

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,

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,

-and-

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

Intervenors-Respondents.

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**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
INTERVENOR-RESPONDENTS' MOTION TO DISMISS**

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

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PRELIMINARY STATEMENT

As Intervenor-Respondents explained in the motion-to-dismiss portion of their Memorandum Of Law In Support Of The Motion To Dismiss And In Opposition To Petitioners' Motion For Judgment, this Court should dismiss Petitioners' claim for multiple independent reasons, including that Article III, Section 4 does not incorporate Petitioners' theory under the later-enacted New York Voting Rights Act ("NYVRA") and that the only remedy that Petitioners seek—changing the 11th Congressional District to alter the race-based election outcomes within that district—would violate the U.S. Constitution's Equal Protection Clause. Then, in the portion of their Memorandum Of Law addressing the Petition on the merits, Intervenor-Respondents argued that Petitioners' lawsuit failed under the NYVRA's standards, while making extensive arguments as to the relevant meaning of those standards and submitting multiple expert reports as to those standards. Under this Court's scheduling order, NYSCEF Doc. No.56, Intervenor-Respondents confine this Reply Memorandum to supporting their arguments for dismissal.

Now that Petitioners, the Governor,¹ and certain *amici* have weighed in, the proper disposition of this case is clear. It is beyond any serious dispute that Petitioners' *only* merits theory, that Article III, Section 4 of the New York Constitution time traveled to include the subsequently adopted standards from the NYVRA, is egregiously wrong. Even the Governor—who, remarkably, refuses to defend the very redistricting statute that she signed into law less than 22 months ago²—cannot bring herself to defend Petitioners' Article-III-Section-4-equals-NYVRA

¹ Intervenor-Respondents refer to Respondents Kathy Hochul, Andrea Stewart-Cousins, Carl E. Heastie, and Letitia James—who submitted a joint letter in response to the Petition, NYSCEF. Doc. No.95 ("Gov.Ltr.")—collectively as "the Governor."

² The Governor makes the risible suggestion that her unwillingness to defend the map that she signed into law stems from the fact she "did not have the evidence now submitted by Petitioners." Gov.Ltr.2-3 n.1. Nothing that Petitioners submitted would be surprising to a politician knowledgeable in New York's political geography and recent election results. The Governor is, instead, clearly torn between the utterly meritless nature of Petitioners' lawsuit and

theory, and two different sets of *amici* float different approaches. Petitioners, for their part, only meekly defend the only theory in their Petition, while telling this Court to come up with its own approach if it so desires. That request would violate the Due Process Clause and basic principles of fairness. Intervenor-Respondents submitted merits briefing and expert analysis on the only theory that Petitioners put forward: that Article III, Section 4 incorporates the NYVRA’s standards. To now pull a bait-and-switch—after submission of briefing and expert reports—and force the parties to litigate this case under one of the theories that *amici* have articulated or on some theory that this Court belatedly invents, at Petitioners’ urging, is a nonstarter. Any alternative theories under Article III, Section 4 have not even been vetted in adversarial briefing in this case, let alone had expert reports submitted in this Court tailored to their particularities. Petitioners chose to frame their belated lawsuit in the manner that they did, and if this Court rejects that framing—which even the Governor admits is wrong—that must be the end of this case.

All that said, if this Court does somehow conclude that the Petition survives the fatal defect described immediately above, it should still dismiss the Petition on any of the other three grounds that Intervenor-Respondents have developed, including that Petitioners’ only requested remedy is an unconstitutional racial gerrymander. Petitioners’ sole requested remedy requires the redrawing of the 11th Congressional District with the express goal of giving Black and Latino voters the benefit of an increased electoral “influence,” but there is no narrowly tailored, compelling justification for engaging in that race-based redistricting that would satisfy the applicable strict scrutiny review. While Petitioners argue that strict scrutiny does not apply because their proposed map does not rely on an express racial target and otherwise complies with traditional redistricting principles, this is clearly contrary to binding U.S. Supreme Court precedent. Specifically, under

her political promise to explore “every option to redraw [New York’s] congressional lines as soon as possible.” NYSCEF Doc. No.92 at 3–4 (citation omitted).

the U.S. Supreme Court’s case law, strict scrutiny applies whenever race is the sole—and, therefore, necessarily the “predominant”—factor that “motivat[ed] the [mapdrawer’s] decision,” *Cooper v. Harris*, 581 U.S. 285, 291 (2017) (citation omitted); *see also Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 402–03 (2022) (per curiam), and “could not be compromised,” *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citations omitted). That holds even if the race-based map at issue “respects traditional [redistricting] principles.” *Bethune-Hill*, 580 U.S. at 189.

This Court should dismiss the Petition.

ARGUMENT

I. The New York Constitution Does Not Incorporate The NYVRA’s Standards, Which Is Reason Enough To Dismiss The Petition

A. As Even The Governor Concedes, Article III, Section 4 Does Not Incorporate The NYVRA’s Standards

1. As Intervenor-Respondents explained, this Court should dismiss the Petition because Article III, Section 4 does not incorporate the NYVRA’s standards requiring a mapmaker to draw so-called “influence” districts if certain statutory criteria are met. NYSCEF. Doc. No.115 (“Int’r.Resp’t.Br.”) at 9–13. Article III, Section 4 was modeled after, and uses the same language as, Section 2 of the federal VRA, Int’r.Resp’t.Br.9–13, which the U.S. Supreme Court held does not require influence districts, *League of United Latin Am. Citizens v. Perry* (“LULAC”), 548 U.S. 399, 446 (2006) (plurality opinion). Well-settled principles of construction under New York law thus compel the Court to adopt the U.S. Supreme Court’s interpretation of the language used in Article III, Section 4. Int’r.Resp’t.Br.9–13; *see also In re Colo. Indep. Cong. Redistricting Comm’n*, 497 P.3d 493 (Colo. 2021) (interpreting a Colorado constitutional amendment consistent with the VRA because the General Assembly failed to define separately words used in the VRA). Petitioners’ only contrary argument as articulated in their Petition and supporting papers—that

Article III, Section 4 adopted in 2014 somehow incorporates the influence-district mandate of the NYVRA, a statute adopted eight years later—is egregiously, indefensibly wrong. Int’r.Rep’t.Br.15–20. Unlike the NYVRA, Article III, Section 4 says nothing about a minority group’s “ability to ‘influence outcomes,’” and instead, like Section 2 of the federal VRA, ensures only an “opportunity to participate.” Int’r.Resp’t.Br.17 (citation omitted). To accept Petitioners’ position, this Court would have to retroactively amend constitutional language adopted in 2014 to govern congressional districts to add statutory language enacted eight years later dealing with different jurisdictions—something it cannot do. Int’r.Resp’t.Br.16.

2. All of the submissions that the Court has received since Intervenor-Respondents filed their Motion to Dismiss confirm that the sole theory alleged in the Petition—that Article III, Section 4’s anti-vote-dilution mandate adopted in 2014 somehow incorporates the influence-district mandate of the NYVRA adopted in 2022—is a nonstarter. The Governor who signed the NYVRA and openly voiced her desire to redraw the 2024 Congressional Map refuses to endorse Petitioners’ theory, explaining that “the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or Legislative Districts” as it is “clearly limited to political subdivisions.” Gov.Ltr.2. And two different sets of *amici* have advanced new approaches. *See infra* Part I.B. In response, Petitioners contend that this Court is free to adopt any standard, while half-heartedly defending their own standard as the best one. But these eleventh-hour theories and Petitioners’ failure to defend meaningfully their theory that the NYVRA’s standards are somehow incorporated into Article III, Section 4 tells the Court all it needs to know and independently warrants dismissal, regardless of what other standard Article III, Section 4 can be held to incorporate in a later case, where those arguments are properly pleaded and developed.

