to “rational basis” review. *Clarke*, 237 A.D.3d at 32–33 (quoting *Golden v. Clark*, 76 N.Y.2d 618, 624 (1990)).¹²

Respondents next erroneously claim that the NY VRA allegedly “distributes burdens or benefits on the basis of individual racial classifications” because it requires “inherently racial inquiries,” including “whether voting is racially polarized” and whether a group that is alleging that its votes have been diluted are able to “elect candidates of their choice.” Doc. 122 at 23 (internal citation omitted). But they provide no support for the proposition that either inquiry somehow distributes benefits or burdens based on race. Nor is that correct. Racially polarized voting analyses simply analyze different racial groups’ voting behavior and in doing so, do not “prescribe[] one rule for [one racial group], and another for [other racial groups].” *Skrmetti*, 145 S. Ct. at 1856–57. The same is true of the examination of whether voters of a particular race have the opportunity to elect candidates of their choice—such examination provides no benefits or burdens based on race. If the NY VRA were “subject to strict scrutiny because of its reference to race, so would every law be that creates liability for race-based harm, including the F[ederal] VRA” *Sanchez*, 145 Cal. App. 4th at 681.

The fact that the NY VRA differs from the federal VRA is also not a reason to subject it to strict scrutiny. The federal VRA is not the exclusive tool for remedying racial vote dilution. To the

¹² The NY VRA easily satisfies rational basis review. In enacting the NY VRA, the Legislature found that “voter suppression is on the rise, vote dilution remains prevalent” and the state of New York “has an extensive history of discrimination . . . in voting.” Introductor’s Mem. in Support, in Bill Jacket for Ch. 226 (2022), at 8. Petitioners have documented some of this history of discrimination before this Court as well, *see supra* § II.B. The NY VRA’s prohibition against racial vote dilution plainly advances the State’s interest in ending or remedying racial discrimination in voting.

contrary, both the U.S. Supreme Court and New York courts have recognized that states are free to extend civil rights protections of voters beyond the federal baseline established by the VRA. *See, e.g., Bartlett*, 556 U.S. at 24 (“States that wish to draw crossover districts are free to do so where no other prohibition exists.”); *Coads*, 86 Misc. 3d at 644 (“There is no rule that a state legislature can never extend civil rights beyond what Congress has provided.”). The “NYVRA, like the California and Washington [VRAs], . . . does not require the first *Gingles* precondition, i.e., that the minority group must be sufficiently large and geographically compact to constitute a majority in a reasonably configured district.” *Clarke*, 237 A.D.3d at 25. Indeed, “[t]he United States Supreme Court has never said that the *Gingles* test was required by the Constitution, as opposed to resulting from a statutory interpretation of section 2 of the FVRA.” *Id.* at 37–38. And eliminating the first *Gingles* precondition does not impose a racial classification. “[T]hat the need to prove the possibility of creating a geographically compact majority-minority district is eliminated . . . do[es] not introduce a racial classification or a burden on the right to vote.” *Sanchez*, 145 Cal. App. 4th at 680. Accordingly, this difference provides no reason to “subject [the statute] to strict scrutiny” and “[o]nly rational-basis review applies.” *Id.*

B. The remedies available under the NY VRA do not require strict scrutiny.

Nor do the NY VRA’s remedies—including the imposition of “new or revised districting or redistricting plans,” N.Y. Elec. Law § 17-206(5)(a)(iii)—rely on impermissible racial classifications that would subject the statute to strict scrutiny. Intervenor broadly claim that the “redrawing of the 11th Congressional District” in order to remedy racial vote dilution “triggers strict-scrutiny” because it “would mandate the placement of voters either within or without the 11th Congressional District predominantly (and, indeed, solely) to give voters lumped together by race the benefit of a greater chance of electing their preferred candidates” Doc. 115 at 32. Under this theory, however, any time a court ordered the creation of a majority-minority district

as a remedy for a Section 2 violation, such a remedy would also be subject to strict scrutiny because, by definition, it would also “give voters lumped together by race the benefit of a greater chance of electing their preferred candidates” *Id.* But “[s]trict scrutiny *does not apply* . . . to all cases of intentional creation of majority-minority districts.” *Vera*, 517 U.S. at 958 (emphasis added). Instead, “[f]or strict scrutiny to apply,” a challenger “must prove that other, legitimate districting principles were ‘subordinated’ to race.” *Id.* (quoting *Miller*, 515 U.S. at 916); *see also e.g., Bethune-Hill*, 580 U.S. at 192 (“[T]he use of an express racial target” is just one factor courts consider as part of a “holistic analysis” of racial predominance.). This makes sense because, in order to grant a remedy in the first place, a court must first determine that members of minority group are being restricted in their ability to elect candidates of their choice. *See* 52 U.S.C. § 10301(b) (requiring a showing that member of the minority group had “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice”). As such, the creation of such a district serves to remedy discrimination and equalize opportunity, rather than give preference to individual voters.

