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

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-

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

Intervenor-Respondents.

Index No.: 164002/2025
Hon. Jeffrey H. Pearlman

Mot. Seq. 001 and 007

REPLY MEMORANDUM OF LAW
IN FURTHER SUPPORT OF MOTION TO DISMISS

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PRELIMINARY STATEMENT[1]

Respondents respectfully submit this reply memorandum of law in further support of their motion to dismiss pursuant to CPLR 3211(a)(7). Respondents adopt and expressly incorporate herein the arguments made on reply by the Intervenor-Respondents.[2]

Petitioners' opposition confirms this case is frivolous. Their sole theory is that a 2022 state statute, the NYVRA, somehow displaces the plain text of a 2014 constitutional amendment that, by its own terms, is "subject to the requirements of the federal constitution and statutes." That theory is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law. Indeed, it is obvious that Petitioners contrived this absurd theory because they recognize that Article III, § 4(c)(1) does not mandate the creation of influence districts or a departure from federal redistricting standards.

Petitioners' own filings highlight how little support their theory finds in the constitutional text. If Article III, § 4(c)(1) truly "swept more broadly than federal law" in the way they claim, they would be able to point to concrete language in the provision—some word, phrase, or structural feature that mandates the creation of influence districts or abandons federal redistricting law. Yet nothing in Petitioners' extensive filings identifies any such textual basis. Instead, they repeat the unsupported refrain that the NY Constitution "sweeps more broadly" than Section 2 and then pivot immediately to a completely different enactment, the NYVRA. Petitioners resort to catchphrases and the concededly inapplicable NYVRA precisely because the constitutional text they ask this

[1] All terms used but not defined herein shall have the same meaning ascribed in Respondents' Memorandum of Law in Opposition to the Petition and in Support of Motion to Dismiss (NYSCEF Doc. No. 122) ("Respondents' Mem."). This reply addresses only issues relevant to Respondents' motion to dismiss under CPLR 3211(a)(7). Respondents rely on, and do not repeat, the factual and merits arguments set forth in their prior memorandum and in the Intervenor-Respondents' submissions.

[2] Reply Memorandum of Law in Further Support of Intervenor-Respondents' Motion to Dismiss (NYSCEF Doc No. 161) (Intervenors' Reply).

Court to rewrite says nothing about mandating the creation of influence districts. To the contrary, in fact, the unambiguous text of Article III, § 4(c)(1) mirrors the operative language of Section 2 of the VRA, expressly ties congressional redistricting to federal law, and does not mandate creation of influence districts.

Petitioners' opposition confirms that even they now recognize the fatal flaws in their original theory. Having staked their entire case on the premise that the NYVRA's expanded liability standard controls Article III, § 4, they now retreat from that position and invite the Court to "decide in the first instance what standard governs."[3] That invitation underscores the frivolous nature of this proceeding: Petitioners ask the Court not only to ignore the constitutional text and structure they previously invoked, but also to rescue their non-viable NYVRA theory by improvising a new, broader state-law standard unconnected to any pleaded cause of action or adversarial briefing.

Despite this contorted interpretation of Article III, § 4, Petitioners still have not addressed a simple question: if the Legislature intended to apply the "loosen[ed] . . . requirements"[4] in the NYVRA to congressional elections, why did it expressly limit those requirements to municipal and local elections? The answer to that question is clear—the Legislature made an informed decision to exempt congressional elections from those purported "loosen[ed]" requirements. Thus, separation of powers prohibits this Court from doing what the Legislature chose not to and requires dismissal of this proceeding.

Once the NYVRA is taken off the table, Petitioners have no case left to litigate. They concede that their vote-dilution claim fails under Section 2 and the *Gingles* standard, and they have

[3] Petitioners' Opposition to Respondents' and Intervenors' Motions to Dismiss the Petition and Reply Memorandum of Law in Support of the Petition (NYSCEF No. 156) ("Petitioners' Reply Mem.") at 4.
[4] Petitioners' Mem. (NYSCEF Doc. No. 63) at 16.

never offered any alternative theory under Article III, § 4(c)(1). The principle of party presentation and basic due process therefore foreclose Petitioners' invitation for the Court to invent a new, unbriefed state-law standard "in the first instance"[5] to rescue their claim. Respondents and Intervenors have framed their legal defenses and expert rebuttals around the only theory Petitioners chose to plead. It would work concrete prejudice, and contravene the adversarial system, to change the rules of the game now.