Most obviously, and fatal to this lawsuit, Petitioners cannot explain how Article III, Section 4's 2014 language could possibly incorporate the NYVRA's standards adopted by the Legislature eight years later. When the Legislature adopted the NYVRA in 2022, the Legislature sought to guarantee citizens in local elections grouped together by race the "opportunity" to "elect candidates of their choice" *and* the ability to "*influence the outcome of elections.*" N.Y. Elec. Law § 17-206 (emphasis added). Article III, Section 4 does not use "influence" and guarantees *only* an equal "opportunity" "to participate in the political process" and "elect representatives of their choice" in congressional and state legislative elections. N.Y. Const. art. III, § 4. Under bedrock canons of construction, this Court cannot "add[] words" to a provision—especially not to a constitutional provision—"that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). Nor can the Court render the NYVRA's use of "influence" superfluous by interpreting Article III, Section 4's use of "opportunity" to guarantee voters' right to influence elections. *Columbia Mem'l Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022). Petitioners have no response to this dispositive, threshold interpretive problem. *See generally* NYSCEF Doc. No.154 ("Pet.Opp.").

To the extent that Petitioners try to respond to this devastating point, their argument is hard to even understand. Their position appears to be that "the NY VRA acts as a 'legislative interpretation' of the Constitution itself," and for this reason, Article III, Section 4 should be interpreted to incorporate the NYVRA's influence-district mandate. That is circular and wrong. Although a statute adopted in tandem with a constitutional amendment on the same subject may inform the Constitution's meaning because when the People voted for the amendment they can be expected to have had the statute in mind as informing how the amendment would operate, *see Harkenrider v. Hochul*, 38 N.Y.3d 494, 510–11 (2022), that is not even arguably the temporal sequence here. The People voted for Article III, Section 4 in 2014; the Legislature enacted the

NYVRA in 2022. Other than perhaps Marty McFly, no person who voted for Article III, Section 4 in 2014 could possibly have had the NYVRA's 2022 standards in mind. ***And that does not even account for the point that Article III, Section 4 uses materially different language than the NYVRA with respect to influence districts—a point that Petitioners never even attempt to address because they have no response.*** Again, Article III, Section 4 uses only “opportunity” without any reference to an ability to “influence” elections. N.Y. Const. art. III, § 4. The NYVRA, in stark contrast, specifically uses the word “influence.” N.Y. Elec. Law § 17-206. Petitioners provide no support for the contention that a materially different statute enacted eight years later can inform the interpretation of a constitutional provision.

Petitioners' repeated invocation of the NYVRA's statement of purpose, Pet.Opp.6–7, does not move the needle, as Intervenor-Respondents previously explained, Int'r.Resp't.Br.18. Again, the NYVRA's text—enacted eight years later—cannot constitutionally amend Article III, Section 4, regardless of what the NYVRA's statement of purpose says. Petitioners fail to provide any support for the contention that the policy of a later enacted statute can inform the Court's interpretation of a constitutional provision adopted eight years earlier, even after Intervenor-Respondents called them out for that failure, Int'r.Resp't.Br.18. In any event, that the Legislature enacted the NYVRA in “‘recognition [of] . . . the constitutional guarantee[] . . . against the denial or abridgment of voting rights' of racial minority groups,” Pet.Opp.7 (alteration in original and citation omitted), says nothing about whether Article III, Section 4 mandates minority influence districts. As Intervenor-Respondents pointed out, Int'r.Resp't.Br.18, interpreting Article III, Section 4 to be consistent with Section 2, upholds the guarantee “against the denial or abridgment of voting rights,” N.Y. Elec. Law § 17-200, because it ensures the rights of minority groups to “participate in the political process” and “elect representatives of their choice,” N.Y. Const. art.

III, § 4. Nothing in the NYVRA's statement of purpose, which makes no mention of influence, suggests otherwise.

Petitioners' citation of the *in pari materia* canon also does not support them. Pet.Opp.7–8. Intervenor-Respondents offer an interpretation of Article III, Section 4 that treats New York's voting laws cohesively. Under Intervenor-Respondents' reading, Article III, Section 4's language imposes certain standards on congressional and state legislative districts, mirroring the standards of Section 2. The NYVRA then takes it a step further for New York's political subdivision districts, utilizing distinct "influence" language to mandate the imposition of influence districts, in addition to constitutional requirements. There is no conflict.

Petitioners also are unsuccessful in attempting to refute Intervenor-Respondents' argument that Article III, Section 4 incorporates the standards of Section 2 of the VRA. To be clear, this Court need not resolve the question of what standard governs Article III, Section 4 claims as a general matter because, as explained, Petitioners rest their entire case on their utterly meritless Article-III-Section-4-equals-NYVRA theory. *See supra* pp.1–2. It is sufficient for this Court to hold that Petitioners' outlandish theory is wrong to dismiss this case. That said, Intervenor-Respondents' argument that Article III, Section 4 incorporates the standard from Section 2 of the VRA is mandatory under bedrock principles of New York constitutional interpretation. Both provisions guarantee racial and language minority groups the "opportunity" "to elect representatives of their choice," N.Y. Const. art. III, § 4(c)(1); 52 U.S.C. § 10301, which is the same language that the U.S. Supreme Court interpreted as not requiring the creation of influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.). That the Legislature utilized that identical, material language after the U.S. Supreme Court decided *LULAC* demonstrates the Legislature's

intention for these two provisions to be coterminous. *See Zakrewska v. New Sch.*, 14 N.Y.3d 469, 479 (2010). Petitioners' various arguments to the contrary are all wrong.

Although Petitioners strain to identify minor, irrelevant "textual differences" between Article III, Section 4 and VRA Section 2, Pet.Opp.5–6, Petitioners fail to confront the clear, pertinent textual parallels between Article III, Section 4 and Section 2 that Intervenor-Respondents drew in their Motion to Dismiss, Int'r.Resp't.Br.13–14. And the "textual differences" that Petitioners identify—in reality, a single difference—do not help Petitioners. Petitioners invoke Article III, Section 4's use of the word "groups" (in the plural) as opposed to "class" (in the singular) to support their argument. Pet.Opp.5–6. Thus, Petitioners note, Article III, Section 4 prohibits the dilution of "racial or minority language *groups*[']" ability to "elect representatives of *their* choice," N.Y. Const. art. III, § 4 (emphases added), while Section 2 prohibits the dilution of "members of a *class* of citizens[']" votes such that "*its* members have less opportunity than other[s]" "to elect representatives of *their* choice," 52 U.S.C. § 10301(b) (emphases added). This difference does not support Petitioners' contention that the New York Constitution, unlike Section 2, mandates the creation of influence districts. Like Section 2, *Article III, Section 4 makes no mention of the creation of "influence districts,"* and its use of the word "groups" as opposed to "class" does not somehow insert an influence-district mandate into this state-constitutional provision.