Even if the NY VRA were subject to strict scrutiny, it would pass muster because it is narrowly tailored to achieve a compelling state interest. The state has a “compelling governmental interest[]” in “eliminat[ing] discrimination against . . . minorities.” *N.Y. State Club Ass’n v. City of New York*, 69 N.Y.2d 211, 223 (1987), *aff’d*, 487 U.S. 1 (1988). And the Supreme Court has made clear that racial discrimination in voting, specifically, is “an insidious and pervasive evil” that requires “stern[] and [] elaborate measures” to fight it. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966). The NY VRA clearly serves this interest by establishing standards to prevent the “denial or abridgement of the voting rights of members [of protected classes].” N.Y. Elec. Law § 17-200; *see also Bartlett*, 556 U.S. at 24 (“States that wish to draw crossover districts are free to

do so where no other prohibition exists.”); *Coads*, 86 Misc. 3d at 644 (“There is no rule that a state legislature can never extend civil rights beyond what Congress has provided.”).

The NY VRA is also narrowly tailored to achieve that interest. A comparison to the Federal Voting Rights Act is instructive here as well. Although the Court has not subjected the Federal VRA to strict scrutiny, it has held that “compliance with § 2 of the Voting Rights Act” would satisfy the narrow tailoring prong of strict scrutiny, even if race predominated in the drawing of the district lines at issue. *See LULAC*, 548 U.S. at 475. That the first *Gingles* precondition is not required under the NY VRA does not deprive the statute of narrow tailoring. Under Section 2, “[t]he first [*Gingles* precondition] . . . is ‘needed to establish that the minority has the potential to elect a representative of its own choice’” in the newly created district. *Allen v. Milligan*, 599 U.S. 1, 18 (2023) (quoting *Grove v. Emison*, 507 U.S. 25, 40 (1993)). That same requirement is satisfied under the NY VRA through a petitioner’s demonstration that “there is an alternative practice that would allow the minority group to ‘have equitable access to fully participate in the electoral process.’” *Clarke*, 237 A.D.3d at 39; *see also id.* at 37–38 (The “Supreme Court has never said that [*Gingles* factor 1] was required by the constitution, as opposed to resulting from a statutory interpretation of section 2.”). Petitioners make that demonstration in this case through their Illustrative Map.¹³

¹³ Respondents also contend that Petitioners’ theory here has “consequences” that defeat narrow tailoring. But their concerns are vastly overblown. *First*, the long-established vote dilution standards Petitioners discuss above, *supra* § I, are tailored to ferreting out and correcting minority vote dilution that in fact exists. *Second*, Respondents ignore that alongside the prohibition on diluting minority vote dilution, the State Constitution also requires compliance with other traditional redistricting factors, such as contiguity and compactness. The vote dilution provision offers a remedy only if a district that complies with the other redistricting criteria can be drawn. And *third*, the Court need not decide on a “lower bound on the proportion of minority voters needed” within a district to successfully state a claim for vote dilution to decide this case. *See* Doc. 122 at 25 (citing *Alford* at 15). Black and Latino voters would comprise approximately a quarter of the Illustrative Map’s citizen voting age population. *Cooper* ¶ 50, fig. 9; *Cooper Reply* ¶ 7. This

V. The Elections Clause does not bar Petitioners' claim.

Nothing in the Elections Clause of the U.S. Constitution bars Petitioners' claim. The Elections Clause provides that each state Legislature shall "prescribe[]" "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," but reserves to Congress the right "at any time by Law [to] make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4.

Intervenors incorrectly allege that "granting Petitioners any remedy" here would require the court to "impermissibly 'add[] words' to the New York Constitution," purportedly exceeding the bounds of state court judicial review outlined in *Moore v. Harper*, 600 U.S. 1 (2023). Doc. 115 at 39 (quoting *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004)). For the reasons explained *supra* § I.A, this is incorrect. Petitioners' request that this Court determine an appropriate standard under which to evaluate a vote dilution claim under the New York Constitution is not only unremarkable—it is consistent with a core and longstanding function of this Court, which is to interpret state constitutional provisions and determine whether they have been violated. *See People v. LaValle*, 3 N.Y.3d 88 (2004) ("It is the responsibility of the judiciary to safeguard the rights afforded under our State Constitution."); accord *People ex rel. Adsit v. Allen*, 42 N.Y. 378 (1870) ("The constitution, as well as the statutes, is the law of this State, and it is the duty of courts to decide upon and construe the former, as well as the latter."). Applying the NY VA standards to adjudicate Petitioners' claim would not exceed the bounds of ordinary judicial review or usurp the legislature's proper role, as Intervenors suggest. *See supra* § I.A. Rather, it would provide a workable standard for the Court to determine liability that is consistent with Article III's mandate

population is substantial and influential, and electoral success in the new district would require that Black and Latino voters continue voting cohesively in favor of a shared candidate of choice.

to “protect minority voting rights,” *see* Mem. in Supp. of S.-Assemb. Con. Res. No. A2086 (“A02086 Memo”), 2013-14 Reg. Sess. (N.Y. rev. Jan. 11, 2013). It would further effectuate the State’s interest in applying a uniform vote dilution standard across all voting districts. Doc. 63 at 18.