In all events, even if the federal standard is applied, dismissal is still required as a matter of law. Under Petitioners' own illustrative map and demographic submissions, Black and Latino voters—individually or in coalition—cannot constitute a majority of the relevant population in any reasonably compact version of CD-11. That undisputed fact fails the first *Gingles* precondition and forecloses any cognizable vote-dilution injury, because any inability to elect preferred candidates flows from demographics and political geography, not from a standard or practice that denies or abridges the right to vote.

Finally, as explained more fully in Intervenors' reply,[6] which Respondents expressly incorporate herein, Petitioners' attempt to avoid strict scrutiny review fails. Petitioners fail to identify any compelling state interest. Instead, they argue that complying with the federal VRA is a compelling state interest, citing *Abbott v Perez* (585 US 579, 616 [2018]),[7] apparently to imply that complying with Article III, § 4(c)(1) is also a compelling state interest. This makes no sense, since, on its face, Article III, § 4(c)(1) does not mandate the creation of minority influence districts. Moreover, Petitioners cannot show narrow tailoring because they do not establish, much less even

[5] Petitioners' Reply Mem. at 4.
[6] Intervenors' Reply Mem. at 15-29.
[7] Petitioners' Reply Mem. at 24.

argue, that their proposed remedy is "necessary" to achieve that interest (*Students for Fair Admissions, Inc. v President and Fellows of Harvard College*, 600 US 181, 207 [2023]).

For these reasons, the Petition should be dismissed in its entirety, without a hearing, pursuant to CPLR 3211(a)(7).

ARGUMENT

I. Petitioners fail to show that the NYVRA's standards apply to Article III, § 4

In their moving brief, Respondents demonstrated that the Petition must be dismissed because: (1) the plain and unambiguous terms of Article III, § 4 expressly require it to be interpreted in accordance with federal statutes and not New York State statutes, including the NYVRA; (2) as a matter of law, the NYVRA cannot modify Article III, § 4, as Petitioners claim in their Petition; and (3) under settled canons of constitutional and statutory construction there is an irrefutable inference that the Legislature intended to omit congressional elections from the analytical framework contained in the NYVRA.[8]

In opposition, Petitioners do not dispute that Article III, § 4 is plain and unambiguous or that the NYVRA, as adopted by the Legislature is expressly limited to municipal and local elections. Instead, Petitioners blissfully ignore the express terms of the constitutional and statutory provisions and argue that, *in their view*, the NYVRA "offers a better framework to evaluate Petitioners' claim than Section 2 of the" federal VRA.[9] Petitioners' theory that the analytical framework in the subsequently enacted NYVRA should apply to Article III, § 4 fails for several fundamental reasons and, since Petitioners premised this entire proceeding on that aspirational argument, this case must be dismissed without a hearing.

[8] Respondents' Mem. at 15-22.
[9] Petitioners' Reply Mem. at 5.

A. The express language of Article III, § 4 precludes application of the NYVRA

Petitioners contend that "textual differences between Article III, § 4(c)(1) and Section 2 of the [federal VRA] support Petitioners' view that the New York Constitution sweeps more broadly than federal law."[10] Petitioners, however, fail to address the clear statement in Article III, § 4(c) that it is "subject to" the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Regardless of Petitioners' view that the New York Constitution sweeps more broadly, an irrefutable inference must be drawn that the Legislature and the People intentionally excluded state statutes from the requirements to which Article III, § 4(c) is subject (*see generally* *Matter of Rochester Community Sav. Bank v Bd. Of Assessors of City of Rochester*, 248 AD2d 949, 950 [4th Dept 1998], *lv. denied*, 92 NY2d 811 [1998]).[11] Petitioners failed to address, much less rebut, this irrefutable inference. On this basis alone, Petitioners' claim fails and this proceeding must be dismissed.

Even if this irrefutable inference could be ignored (it cannot), this proceeding must be dismissed because Petitioners' supposed textual argument is meritless. Petitioners do not seriously contend with the text the People adopted in Article III, § 4(c). The provision begins by directing that congressional redistricting is "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Petitioners identify no authority, and point to no textual hook, suggesting that "subject to" means anything other than what the caselaw and ordinary usage provide: "subordinate to, subservient to or limited by" (*Peters v Smolian*, 49 Misc 3d 408, 423 [Sup Ct, Suffolk County 2015], *affd* 154 AD3d 980 [2d Dept

[10] *Id.*
[11] Respondents' Mem. at 20-21.