The Sixth Circuit's decision in *Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (en banc)—which Petitioners rely upon here, Pet.Opp.6—suggests that the textual difference between Article III, Section 4 and Section 2 is relevant only to the viability of *coalition* district claims, not the *influence* district claims at issue here. In *Nixon*, the plaintiffs brought a minority coalition claim under Section 2, contending that a particular district diluted African American and

Hispanics’ collective right to vote. *Nixon*, 76 F.3d at 1383. The Sixth Circuit concluded that Plaintiffs could not succeed because Section 2 does allow for “coalition suits.” *Id.* at 1386. The Sixth Circuit reasoned that Section 2 protects “members of *a class*,” and “[i]f Congress had intended to sanction coalition suits, the statute would read ‘participation by members of *the classes* of citizens.’” *Id.* Thus, *Nixon* considered only a completely distinct claim, saying nothing about influence claims—the sole claim alleged by Petitioners. And, if anything, *Nixon* supports Intervenor-Respondents’ argument here: Had the New York Legislature intended to mandate influence districts, Article III, Section 4 would say so. *Id.*

Petitioners then argue that this Court should not interpret Article III, Section 4 in line with the VRA, despite materially indistinguishable language, because that would introduce “redundancy and the will of New York voters in voting for them would be read out of the State Constitution.” Pet.Opp.6–7 (citing Gov.Ltr.3). As a threshold matter, interpreting Article III, Section 4 to mirror Section 2’s lack of an influence district mandate does not make this constitutional provision “redundan[t]” or a “legal nullity.” *Contra* Gov.Ltr.4. That is because the 2014 Amendments textually differ from the VRA in numerous *other* ways. The 2014 Amendments, for example, prohibit partisan gerrymandering, *see Harkenrider*, 38 N.Y.3d at 518, while the VRA does not, *see Hunt v. Cromartie*, 526 U.S. 541, 551 (1999). Further, the 2014 Amendments establish additional redistricting principles beyond those of the VRA, such as maintaining “cores of existing districts” and “pre-existing political subdivisions,” N.Y. Const. art. III, § 4, again demonstrating that the New York Legislature knew how to distinguish the 2014 Amendments from the VRA when it intended to. That it chose not to differentiate Article III, Section 4’s language from Section 2 of the VRA therefore does not make it redundant but rather indicates that the People intended for these particular provisions to be coterminous. *Supra* pp.3–

8. In any event, States—including New York—**very commonly** adopt (or interpret) constitutional provisions that are coextensive with federal law. *See Lake Country Ests., Inc. v. Tahoe Reg'l Plan. Agency*, 440 U.S. 391, 404 (1979). For example, the Court of Appeals has interpreted New York's equal protection guarantees, search and seizure provision, and due process protections to be coextensive with the U.S. Constitution's Equal Protection Clause, Fourth Amendment, and Due Process Clause, respectively. *See Congregation Rabbinical Coll. Of Tartkov, Inc. v. Vill. of Pomona*, 945 F.3d 83, 110 n.211 (2d. Cir. 2019) (New York and federal "equal protection guarantees" "are coextensive"); *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 304 (1988) (provision against "unlawful searches and seizures contained in NY Constitution . . . conforms with that found in the 4th Amendment"); *Cent. Sav. Bank in N.Y. v. City of N.Y.*, 280 N.Y. 9, 10 (1939) (per curiam).

B. Petitioners' And The Governor's Suggestion That This Court Can Adjudicate This Case Under Some Other Theory Would Violate The Due Process Clause And Basic Principles Of Fairness

Recognizing that Petitioners' sole request to read the NYVRA's standards into Article III, Section 4 is a nonstarter, the Governor and *amici* have attempted to reframe this case for Petitioners. The Governor asserts that the Court can simply wing it and adopt whatever standard it sees fit outside of the NYVRA. Gov.Ltr.2–3. Petitioners seem to follow the Governor's lead, asserting that this Court ultimately "must decide in the first instance what standard governs [their] vote dilution claim," Pet.Opp.4 (emphasis omitted), while claiming only that their own NYVRA-based standard is the "better framework," Pet.Opp.5. Two sets of *amici* each propose their own standards, including one drawn from certain law review articles written by some of the *amici*, and then urge this Court to apply those approaches, even though no party has briefed the constitutionality of those standards or submitted expert evidence tailored to those standards. NYSCEF. Doc. No.139 ("NYCLU.Am.Br.") at 11; NYSCEF. Doc.No.135 at 19–20

(“Prof.Am.Br.”). This is all egregiously inappropriate and, if adopted by this Court, would violate the Due Process Clause and basic principles of fairness to litigants.

1. The Due Process Clause of the Fourteenth Amendment “centrally concerns the fundamental fairness of governmental activity,” *N.C. Dep’t of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019); *see also People v. Collier*, 223 A.D.3d 539, 542 (1st Dep’t 2024), *leave to appeal denied*, 42 N.Y.3d 962 (2024), and “imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair,” *Lassiter v. Dep’t of Soc. Servs.*, 452 U.S. 18, 33 (1981). “[A]t a minimum,” those standards require “notice and opportunity for hearing appropriate to the nature of the case,” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *see also People ex rel. Abrams v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803, 806 (1992), that is “reasonably calculated, under all the circumstances, to . . . afford [participating parties] an opportunity to present their objections,” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *see Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) (due process requires “an opportunity to present every available defense”); *Apple Health & Sports Clubs*, 80 N.Y.2d at 806 (due process requires “opportunity to be heard at a meaningful time in a meaningful manner”) (citations omitted). A court deprives a party “of the right of fair warning,” *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), when it “reconfigure[s]” the applicable “scheme, unfairly, in *midcourse* [] to ‘bait and switch’” the responding party, *Reich v. Collins*, 513 U.S. 106, 111 (1994).

2. Here, if this Court now follows the suggestion of Petitioners, the Governor, and/or the *amici* and belatedly adjudicates this case under a standard different from the one that the Petition articulated, that would unconstitutionally “‘bait and switch’” Intervenor-Respondents “unfairly, in *midcourse*,” *Reich*, 513 U.S. at 111, depriving them of the “right of fair warning,” *Bouie*, 378 U.S.

at 352, transgressing basic principles of fairness. The Petition's sole theory was that this Court should "apply the same standards set forth under the NY VRA to adjudicate Petitioners'" Section III, Article 4 claim, NYSCEF Doc. No.1 ("Pet.") ¶ 50, and determine whether, under that NYVRA standard, "[a] minority influence district is both possible and required" in the 11th Congressional District, Pet. ¶¶ 97–102. In light of that framing, Intervenor-Respondents developed expert evidence refuting Petitioners' claim under the standards set forth in the NYVRA and submitted extensive merits briefing under that theory, relying upon those experts. *See* Int'r.Resp't.Br.20–31; NYSCEF Doc. No.112 ("Trende.Rebut."); NYSCEF Doc. No.160 ("Voss.Rebut."); NYSCEF Doc. No.114 ("Borelli.Rebut."). Having baited Intervenor-Respondents into submitting detailed arguments and expert reports on the only theory that Petitioners put forth—that the NYVRA's standards apply under their Article III, Section 4 claim—Petitioners, the Governor, State Respondents, and various *amici* now suggest that this Court adopt some other standard.