VI. Laches does not bar the relief Petitioners seek.

Intervenors’ Hail Mary argument that Petitioners’ constitutional claim is barred by laches also fails. As Intervenors acknowledge, establishing laches requires demonstrating that Petitioners have engaged in both a “lengthy neglect or omission to assert a right” *and* “prejudice to an adverse party.” *Saratoga Cnty. Chamber of Com, Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003). Prejudice is the “essential element” of a laches defense under New York law. *Amedure v. State*, 210 A.D.3d 1134, 1136 (2022) (quotation omitted). Indeed, mere “delay in bringing a proceeding, without a showing of prejudice, does not constitute laches. To preclude a claim on the ground of laches, there must be a showing not only of a delay, but also an injury, change of position, or other disadvantage resulting from such delay.” *Haberman v. Haberman*, 216 A.D.2d 525, 527 (2nd Dept. 1995); *see also Taberski v. Taberski*, 197 AD.3d 871, 873 (4th Dept. 2021) (“The mere lapse of time, without a showing of prejudice, will not sustain a defense of laches.” (quoting *Pataki*, 100 N.Y.2d at 816)). Intervenors note this requirement at the outset of their laches section but then fail to return to it—they do not suggest, never mind show, any prejudice from the timing of this suit. That alone defeats their laches assertion. *See Kuhn v. Town of Johnstown*, 248 A.D.2d 828, 831 (3d Dept. 1998) (rejecting laches defense where “the record fails to show any substantial prejudice”).¹⁴

¹⁴ Nor would any assertion of prejudice be possible, as New York’s election calendar permits timely relief here. Indeed, *Harkenrider* was filed substantially later in the election cycle in this case, yet still resolved in time to change maps for the 2022 election. For the same reason, *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1228–30 (3d Dep’t

Setting aside the lack of prejudice, there has also been no unreasonable delay here. The map Petitioners challenge was not enacted until February 28, 2024, and has only been in place for one election cycle. Further still, as the evidence here shows, Staten Island has grown increasingly racially diverse and—at the same time—voting has become increasingly racially polarized in CD-11. *See* Palmer ¶¶ 16–19, fig. 2. These evolving factual circumstances further undercut any laches claim. *See Garza v. Cnty. of Los Angeles*, 918 F.2d 763, 772 (9th Cir. 1990) (explaining laches was improper because “the injury [plaintiffs’] suffered . . . has been getting progressively worse” due to changes in district demographics).

And as other courts have recognized, laches cannot be properly invoked where—as here—plaintiffs are suffering an *ongoing* election-related injury and seek prospective relief. *See, e.g., id.* (concluding laches should not apply to challenge to district that had existed for four election cycles “because of the ongoing nature of the violation”); *Miller v. Bd. of Comm’rs of Miller Cnty.*, 45 F. Supp. 2d 1369, 1373 (M.D. Ga. 1998) (“The defense of laches does not apply to voting rights actions wherein aggrieved voters seek permanent injunctive relief insofar as the electoral system in dispute has produced a recent injury or presents an ongoing injury to the voters.”); *League of Women Voters of Mich. v. Benson*, 373 F. Supp. 3d 867, 908–10 (E.D. Mich.), *rev’d on other grounds sub nom., Chatfield v. League of Women Voters of Mich.*, 589 U.S. 1031 (2019) (holding laches does not apply as a matter of law to claims for injunction against Michigan’s congressional map). That disfavor for applying laches to ongoing injuries makes sense. Laches operates to preclude stale claims, *see Ambrogio & Caterina Giannone Fam. Ltd. P’ship v. 7th Heaven USA Inc.*, 954 N.Y.S.2d 757 (N.Y. Dist. Ct. 2012), not to moot continuing violations or prevent

2022), is irrelevant. There, petitioner challenged certification of Assembly ballots *after* the certification deadline—an obvious source of prejudice to the State Board. In contrast, the relevant state election deadlines here are in the future, rather than already past. *See* Doc. 63 at 39.

prospective injunctive relief for continuing injuries. *Transport Workers Union of Am., AFL-CIO v. N.Y. City Transit Auth.*, 341 F. Supp. 2d 432, 454 (S.D.N.Y. 2004). By definition, future harms are not stale. *See Ohio A. Philip Randolph Inst. v. Smith*, 335 F. Supp. 3d 988, 1002 (S.D. Ohio 2018).

CONCLUSION

For the reasons provided above, as well as in Petitioners' opening memorandum of law, NYSCEF Doc. 63, and supporting materials, the 2024 congressional plan unconstitutionally dilutes Black and Latino Staten Islanders' voting strength in CD-11. Petitioners therefore respectfully request that this Court issue an order declaring that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York Constitution; permanently enjoining Respondents from using the 2024 Congressional Map in any future elections; and remand to the Legislature for proceedings consistent with the Court's ruling.

Dated: December 18, 2025

Respectfully submitted,

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CERTIFICATIONS

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in the Parties' stipulation for 15,000 words for Petitioners' reply memorandum of law in support of the Petition and opposition to Respondents' and Intervenors' Motions to Dismiss. This memorandum of law contains 11,789 words, excluding parts of the document exempted by Rule 202.8-b(b).

I further certify that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within the submission.

/s/ Aria C. Branch