2017]).[12] Nor do they explain why this Court should read "subject to . . . federal . . . statutes" to displace the federal VRA with a later enacted state statute.

If the framers and the People intended a state statute to provide the standard, they would not have omitted state statutes from the authorities to which they made Article III, § 4(c) expressly subject. Petitioners wave away this point as a "straw man," arguing that "Petitioners do not contend that the NY VRA directly *governs* the constitutional claim here."[13] But that is precisely what they are doing. Their entire theory asks this Court to adjudicate their claim under Article III, § 4(c) by treating it as a claim under the NYVRA and that subsequently enacted statute's distinct liability and remedial standards. Whether styled as "directly governs" or, euphemistically, as a "better framework,"[14] the practical effect is identical: the NYVRA becomes the rule for Article III, § 4(c) claims. Ironically, Petitioners forward this theory despite acknowledging themselves that it is backward: "Of course, statutes must adhere to the State Constitution—not the other way around."[15]

The contradiction is stark in Petitioners' own pleadings. In the absence of any textual support in Article III, § 4(c), they urge the Court to treat racially polarized voting and the totality-of-the-circumstances as alternative routes to liability, and to authorize coalition, crossover and "influence" districts in the absence of a large and compact majority. None of that appears anywhere in Article III, § 4(c). The People adopted language that mirrors the federal Section 2 standard and then made congressional redistricting "subject to the requirements of the federal constitution and statutes." Petitioners' request that this Court read into the Constitution a later-enacted state statute would displace the federal law to which Article III is expressly tethered.

[12] Respondents' Mem. at 15-16.
[13] Petitioners' Reply Mem. at 8 n 5.
[14] *Id.* at 5.
[15] *Id.* at 8 n 5 (emphasis in original).

Calling that maneuver "a better framework" than federal law is grossly disingenuous. If this Court were to hold that the NYVRA's drastically different standards apply to Article III vote-dilution claims, then the NYVRA would, in effect, govern the constitutional analysis. That interpretation would ignore the plain, unambiguous text of the NY Constitution, erase the opening clause of Article III, § 4(c), and effect a wholesale transfer of lawmaking power from the People to the Legislature, which could amend or repeal the NYVRA at any time.

Petitioners' fallback— that federal law is a "floor" and "states may go further"—cannot resuscitate their claim.[16] The relevant question is not whether a state could choose to do more as a policy matter, but whether New York did so in its Constitution. In 2014, the People did not constitutionalize influence or crossover districts, did not abandon the first *Gingles* precondition, and did not make Article III § 4(c) subject to state statutes or legislative interpretation. If the People intended to depart from federal redistricting standards, they would have said so, and they certainly would not have made the provision expressly subject to "federal . . . statutes."

Nor would reading Article III as written render it a "redundancy" or "read [it] out of the State Constitution."[17] As a statute, the VRA is subject to repeal. By enshrining materially identical voting rights into the NY Constitution, the People ensured its protections would survive in the event the federal government repeals the VRA. This is a common event. The People have ratified other amendments that enshrine federal rights in the NY Constitution (*see e.g.* Senate Introducer's Mem in Support of 2023 NY Senate Bill S108A [Equal Rights Amendment] ["If, for example, the protections of Lawrence v. Texas were overturned by the federal courts, this amendment would prohibit the adoption of laws, policies, or practices in New York that target people for

[16] Petitioners' Reply Mem. at 8.
[17] *Id*. at 6 (quoting State Respondents' Letter at 3).

discrimination or criminal prosecution based on their sexual orientation or gender identity."]; Senate Introducer's Mem in Support of 2021 NY Senate Bill S528 [Green Amendment] [amending Constitution to "ensure that clean air and water are treated as fundamental rights for New Yorkers"]). In addition to constitutionalizing federal statutes, the NY Constitution also embodies protections found in the US Constitution, such as an equal protection clause. But any redundancy does not compel the conclusion that New York's provisions must "sweep more broadly than federal law."[18] For example, New York's equal protection clause "is no more broad in coverage than its Federal prototype" (*Dorsey v Stuyvesant Town Corp.*, 299 NY 512, 530 [1949]). Rather, New York enacted an equal protection clause "to make it clear that this State, like the Federal Government, is affirmatively committed to equal protection" and not due to "any perceived inadequacy in the Supreme Court's delineation of the right" (*Esler v Walters*, 56 NY2d 306, 314 [1982]). The same is true of the 2014 amendment.