But adopting their belated suggestion now would be fundamentally unfair, in violation of the Due Process Clause. *N.C. Dep't of Revenue*, 588 U.S. at 268. In response to the Petition's sole theory, Intervenor-Respondents developed a robust merits defense focused on the NYVRA's standards. *See generally* Int'r.Resp't.Br. Because no court has interpreted many of the NYVRA's standards, Intervenor-Respondents spent considerable time explaining how this Court should interpret those standards. Int'r.Resp't.Br.20–31. Intervenor-Respondents also obtained experts to opine on how to analyze Petitioners' claim under the NYVRA's statutory standards. *See* Trende.Rebut.5–16; Voss.Rebut.1–6; Borelli.Rebut.6–62. Intervenor-Respondents then dedicated a significant portion of the limited words they were given in their brief to explain why they should prevail under the NYVRA's standards, Int'r.Resp't.Br.20–31, mirroring Petitioners' Memorandum of Law in Support of Petition, NYSCEF Doc. No.63 at 19–30. Intervenor-

Respondents have now spent additional time and resources preparing for trial under the reasonable assumption that the sole theory in the Petition would govern the proceedings. To change the applicable standard now and decide this case under an approach that Petitioners did not allege—whether put forward by *amici* or adopted by this Court upon Petitioners’ and the Governor’s belated invitation—would deny Intervenor-Respondents the “minimum,” guarantees of due process, *Mullane*, 339 U.S. at 313, by failing to provide them a meaningful “opportunity to present their objections,” *United Student Aid Funds*, 559 U.S. at 272.

The timing of this case makes this suggestion even more egregious. Petitioners had 20 months to frame this action after Governor Hochul signed the 2024 Congressional Map and before they filed their Petition. That they did not utilize that unreasonably lengthy amount of time to develop alternative theories is not something that *amici* or the Court can change at this belated stage in the proceedings. Having thrown all of their eggs into the NYVRA basket—ensuring their adversaries submitted evidence and arguments under that approach—Petitioners must live with their framing. It is far too late now, with Intervenor-Respondents’ final brief due today and a trial immediately after the holidays, for this Court to decide this case under any other standard. See *United Student Aid Funds*, 559 U.S. at 272; *Am. Surety Co.*, 287 U.S. at 168.

Under these circumstances, due process requires that the Court consider only the standard advanced by Petitioners at the outset of this litigation and that Intervenor-Respondents had an opportunity to respond to—that the NYVRA governs claims brought under Section III, Article 4. Because that theory is an obvious nonstarter, the only permissible disposition now is dismissal.

II. Adopting Petitioners’ Outlandish Theory Of Article III, Section 4 Would Violate The Elections Clause

A. Should the Court adopt Petitioners’ atextual rewrite of the New York Constitution, that would “transgress the ordinary bounds of judicial review” and “arrogate to [this Court] the power

vested in state legislatures” to “prescribe[]” the “[m]anner” of holding congressional elections in violation of the U.S. Elections Clause. Int’r.Resp’t.Br.38–41 (citing *Moore v. Harper*, 600 U.S. 1, 34 (2023); U.S. Const. art. I, § 4). The U.S. Supreme Court has warned state courts not to disrespect “the constitutionally prescribed role of state *legislatures*” in congressional cases, Int’r.Resp’t.Br.41 (citing *Bush v. Gore*, 531 U.S. 98, 115 (2000)), by utilizing strained interpretations of state law to wield unauthorized authority over the congressional-redistricting process, Int’r.Resp’t.Br.42–43 (citing *Moore*, 600 U.S. at 34–37). To judicially amend Article III, Section 4 to include the NYVRA’s standards, in order to strike down and require the redrawing of a legislatively adopted congressional map, would be just the kind of “impermissibl[e] distort[ion]” of state law that would “unconstitutionally intrude upon the role specifically reserved to state legislatures” by the U.S. Constitution. Int’r.Resp’t.Br.41–42 (citing *Moore*, 600 U.S. at 37; *id* at 38 & n .1 (Kavanaugh, J. concurring)). That is even more true given that this Court would be the first to read language identical to Section 2, in any State’s constitution or laws, as secretly including an influence-district mandate. Int’r.Resp’t.Br.39.

B. Petitioners assert that “determin[ing] an appropriate standard under which to evaluate a vote dilution claim under the New York Constitution . . . is consistent with a core and longstanding function of this Court.” Pet.Opp.32. That misses the point. While the Court may determine the appropriate standard to apply to a claim brought under the New York Constitution, it cannot adopt an interpretation in carrying out that function with regard to congressional districts that departs so drastically from prior doctrine on how to interpret the New York Constitution as to “transgress the ordinary bounds of judicial review.” *Moore*, 600 U.S. at 36. Under New York law, longstanding rules of construction prevent the Court from adopting Petitioners’ sole theory as it would require the Court to retroactively amend Article III, Section 4’s text to adopt standards from the NYVRA

that were enacted eight years after Article III, Section 4, *Am. Transit Ins. Co.*, 3 N.Y.3d at 76; and it would erroneously render the NYVRA's express reference to "influence" superfluous, *Columbia Mem'l Hosp.*, 38 N.Y.3d at 271; *supra* pp.3–8. In all, because Article III, Section 4 makes no mention of influence districts and, to the contrary, mirrors the language of Section 2—which indisputably does not require influence districts, *supra* Part I.A—accepting Petitioners' theory would "impermissibly distort" state law "in a federal election case," *Moore*, 600 U.S. at 38 & n.1 (Kavanaugh, J., concurring). And doing so in order to strike down a legislatively drawn congressional map is a textbook violation of the Elections Clause. *See id.* at 36 (majority op.).

That Petitioners believe that the NYVRA provides a "workable standard" for influence claims, Pet. Opp. 32, is legally irrelevant. The problem here is not that the NYVRA's standard is difficult to apply—although, as Intervenor-Respondents explained, the NYVRA contains multiple important wrinkles that this Court would need to adjudicate to decide Petitioners' claim, Int'r. Resp't. Br. 20–31—the problem is that the NYVRA cannot permissibly be read as applying to a constitutional provision adopted eight years before its enactment. This Court does not have "free rein," *Moore*, 600 U.S. at 34, to depart from New York's long-standing principles of constitutional interpretation to accomplish Petitioners' desired policy ends, workable or not. If Petitioners would like the congressional map to accomplish the policy ends that Petitioners praise, the Elections Clause requires them to bring their request to the Legislature, not for the courts to depart from established notions of New York constitutional interpretation to mandate the alteration of a legislatively adopted map. *Id.* at 36.

III. Petitioners' Requested Remedy Is A Racial Gerrymander That Violates The Equal Protection Clause

A. As Intervenor-Respondents explained, this Court ordering the redrawing of the 11th Congressional District with the express goal of increasing the electoral success of citizens lumped

together by race would violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. Int’r.Resp’t.Br.32–39. Under binding U.S. Supreme Court precedent, Petitioners’ requested remedy triggers strict-scrutiny review because it requires the redrawing of the 11th Congressional District’s lines explicitly based on race. Int’r.Resp’t.Br.32–33 (citing, for example, *Cooper*, 581 U.S. at 291, 299–301; *Wis. Legislature*, 595 U.S. at 402–03; and *Bethune-Hill*, 580 U.S. at 192–93). Thus, the “predominant”—and, indeed, sole—rationale for the new district lines that Petitioners ask this Court to mandate would be race-based, clearly triggering strict-scrutiny review. Int’r.Resp’t.Br.32–33. That conclusion would obtain even if the new lines of the 11th Congressional District that either the Court or the Legislature adopts to comply with this race-based redistricting mandate happens to comply with traditional redistricting principles, Int’r.Resp’t.Br.33, although, as Intervenor-Respondents have explained, Petitioners’ proposed lines do not adhere to such principles, Int’r.Resp’t.Br.34.

Petitioners’ requested race-based redrawing of the 11th Congressional District cannot possibly satisfy the applicable strict-scrutiny review because it neither furthers a compelling state interest nor is narrowly tailored to any such interest. Int’r.Resp’t.Br.35–39. Beginning with the compelling-state-interest prong, redrawing the 11th Congressional District to increase the electoral “influence” of Black and Latino voters would not further any compelling state interest that New York has in “remediating specific, identified instances of past discrimination that violated the Constitution or a statute.” Int’r.Resp’t.Br.35–37 (citing *Students for Fair Admissions, Inc. v. President and Fellows of Harvard Coll.* (“*SFFA*”), 600 U.S. 181, 207 (2023)). Moving to the narrow-tailoring prong, Petitioners cannot show that their proposed redrawing of the 11th Congressional District would be “*necessary*” to achieving any compelling state interest. Int’r.Resp’t.Br.37–39 (citing *SFFA*, 600 U.S. at 206–07 (emphasis added)). Petitioners have made

no effort to tie Article III, Section 4's alleged mandate to redraw the 11th Congressional District into any showing either that New York has engaged in specific racially discriminatory conduct in the past, or that there are ongoing consequences of such specific discrimination either generally or with respect to the 11th Congressional District, in particular. Int'r.Resp't.Br.38. Instead, Petitioners claim only that redrawing the 11th Congressional District is required because the preferred candidates of Black and Latinos are usually defeated and there is "racially polarized" voting under the NYVRA's totality-of-the-circumstances standard—neither of which is discrimination. Int'r.Resp't.Br.37–38. And Petitioners have not explained why race-neutral alternatives, such as those listed in the NYVRA itself, are inadequate to increase the electoral "influence" of Black and Latinos, meaning that their race-based redrawing of the 11th Congressional District is not "necessary" for this reason as well. Int'r.Resp't.Br.38–39.

B. Petitioners' various arguments that their proposed redrawing of the 11th Congressional District into an "influence" district for Black and Latino Voters somehow complies with the Equal Protection Clause all fail.

Strict scrutiny applies. Petitioners admit that, under binding U.S. Supreme Court precedent, a redistricting map triggers strict scrutiny where it is drawn with race as the predominant rationale. Pet.Opp.22–23. Despite that concession, Petitioners attempt to muddy the predominant-rationale test with misplaced quotations of *Bush v. Vera*, 517 U.S. 952 (1996), Pet.Opp.22–23—which Petitioners fail to cite as a plurality opinion, see Pet.Opp.18, 22–23, 30—and of *Bethune-Hill v. Virginia State Board of Elections*, 580 U.S. 178 (2017), Pet.Opp.22–23. The U.S. Supreme Court's decisions in *Wisconsin Legislature* and *Cooper* show the correct articulation of the predominant-rationale test; put Petitioners' misplaced quotations from *Vera* and *Bethune-Hill* in

proper context; and powerfully show that redrawing the 11th Congressional District for race-based reasons does trigger strict-scrutiny review under this test.

In *Wisconsin Legislature*, the U.S. Supreme Court concluded that a judicially adopted remedial redistricting map for Wisconsin’s legislative districts triggered (and, ultimately, failed) strict-scrutiny review, after applying the predominant-rationale test. 595 U.S. at 401–04. There, the Wisconsin Supreme Court had adopted the remedial map at issue, upon the proposal of the Wisconsin Governor. *Id.* at 399–400. That map had “intentional[ly] add[ed]” a “seventh majority-black district,” *id.* at 402, which was “one more” than the State’s prior map, *id.* at 400. Applying the predominant-rationale test, *id.* at 401, the U.S. Supreme Court held that the “intentional addition of a seventh majority-black district” in the remedial map—standing alone—meant that the “strict-scrutiny test must [] be satisfied” for the map to comply with the Equal Protection Clause, *id.* at 402–03. That is, “drawing the seventh majority-black district” into the map, *id.* at 403, without any further showing constituted “race-based redistricting,” *id.* at 402, as that decision alone established that “race [was] the predominant factor motivating the placement of voters in or out of [that] particular district,” *id.* at 401. Accordingly, in deciding that strict scrutiny applied, the U.S. Supreme Court saw no need to discuss, for example, whether the remedial map at issue also failed to satisfy the traditional districting principles, *see generally id.* at 401–04, notwithstanding arguments from the Wisconsin Governor that the map did comply with those principles, *see Resp. To Appl. From Resp’t Governor Tony Evers* at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022) (asserting that Petitioners did not “identify any specific respect in which its map conflicts with or subordinates traditional redistricting criteria”).³

³ Available at https://www.supremecourt.gov/DocketPDF/21/21A471/218427/20220311165107226_21A471%20Wisconsin%20-%20SCOTUS%20Opp%20Final.pdf (last visited December 23, 2025).

Cooper is in accord. There, like *Wisconsin Legislature*, the U.S. Supreme Court held that two districts within a state legislative map drawn by the North Carolina General Assembly triggered (and, again, failed) strict scrutiny, based upon the predominant-rationale test. *Cooper*, 581 U.S. at 291, 295–96. The Court explained that under the predominant-rationale test, a party may “make the required showing” that “race was the predominant factor motivating the [mapdrawer’s] decision to place a significant number of voters within or without a particular district” through three different evidentiary pathways: “[1] direct evidence of legislative intent, [2] circumstantial evidence of a district’s shape and demographics, or [3] a mix of both.” *Id.* at 291 (citations omitted). A party’s “task, in other words, is simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district.” *Id.* at 318; accord *Bethune-Hill*, 580 U.S. at 189 (“the criterion that . . . could not be compromised” (citations omitted)). *Cooper* then held that, under this test, one of the districts at issue triggered strict scrutiny based upon the first pathway (“direct evidence of the [mapdrawer’s] intent”) because the North Carolina General Assembly “purposefully established a racial target” with the district: the goal of ensuring that Black voters “ma[d]e up no less than a majority of the voting-age population” in that district. 581 U.S. at 299–301. Again, as with *Wisconsin Legislature*, that decision alone triggered strict-scrutiny review as to that district, with no need for the Court to discuss the State’s argument that this district nevertheless complied with traditional districting principles. Compare *id.*, with Br. For Appellants at 45, *Cooper v. Harris*, No.15-1262, 2016 WL 4771954 (U.S. Sept. 12, 2016) (asserting that “a plaintiff must prove—and a court must find—that the challenged district lines are inconsistent with traditional districting principles”).