Petitioners' contention that the NYVRA "acts as 'a legislative interpretation' of the Constitution itself"[19] is similarly illogical. As discussed in Respondents' opening brief, Petitioners' entire premise—that a 2022 statute may supply the controlling standards for a 2014 constitutional enactment—fails as a matter of law.[20] Petitioners' reliance on *Lallave v Martinez* (653 F Supp 3d

[18] Petitioners' Reply Mem at 3, 6; State Respondents' Letter at 3-4.
[19] *Id*. at 6-8.
[20] Respondents' Mem., at 18-20. In their moving papers, Petitioners cited to *People v Harris* (77 NY2d 434 [1991]) for the proposition that "[t]he Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to '[s]tatutory or common law defining the scope of the individual right in question'" (Petitioners' Reply Mem. at 15). Respondents pointed out in their opening brief that Petitioners omitted the words "any preexisting" from the beginning of that quotation (Respondents' Mem. at 19). Since the holding in *Harris* confirms that the subsequently enacted NYVRA cannot be considered in construing Article III, § 4(c)(1), Petitioners have abandoned reliance on that case.

173 [EDNY 2022]) is misplaced since the court in that case relied on a statute to interpret a prior statute, not a constitutional provision.

i. Any "textual differences" are immaterial

Petitioners' desperate search for "textual differences" between Article III, § 4(c) and Section 2 of the VRA is unavailing and ignores the clear *similarities* between the two provisions. Indeed, Article III, § 4(c) deliberately tracks the operative language of Section 2 of the VRA and should be construed in harmony with it. Like Section 2(a), Article III, § 4(c)(1) prohibits district lines that "result in" the "denial or abridgement" of racial or minority voting rights. And, like Section 2, it defines that prohibition through a "totality of the circumstances" standard and the same "less opportunity" formulation, requiring that minority groups not have "less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." Those parallel phrases—"denial or abridgement," "totality of the circumstances," and "less opportunity . . . to participate . . . and to elect representatives of their choice"—are borrowed directly from Section 2 and embedded in the State Constitution "subject to the requirements of the federal constitution and statutes," confirming that Article III, § 4(c)(1) was meant to constitutionalize a Section 2–equivalent protection, not to create a novel vote-dilution regime far broader than federal law.

Petitioners' attempt to avoid the first *Gingles* precondition on the basis that it "captures the statutory language in Section 2" that protects a singular "*class* of citizens'"[21] is demonstrably false. The Supreme Court's requirement that a minority group be "sufficiently large and geographically compact to constitute a majority in a single-member district" has nothing to do with the VRA's reference to a "class of citizens." Rather, the first precondition goes to whether a

[21] Petitioners' Reply Mem. at 6.

minority group can show an injury from a voting structure or practice. The Supreme Court specifically explained its rationale for the first precondition with no reference to the "class of citizens" language. As the Court explained,

> The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: **Unless minority voters possess the *potential* to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.** The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected. **Thus, if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure**.

(*Gingles*, 478 US at 51 n 17 [italics in original, bold added]).

Thus, contrary to Petitioners' argument, the Supreme Court did not develop the first *Gingles* precondition on the basis of the VRA's text, but rather, the fundamental principle that a minority group cannot claim an injury flowing from an electoral practice where the group is so small or dispersed that it cannot achieve electoral success for reasons independent of discriminatory voting practices (*see* *United States v City of Eastpointe*, 378 F Supp 3d 589, 602 [ED Mich 2019] ["The reasoning behind this precondition is that unless it can be shown that minority voters have the *potential* to elect representatives of their choice absent the challenged political structure, they cannot claim to have been injured by that structure."]).