The U.S. Supreme Court’s *Wisconsin Legislature* and *Cooper* decisions provide essential framing for the misplaced quotations of the *Vera* plurality and *Bethune-Hill* in Petitioners’ brief. Pet.Opp.22–23. In their brief, Petitioners cite the *Vera* plurality’s statement that the decision “to create a majority-minority district” in the map there was “merely one of several essential ingredients” to the plurality’s conclusion that strict scrutiny applied under the predominant-rationale test. *Vera*, 517 U.S. at 962 (lead plurality of O’Connor, J.); Pet.Opp.22–23. Petitioners then cite *Bethune-Hill*, arguing that it holds that the predominant-rationale test requires a “‘holistic analysis’” and the consideration of multiple “factor[s].” Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192). Finally, based on these two citations, Petitioners claim that their own map-drawing “goal of giving Black and Latino voters the benefit of increased electoral ‘influence’ than under the prior map” cannot by itself trigger strict scrutiny, under the predominant-rationale test. Pet.Opp.22 (citing Int’r.Resp’t.Br.33). *Wisconsin Legislature* and *Cooper* definitively refute that argument, as they both concluded that the maps at issue triggered strict scrutiny under the predominant-rationale test solely because the mapdrawers had express race-based purposes when drawing the maps. *See supra* pp.18–19. That is because, as *Cooper* explains, a mapdrawer’s expressed race-based goal is itself “direct evidence of [] intent,” which alone suffices under the predominant-rationale test. 581 U.S. at 291. Petitioners’ quotations from the *Vera* plurality and *Bethune-Hill* do not conflict with *Wisconsin Legislature* and *Cooper* in this respect. Rather, both quotations refer to the *additional* pathways of establishing a mapdrawer’s predominant racial motive expressly recognized in *Cooper*—demonstrating such intent through “circumstantial evidence” or a mix of “direct” and “circumstantial evidence.” *See id.* That kind of reliance does require consideration of “several essential ingredients,” *Vera*, 517 U.S. at 962, and a “holistic analysis,” *Bethune-Hill*, 580 U.S. at 192.

Here, just like the maps in *Wisconsin Legislature* and *Cooper*, Petitioners’ proposed map triggers strict scrutiny because race is the *sole*—and, therefore, necessarily the predominant—rationale for its redrawing of the 11th Congressional District. Again, Petitioners’ requested remedy here requires either this Court or the Legislature to move voters in or out of the 11th Congressional District until there are enough Black and Latino voters within the newly drawn district to give those voters sufficient electoral “influence.” *Supra* pp.15–17. Such intentional and purposeful drawing of a district to give more electoral benefit to voters lumped together by race is alone “race-based redistricting” that triggers strict-scrutiny review under the predominant-rationale test, with no further inquiry. *Wis. Legislature*, 595 U.S. at 401–02. In other words, either this Court or the Legislature redrawing the 11th Congressional District with the sole, express purpose of increasing the electoral “influence” of Black and Latino voters is “direct evidence of [the] intent” that “race was the predominant factor” in redistricting, meaning that strict scrutiny applies. *Cooper*, 581 U.S. at 291. No further evidentiary showing of race-based intent is necessary under the predominant-rationale test to invoke strict scrutiny. *Id.* at 291, 319.

Petitioners’ related argument that their proposed map still avoids strict-scrutiny review because it “respects the other redistricting criteria” fails for the same reasons. Again, *Wisconsin Legislature* and *Cooper* both hold that when a mapdrawer’s *explicit* intent in drawing a map is based on race, race is *necessarily* the predominant rationale, without any need to consider whether the map at issue fails to adhere to traditional redistricting criteria. *Supra* pp.18–19. *Bethune-Hill* makes this same point in express and unambiguous terms: “showing a deviation from, or conflict with, traditional redistricting principles is *not* a necessary prerequisite to establishing racial predominance,” so as to trigger strict scrutiny. 580 U.S. at 191 (emphasis added). That is because “[r]ace may predominate even when a reapportionment plan respects traditional principles . . . if

race was the criterion that, in the [mapdrawer's] view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made.” *Id.* at 189 (citations omitted; brackets in original).

Nevertheless, Petitioners are wrong that the redrawn 11th Congressional District that they have proposed complies with traditional redistricting principles—although, again, that is not legally relevant to whether strict scrutiny applies. As Intervenor-Respondents’ experts showed, Petitioners’ proposed redraw of the 11th Congressional District disregards communities of interest in multiple ways, Int’r.Resp’t.Br.34 (citing Borelli.Rebut.15–18), and disregards compactness, given its combination of the physically separated Manhattan and Staten Island boroughs, Int’r.Resp’t.Br.34 (citing Borelli.Rebut.17–19). Petitioners’ response that their proposed map does not disregard communities of interest because “the Staten Island ferry carries *tens of thousands* of people between boroughs every single day” is perplexing, to say the least, and does not support their argument. Pet.Opp.23–24. That people choose to travel between the boroughs every day, as opposed to moving to Staten Island, supports Intervenor-Respondents’ contention that it makes “little practical sense” to combine Staten Island’s diverse, suburban population with lower Manhattan’s largely White, city dwellers. Int’r.Resp’ts.Br.34. If lower-Manhattanites believed that their lifestyle matched those of Staten Islanders, they would not undertake a daily commute, and vice versa. Pivoting, Petitioners then contend that “Article III, § 4 does not require new congressional districts to *create* communities of interest,” so, “the absence of a community of interest does not mean a map should *fail*.” Pet.Opp.24. But it is Petitioners who contend that Article III, Section 4 requires mapdrawers to link communities of interest in Staten Island and lower Manhattan. Pet. ¶ 12. That the two boroughs have little in common is surely relevant to that contention. Borelli.Rebut.15–19.

Petitioners next attempt to avoid the application of strict scrutiny here by claiming that their request to redraw the 11th Congressional District to give Black and Latino voters more “influence” does not “rely on ‘the use of an express racial target.’” Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192). But Petitioners’ requested relief requires a mapdrawer (either this Court or the Legislature) to move voters in and out of the 11th Congressional District until Petitioners’ express goal of giving Black and Latino voters within the district enough electoral “influence” is met. See Pet.28; Int’r.Resp’t.Br.33–34. The choice to use a qualitative racial target still makes race the explicit—and, indeed, sole—“rationale” for the “design” of the redrawn 11th Congressional District that Petitioners have proposed, which necessarily means that race is the “predominant” factor here, *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 401–04, for all the reasons already discussed above, *supra* pp.15–22. Strict scrutiny therefore applies.

Petitioners then appear to argue, briefly, that the U.S. Supreme Court’s decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009), means that strict scrutiny should not apply to their requested redrawing of the 11th Congressional District. Pet.Opp.23. In *Bartlett*, the U.S. Supreme Court stated (in a controlling plurality by Justice Kennedy) that, although Section 2 of the VRA does not mandate the creation of “cross-over districts,” such districts may “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 (plurality op.). Therefore, the Court continued, “States that wish to draw crossover districts are free to do so where no other prohibition exists.” *Id.* These statements in *Bartlett* do not help Petitioners, however, because they do not water down the controlling racial-predominance inquiry applicable here. “[T]here is a difference between being aware of racial considerations and being motivated by them.” *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (citation omitted). “The former is permissible; the latter is usually not,” given that it

triggers exacting, strict-scrutiny review. *Id.* Under *Bartlett*, a State may draw cross-over districts due to the State’s “aware[ness] of racial considerations” or “racial demographics,” *id.*, but a State cannot draw such districts where “the overriding reason for choosing [them]” is “race for its own sake,” *id.* at 31. Here, as explained above, Petitioners’ overriding reason for redrawing the 11th Congressional District to increase the “influence” of Black and Latino voters is race for its own sake. *Supra* pp.15–22. *Bartlett* does not insulate such obviously race-based redistricting decisions from strict-scrutiny review.