Justice Kennedy elaborated on this point in *Bartlett*, explaining that "the majority-minority rule has its foundation in principles of democratic governance" (*Bartlett*, 556 US at 19). Those principles include "[t]he special significance, in the democratic process, of a majority" because "it is a special wrong when a minority group has 50 percent or more of the voting population and

could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district" (*id.*). In other words, majority rule is fundamental to the democratic process. Where a minority group—or even, assuming *arguendo*, a coalition of minority groups—cannot sustain a majority in a reasonably compact district, there is no cognizable vote-dilution injury because any inability to elect its preferred candidates flows from underlying demographic and political realities, not from a "standard, practice, or procedure" that denies or abridges the right to vote. Neither Section 2 nor Article III, § 4(c) confers a right to have such groups furnished with an "influence" or "crossover" district that overcomes those basic facts of political geography.

Petitioners' reliance on the Sixth Circuit's decision in *Nixon v Kent County* (76 F3d 1381 [6th Cir 1996]) fares no better. *Nixon* addressed whether Section 2 authorizes coalition suits and reasoned that, had Congress intended to permit them, it would have referred to "the classes of citizens," rather than "a class of citizens." (*id.* at 1386). Petitioners then contend "[t]hat language . . . is precisely the language the People of New York adopted when they voted in favor of Article III, Section 4(c)(1)."[22] But that is not "precisely the language" of Article III, § 4(c)(1). The language Petitioners cite does not refer to "classes" of citizens, let alone "coalitions." It tracks Section 2's "results test" language almost verbatim (*Gingles*, 478 US at 35), including the requirement that groups "do not have less opportunity . . . to elect representatives of their choice." (NY Const art. III, § 4 [c] [1]). Incredibly, Petitioners imply that the provision's use of the pronoun "their" reflects "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."[23] But Section 2 uses that same "their choice" phrasing (52 USCA

[22] Respondents' Mem. at 6.
[23] Petitioners' Reply Mem. at 6.

§ 10301 [b]), and the Supreme Court still imposed the first precondition. Petitioners offer no explanation why the identical phrase in Article III, § 4(c) suddenly does different work. The antecedent "racial or minority language groups" merely identifies who is protected, while the possessive "their" refers back to that antecedent. This grammar cannot be read to imply a rejection of the first *Gingles* precondition.

ii. The in pari materia canon does not apply

Petitioners' reliance on the *in pari materia* canon is unfounded. That canon is a modest aid in construing "statutes or general laws, usually enacted at different times but with reference to the same subject matter" (Statutes Law § 221). To begin with, the canon only applies when a provision is ambiguous, which Petitioners have neither alleged nor demonstrated (*Matter of St. Margaret's Ctr. ex rel. Ctr. for Disabled Corp. v Novello*, 18 Misc 3d 1130(A) [Sup Ct, Albany County 2005] ["However, the general rule that the meaning of a statute may be determined from its construction in connection with other statutes *in pari materia is resorted to only in search of legislative intent and cannot be invoked where the language of the statute is clear and unambiguous*."] [emphasis added]). Even if it did apply, the canon does not authorize a later, ordinary statute to rewrite the meaning of an earlier constitutional provision. The later-enacted NYVRA is on its face vastly broader in scope and adopts liability standards for local elections that go well beyond the text of Article III. The hierarchy runs in only one direction: the Constitution constrains and informs statutes, not the other way around. A subsequent Legislature cannot, by passing a more expansive statute, retroactively amend or expand the meaning of a previously ratified constitutional amendment. And even if the two enactments could be said to address related subject matter, their

materially different language and coverage confirm that the NYVRA is not *in pari materia* with Article III, § 4, but a separate policy choice that cannot govern construction of the constitution.[24]

More importantly, Petitioners' argument ignores the fatal flaw in their theory—had the Legislature intended to apply the analytical framework in the NYVRA to congressional, assembly or senate elections, it would have expressly done so in the statute. It did not and instead expressly limited that framework and its "loosen[ed] . . . requirements"[25] only to municipal and local elections. Since the Legislature clearly made an informed decision not to subject congressional elections to the NYVRA standard, it is inconceivable that the statute can now be used as a "legislative interpretation" to rewrite Article III, § 4(c)(1).

iii. Article III is not ambiguous and, in any event, extrinsic evidence does not reveal an intent to depart from federal law

Resort to extrinsic aids in interpreting the NY Constitution is also unnecessary in the absence of any ambiguity, which no party alleges here (*see Harkenrider v Hochul*, 38 NY3d 494, 511 [2022] ["In the construction of constitutional provisions, the language used, if plain and precise, should be given its full effect . . . ."]). State Respondents nevertheless "urge" this Court "to take into account the fact that New York amended its constitution in 2014 . . . to stand apart from federal protections."[26] But they fail to offer any textual support for this claim. It also runs

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[24] If anything, the *in pari materia* canon suggests that Article III, § 4(c) should be construed in connection with section 2 of the VRA (*see Harkenrider v Hochul*, 2022 N.Y. Slip Op. 31471[U], at *11 [N.Y. Sup Ct, Steuben County 2022] [approving congressional map where special master used the Federal VRA to interpret Article III, § 4 of the New York Constitution]).

[25] Petitioners' Mem. at 16.

[26] State Respondents' Letter at 3. State Respondents cite the Sponsor's Memo but nowhere in this Memo is there any mention of broadening or expanding the federal protections. Similarly, the official ballot language did not indicate that the 2014 amendment was expanding federal protections (Faso Reply Aff. Ex. A [NYSCEF Doc. No. 174]). The title on the Proposal was "Revising State's Redistricting Procedure," indicating the emphasis was on procedural changes not substantive additions to voting rights. The ballot simply advised voters that the Amendment "establishes principles to be used in creating districts" with no mention of federal protections. In fact "Vote Yes for Progress," an organization supporting the 2014 Amendment, described it as

contrary to the actual text. If the 2014 amendment were meant to "stand apart from federal protections," then the Legislature would not have made the principles of Article III, § 4(c) "[s]ubject to the requirements of the federal constitution and statutes." Moreover, if the Legislature intended the 2014 amendment to supplement federal protections, it would have used more expansive language, such as "in addition to," or otherwise made express what it was purportedly doing.

Also wrong is Petitioners' contention that their argument is "structurally, no different than Respondents' and Intervenors' view that the federal VRA standards should govern the inquiry."[27] This argument intentionally ignores the plain language of Article III, § 4(c)(1) making it expressly "subject to" federal law, including the VRA and the Supreme Court's interpretation of it. By contrast, the NY Constitution makes no reference to the NYVRA (nor could it, since the NYVRA was subsequently enacted) and, in fact, it omits state statutes entirely from the authorities to which it is subject.

Ultimately, Petitioners' opposition reveals their long shot gambit. They admit that they seek to apply the NYVRA because it "does not require proof that a majority-minority district can be drawn in the challenged area."[28] It is undisputed that Petitioners cannot satisfy this condition. This explains why, in their view, the "better framework" is a rewrite of the NY Constitution as opposed to one that is legally and factually coherent.

"Protect[ing] communities of interest and racial and language and minority groups *by codifying existing national Voting Rights Act language in the state constitution*" (New York Proposal 1, Create a Redistricting Commission and Alter Redistricting Processes Amendment (2014) - Ballotpedia [emphasis added]). Because no party has offered any evidence suggesting that the 2014 amendment was intended to expand federal protections, the Court should reject this contention entirely.

[27] Petitioners' Reply Mem. at 4.

[28] *Id*. at 5.

II. Since the NYVRA does not apply, this proceeding must be dismissed.

A. Under the principle of party presentation, this Court should not invent or apply a different standard *sua sponte*

Petitioners are bound to their theory that the NYVRA supplies the operative standard for Article III, § 4. While Petitioners suggest in passing that this Court may "decide precisely how to evaluate a claim under this provision in the first instance,"[29] that suggestion does not license the Court to craft a standard different from Petitioners' chosen legal theory. Due process and the principle of party presentation constrain adjudication of this case to the issues the parties have actually advanced.

The Supreme Court has made clear that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," under which courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" (*United States v Sineneng-Smith*, 590 US 371, 375 [2020]).[30] As another recent decision put it, "courts call balls and strikes; they don't get a turn at bat" (*Clark v Sweeney*, 607 US __, 2025 WL 3260170, at *1 [Nov. 24, 2025]). New York adheres to the same rule: deciding a case on "a distinct ground that [the court] winkled out wholly on [its] own would pose an obvious problem of fair play" because courts are "not in the business of blindsiding litigants, who expect [courts] to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made" (*Misicki v Caradonna*, 12 NY3d 511, 519 [2009]).