Petitioners cannot carry their heavy burden of satisfying strict scrutiny. Petitioners then turn to arguing that, if strict scrutiny did apply to their requested redrawing of the 11th Congressional District, they would satisfy this exacting standard. Pet.Opp.24–25. Yet, although it is Petitioners’ burden to satisfy strict scrutiny, *see Wis. Legislature*, 595 U.S. at 402–03, they spend only a single paragraph attempting to show why redrawing the 11th Congressional District for racial reasons furthers a compelling government interest in a narrowly tailored way, *see* Pet.Opp.24–25. Petitioners’ abbreviated arguments on this score fail.

Beginning with the compelling-state-interest prong, Petitioners’ *sole* argument is that redrawing the 11th Congressional District furthers a compelling interest in complying with the *state* constitutional provision at issue here: Article III, Section 4. Pet.Opp.24–25. The U.S. Supreme Court has never recognized compliance with *state* law to be a compelling state interest for purposes of the Fourteenth Amendment’s strict-scrutiny test. *See Cooper*, 581 U.S. at 292; *SFFA*, 600 U.S. at 207–08. That is for good reason: the Fourteenth Amendment is a prohibition on *the States*, such that States are not “free to decide” when race-based “remedies are appropriate.” *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490 (1989) (plurality op). So, while Congress may have the power to use race-based laws that “redress societal discrimination,” the States

manifestly lack such authority under the Fourteenth Amendment. *SFFA*, 600 U.S. at 228. States cannot in any way undertake the “odious” task of “pick[ing] winners and losers based on the color of [their citizens’] skin.” *Id.* at 208. More broadly, the U.S. Supreme Court has expressed deep skepticism, to put it mildly, of recognizing new compelling state interests in this context, as it is only the “rare” and “extraordinary case” where a State’s race-based action serves a *compelling* interest. *Id.* While Petitioners cite *Bartlett* again, Pet.Opp.24, it is of no help to them here either, as *Bartlett* merely recognized that a State may “appropriate[ly]” create a cross-over district “where no other prohibition exists,” 556 U.S. at 24 (plurality op.). A State pursuing an “appropriate” state policy is a far cry from a *compelling* state interest.

Petitioners’ citation of *Clarke v. Town of Newburgh*, 237 A.D.3d 14 (2d Dep’t 2025), *aff’d*, No.84, 2025 WL 3235042 (N.Y. Nov. 20, 2025), is deeply confused. Pet.Opp.24–25. *Clarke* merely held that the NYVRA need not mirror the so-called *Gingles* standards of Section 2 of the federal VRA in order “to survive a facial challenge to [the NYVRA’s] constitutionality under the Equal Protection Clause.” 237 A.3d at 37. The question here, however, is whether Petitioners’ expressly race-based redrawing of the 11th Congressional District furthers a compelling state interest. *Clarke* does not address that question at all. *See generally id.*

Petitioners’ narrow-tailoring argument—which comprises a single sentence, Pet.Opp.25—fares no better. Even if this Court were to determine that “the current boundaries of CD-11 result in unlawful vote dilution of Black and Latino voters” under Article III, Section 4 of the New York Constitution and that remedying that state-constitutional violation were a compelling state-interest under the Fourteenth Amendment’s Equal Protection Clause, Pet.Opp.25, that would not “necessarily demonstrate” that a *race-based remedy* for that violation is narrowly tailored for purposes of the strict-scrutiny analysis, *contra* Pet.Opp.25. Petitioners bear the burden of showing

that a *race-based remedy*, as opposed to a race-neutral remedy, is “*necessary*.” *SFFA*, 600 U.S. at 206–07 (citations omitted; emphasis added). Yet, Petitioners do not even attempt to explain why a race-neutral remedy would fail to increase sufficiently the electoral “influence” of Black and Latino voters, *see generally* Pet.Opp.25—including some remedies listed in the NYVRA itself, *see* Int’r.Resp’t.Br.38–39.

NYVRA more generally. Petitioners conclude the equal-protection portion of their Opposition with an extended argument that the NYVRA itself does not facially violate the Equal Protection Clause, *see* Int’r.Resp’t.Br.25–31, but that is beside the point. Intervenor-Respondents have not argued here that the NYVRA’s vote-dilution provisions are facially unconstitutional under the Equal Protection Clause. That is, Intervenor-Respondents do not claim in this case that every application of the NYVRA’s vote-dilution provisions violates the Constitution, *see generally* Int’r.Resp’t.Br.32–39, which was one of the issues before the New York Court of Appeals in *Clarke*, a case the Court resolved on municipal-capacity grounds not at issue here, 2025 WL 3235042. Therefore, to rule in Intervenor-Respondents’ favor and dismiss the Petition, the Court need *not* engage at all with Petitioners’ arguments that: the NYVRA does not facially classify based on race, so as to trigger facial strict-scrutiny review, Pet.Opp.26–29; the NYVRA’s remedies do not facially “rely on impermissible racial classifications,” Pet.Opp.29–30; or, even if strict scrutiny did facially apply to the NYVRA, the NYVRA would satisfy that review as a facial matter, Pet.Opp.30–31. Rather, Intervenor-Respondents’ argument is that the drawing of an “influence” district after a petitioner happens to satisfy the minimal showings set out in the NYVRA—namely, (1) that the preferred candidates of a group of voters lumped together by race “usually [be] defeated,” and (2) that there is either (a) “racially polarized” voting in the district or (b) an impairment of that group of voters’ ability to influence an election under the NYVRA’s all-things-

considered, totality-of-the-circumstances inquiry—both triggers and fails strict-scrutiny review, as Intervenor-Respondents explained. Int’r.Resp’t.Br.37–38.

Here, this Court need not go even that far into an equal-protection analysis of the NYVRA and its influence-district mandate to dispose of this case. With respect to ruling for Intervenor-Respondents on their equal-protection argument, it is sufficient for the Court to conclude that the race-based redrawing *of the 11th Congressional District in particular* into an “influence” district, per the NYVRA’s influence-district mandate, fails strict scrutiny. Int’r.Resp’t.Br.37–38. And that is the correct conclusion here, as Intervenor-Respondents explained. Int’r.Resp’t.Br.37–38. Again, Petitioners cannot show how redrawing the 11th Congressional District into an “influence” district according to the NYVRA’s standards furthers any compelling state interest, nor could they show that such a race-based redrawing of the 11th Congressional District is necessary to the pursuit of any such interest. Int’r.Resp’t.Br.37–38.