[29] Petitioners' Reply Mem. at 4 ("[T]his Court must decide precisely how to evaluate a claim under this provision [Article III, § 4(c)(1)] in the first instance.").
[30] This rule applies "in both civil and criminal cases, in the first instance and on appeal" role" (*Sineneng-Smith*, 590 US at 375).

To be sure, the party presentation principle is "not ironclad," but the courts are limited to a "modest initiating role" reserved for narrow circumstances (*Sineneng-Smith*, 590 US at 376). For example, a court may depart from the rule to correct an "an evident miscalculation" of a statute of limitations to prevent an unintentional waiver (*Day v McDonough*, 547 US 198, 202 [2006]), or "to protect a *pro se* litigant's rights" (*Greenlaw v United States*, 554 US 237, 244, 128 S Ct 2559, 2564, 171 L Ed 2d 399 [2008]). A "drastic[]" departure from the principle may "constitute an abuse of discretion" (*Sineneng-Smith*, 590 US at 375). None of the narrow exceptions applies here.

Applying those settled constraints to this case is straightforward. Petitioners exclusively argue that the NYVRA's standards should be applied to Article III, § 4, and they structured their pleadings, proof, and requested remedy around the NYVRA's unique features. They offer no alternative theory, and concede that their dilution claim fails under applicable federal law. Having put all their eggs in the NYVRA basket, they cannot ask this Court to craft a different standard they never briefed and against which Respondents have not been afforded notice and an opportunity to be heard.

Creating an alternative standard would also work a concrete prejudice. The operative legal standard here determines the elements Petitioners must plead and prove, the evidence each side must marshal, and the remedial possibilities the Court may consider. Petitioners selected a standard and Respondents have litigated this case in reliance on Petitioners' own framing. Respondents have accordingly tailored their motion to dismiss, opposition, and expert submissions to that theory. Having chosen that legal and factual template, Petitioners cannot now invite the Court to announce a different, unbriefed standard midstream.

B. Failure to satisfy the first *Gingles* precondition is fatal

While this Court can and should dismiss this proceeding on the sole basis that the NYVRA does not apply, dismissal is also required because Petitioners cannot satisfy the first *Gingles*

precondition (*Reed v Town of Babylon*, 914 F Supp 843, 863 [EDNY 1996] ["Satisfaction of the *Gingles* preconditions is essential to a Section 2 vote dilution claim"]; *Concerned Citizens for Equality v McDonald*, 63 F3d 413, 417 [5th Cir 1995] ["The preconditions set forth in *Gingles* are necessary: Voting rights plaintiffs may not employ a self-serving thought experiment to leap-frog one of the 'necessary' *Gingles* preconditions."]). "[F]ederal courts have nearly unanimously interpreted the first *Gingles* precondition strictly and have rejected any claim where the minority group does not constitute a majority of the relevant population in the proposed district" (*Rodriguez v Pataki*, 308 F Supp 2d 346, 377 [SDNY 2004], affd, 543 US 997 [2004] ["We agree with the nearly universal opinion of federal courts that section 2 of the VRA does not require the creation of influence districts where minority voters will not be able to elect candidates of choice."] [collecting cases]; *see also McNeil v Springfield Park Dist.*, 851 F2d 937, 943 [7th Cir 1988] ["Movement away from the *Gingles* standard invites courts to build castles in the air, based on quite speculative foundations. In our view, the Court based its brightline requirement on a plausible scenario under which courts can estimate approximately the ability of minorities in a single-member district to elect candidates of their choice. "]).

Since it is undisputed that Black and Latino voters cannot form a majority, either on their own or as a coalition, under Petitioners' Illustrative Map, Petitioners cannot satisfy the first *Gingles* precondition. This requires dismissal as a matter of law (*Hall v Virginia*, 385 F3d 421, 432 [4th Cir 2004] [dismissing vote-dilution claim because plaintiffs failed to establish the voters could "form a majority in a single-member district as required by *Gingles*"]).

CONCLUSION

For all these reasons, this Court should dismiss this proceeding as a matter of law and grant such other and further relief as is just, proper, and equitable.

Dated: December 23, 2025
Albany, New York

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies pursuant to the word count stipulation in this action that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 5,527 words, based on the calculation made by the word-processing system used to prepare this document.

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

Dated: December 23, 2025
Albany, New York

/s/ *Nicholas J. Faso*