That said, two of Petitioners’ claims in this portion of their brief do merit a brief response, in light of Intervenor-Respondents’ equal-protection arguments. First, Petitioners claim that the NYVRA would not facially trigger strict-scrutiny review because it is “race neutral,” in that it “allow[s] members of all racial groups, including white voters, to bring vote dilution claims.” Pet.Opp.27 (citing *Clarke*, 237 A.D.3d at 33 (brackets in original)). While that assertion is wrong as a matter of U.S. Supreme Court precedent, *see, e.g., Johnson v. California*, 543 U.S. 499, 502 (2005); *Powers v. Ohio*, 499 U.S. 400, 410 (1991), it suffices to note that Petitioners do *not* claim in this case that their proposed map escapes strict-scrutiny review on these NYVRA-is-facially-race-neutral grounds, *see generally* Pet.Opp.22–24. That is for good reason, as even Petitioners’ own cited authority recognized that, if a court in an NYVRA vote-dilution case were to order as a remedy redistricting “in which race is a factor in establishing district boundaries,” that particular

remedy may trigger strict-scrutiny review. *Clarke*, 237 A.D.3d at 37 (citation omitted). Second, Petitioners claim that “the [U.S. Supreme] Court has not subjected the Federal VRA to strict scrutiny” and that the so-called *Gingles* factors of Section 2 of the VRA, which factors the NYVRA systematically disregards, are not needed to make a vote-dilution provision like Section 2 narrowly tailored for strict-scrutiny review. Pet.Opp.31. These arguments too are clearly wrong, as the logic of the U.S. Supreme Court’s longstanding assumption that a State’s compliance with Section 2 is a compelling interest means that the U.S. Supreme Court would subject Section 2 itself to strict scrutiny. See *Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Bartlett*, 556 U.S. at 21 (plurality op.); *infra* pp.28–29 (discussing how *Louisiana v. Callais*, 606 U.S. ___, 2025 WL 1773632 (June 27, 2025) (reargued Oct. 15, 2025), may cut back on this longstanding assumption). Further, the Court has also made clear that any weakening of Section 2’s *Gingles* factors would raise “serious constitutional concerns under the Equal Protection Clause,” meaning that those factors are essential to Section 2’s narrow tailoring. *Bartlett*, 556 U.S. at 21 (plurality op.).

Finally, Intervenor-Respondents respectfully submit that, as this Court considers the parties’ equal-protection arguments, it should bear in mind that in *Louisiana v. Callais* the U.S. Supreme Court appears poised to cut back, at least to some extent, on its longstanding assumption that a State’s compliance with Section 2 of the VRA is a compelling state interest for purposes of the strict-scrutiny analysis. Int’r.Resp’t.Br.35 n.8, 37. If the U.S. Supreme Court were to reject that longstanding assumption in *Louisiana*, that would alone defeat the only asserted compelling interest—compliance with the NYVRA’s standards, as read into Article III, Section 4—that Petitioners have put forward here. See Pet.Opp.24–25. While Intervenor-Respondents raised the *Louisiana* case in their Memorandum, Int’r.Resp’t.Br.35 n.8, 37, Petitioners wholly ignored it—including by failing to explain how their strict-scrutiny arguments could possibly prevail here if

Louisiana does cut back on the Court’s longstanding assumption that compliance with Section 2 is a compelling state interest.

IV. Laches Bars The Petition As Well

A. Laches independently bars this action because Petitioners inexplicably waited until October 2025 to bring a challenge that would have been ripe as soon as the Governor signed the map into law in 2024, and which contains boundaries that have been largely consistent since 1980. Int’r.Resp’t.Br.43–44. This “entirely avoidable delay,” which will require the drawing of a new map before the impending 2026 primaries, “prejudice[s] [] voters[,] candidates,” and the Legislature, warranting dismissal. Int’r.Resp’t.Br. 43–44 (citing *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1230 (3d Dep’t 2022)).

B. Petitioners do not seriously contend that they acted promptly, simply claiming that it was not unreasonable to wait eighteen months after the 2024 Congressional Map’s enactment to sue. Pet.Opp.33. But they fail to explain how their claim was not ripe in 2014, when the 2014 Amendments’ enactment (under their theory) required a minority influence district to prevent vote-dilution in a nearly identical 11th Congressional District. Pet. ¶¶ 96–102. They assert that “voting has become increasingly racially polarized,” Pet.Opp.34, but their own experts claim a “consistent pattern of racially polarized voting” going back to 2017, NYSCEF Doc. No.60 (“Palmer Rep.”) ¶ 19.⁴ At the absolute minimum, Petitioners could have brought their claim immediately after the adoption of the 2024 Congressional Map on February 28, 2024. Such a delay, particularly in the election context, is unreasonable—as New York courts have repeatedly recognized. See *MacDonald v. Cnty. of Monroe*, 79 Misc.3d 550, 565–67 (Monroe Cnty. Sup. Ct. 2023)

⁴ For this reason, *Garza v. County of Los Angeles*, 918 F.2d 768 (9th Cir. 1990), where petitioners alleged that their injury became “progressively worse over time,” *id.* at 772, does not help Petitioners here who have not alleged that any vote-dilution injury has increased year over year.

(dismissing petition filed two months after enactment); *Nichols v. Hochul*, 76 Misc.3d 379, 384–85 (N.Y. Cnty. Sup. Ct. 2022) (dismissing petition filed three and a half months after adopting map); *Amedure v. State*, 210 A.D.3d 1134, 1137–39 (3d Dep’t 2022) (dismissing petition filed nine months after adoption of election process). Petitioners nonetheless point to a spattering of federal cases to support their position. Pet.Opp.34–35. But federal partisan gerrymandering cases offer little help, as shown by *League of Women Voters of Michigan v. Benson*, 373 F. Supp. 3d 867, 908–10 (E.D. Mich. 2019), which was vacated because federal courts lack jurisdiction to hear partisan gerrymandering claims, *Chatfield v. League of Women Voters of Mich.*, 589 U.S. 1031 (2019). And the sole New York case cited simply holds that “laches is not applicable to commercial cases.” *Ambrogio & Caterina Giannone Fam. Ltd. P’ship v. 7th Heaven USA Inc.*, 954 N.Y.S.2d 757 (Nassau Cnty. Dist. Ct. 2012) (table decision). None show that this Court encourages Petitioners’ dilatory tactics.

Petitioners also claim that laches should fail because there is no prejudice, Pet.Opp.33, but that is wrong. Petitioners’ inexcusable and entirely avoidable delay causes “significant and immeasurable prejudice to voters[,] candidates,” and the Legislature. *League of Women Voters of N.Y. State*, 206 A.D.3d at 1230. Any remedial map must be passed by the Legislature long before the June 23, 2026 primary. By failing to bring suit timely, Petitioners have both artificially compressed judicial review and created an “impossible burden[]” for the Legislature, requiring it to expedite the map drawing process prior to the primary. *Id.* This timeline—which, again, only exists because of Petitioners’ unexplained and avoidable delay—is simply “not feasible.” *MacDonald*, 79 Misc.3d at 555. Further, Petitioners’ delay also prejudices Intervenor-Respondents, who have invested significant time and resources campaigning in the 11th

Congressional District based upon the understanding that the 2024 Congressional Map would govern until the next Census in 2030—not just one election cycle.

The Court should not countenance Petitioners' unreasonable delay and should dismiss this Petition on laches grounds. But, at the absolute minimum, this Court should hold Petitioners to the sole theory that they developed during their lengthy delay and raised in their belated Petition: Article III, Section 4 incorporates the standards in the NYVRA. Since, as even the Governor admits, this theory is a constitutional nonstarter, that must be the end of this case in any event.

CONCLUSION

This Court should dismiss the Petition.

Dated: New York, New York
December 23, 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 reply 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 9,624 words, excluding parts of the document exempted by Rule 202.8-b(b).

I certify pursuant to Rule 18 of the Part 44 Rules that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within this submission.

Dated: New York, New York
December 23, 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