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

RESPONDENTS' PROPOSED CONCLUSIONS OF LAW

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PROPOSED CONCLUSIONS OF LAW[1]

I. Petitioners must overcome a strong presumption of constitutionality

1. The 2024 Plan, as a statutory enactment, enjoys a strong presumption of constitutionality. Courts "strike [redistricting plans] down only as a last unavoidable result" (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted], quoting *Matter of Van Berkel v Power*, 16 NY2d 37, 40 [1965]).

2. In order to overcome this strong presumption, Petitioners "bear the heavy burden of proving ***beyond a reasonable doubt*** that the statute is in conflict with the Constitution" (*People v Viviani*, 36 NY3d 564, 576 [2021] [internal citations and punctuation omitted] [emphasis added]). In addition, Petitioners "bear the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment" (*White*, 38 NY3d at 216 [2022] [internal citation and punctuation omitted]).

3. Petitioners cannot satisfy this heavy burden because they have not demonstrated that the 2024 Plan violates Article III, § 4(c) beyond a reasonable doubt. On this basis alone, the Petition must be dismissed (*see e.g. Cohen v Cuomo*, 35 Misc 3d 478, 484 [Sup Ct, New York County 2012], affd, 19 NY3d 196 [2012] [dismissing challenge to redistricting plan because the petitioners failed to rebut presumption of constitutionality]).

II. Petitioners must also overcome the presumption of regularity

4. All acts of official duty, including the creation of a redistricting plan, are presumed to be in accordance with law and officials are presumed to have not done "anything contrary to

[1] Respondents adopt and expressly incorporate herein the arguments made by Respondents in connection with their pending motion to dismiss (NYSCEF Doc. No. 116). Furthermore, Respondents adopt and expressly incorporate herein the Intervenor-Respondents' Proposed Findings of Fact and Conclusions of Law (NYSCEF Doc No. 207).

[their] official duty, or omit anything which [their] official duty requires to be done" (*People v Dominique*, 90 NY2d 880, 881 [1997]; *see also Matter of Steinberg*, 137 AD2d 110, 114 [1st Dept 1988]).

5. This presumption of regularity can only be overcome by "substantial evidence" rebutting the presumption, which Petitioners have failed to present here (*Dominique*, 90 NY2d at 881).

III. Article III, § 4(c)(1) mirrors Section 2 and does not mandate "influence" districts

A. Text and structure

6. "When language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the People" (*King v Cuomo*, 81 NY2d 247, 253 [1993] [cleaned up]). "Effect must be given to the intent as indicated by the language employed. Especially should this be so in the interpretation of a written Constitution*, an instrument framed deliberately and with care, and adopted by the people as the organic law of the State*" (*Settle v Van Evrea*, 49 NY 280, 281 [1872] [emphasis added]).

7. Here, Article III, § 4(c) expressly directs that it be applied "*[s]ubject to* the requirements of the federal constitution and statutes and in compliance with state constitutional requirements" (emphasis added). Thus, on its face, the provision is governed by federal law and the NY Constitution—not by New York statutes—and it says nothing of the NYVRA.[2]

8. The words "subject to" are unambiguous and, as "used in their ordinary sense, mean subordinate to, subservient to or limited by" (*Peters v Smolian*, 49 Misc 3d 408, 423 [Sup Ct,

[2] Nor could it have referenced the NYVRA, much less could the framers or the people have contemplated that it would be subject to the NYVRA's standards, since the NYVRA was enacted eight years later.

Suffolk County 2015], *affd* 154 AD3d 980 [2d Dept 2017]; *see also* *Auburn & S. Electric R. Co. v Hoadley*, 119 Misc 94, 97 [Sup Ct 1922], *affd* 206 AD 653 [4th Dept 1923] ["the term means 'charged with,' or 'subservient to'"]; *Raw Silk Trading Co. v Katz*, 201 AD 713, 716 [1st Dept 1922] ["The words 'subject to' have a well-defined meaning by legal interpretation."]).

9. The Court of Appeals construes "words of ordinary import with their usual and commonly understood meaning, and in that connection ha[s] regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016] [internal citations and punctuation omitted]). Merriam-Webster defines the phrasal verb "subject to" as "affected by or possibly affected by (something)"(Merriam-Webster Online Dictionary, subject to [https://www.merriam-webster.com/dictionary/subject%20to]).

10. The plain meaning of "subject to" is controlling. New York law gives full effect to unambiguous constitutional text and does not permit interpretive gloss that expands or alters the people's chosen language. As the Court of Appeals has emphasized, "[c]ourts do not have the leeway to construe their way around a self-evident constitutional provision" (*King v Cuomo*, 81 NY2d, 247, 253 [1993]; *see also* *Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] ["[O]ur starting point must be the text"]). Rather, "[i]n construing the language of the Constitution as in construing the language of a statute, [the Court of Appeals] look[s] for the intention of the People and give to the language used its ordinary meaning" (*Harkenrider*, 38 NY3d at 509 [internal citation and punctuation omitted]). Thus, this Court cannot, as Petitioners' request, read into Article III, § 4(c) the standards of the subsequently enacted NYVRA.

11. The text of Article III, § 4(c) draws two deliberate lines. *First*, it subjects redistricting to federal constraints—"the requirements of the federal constitution and statutes"—

thereby incorporating federal equal protection and Voting Rights Act obligations (*see Schneider v Rockefeller*, 31 NY2d 420, 427 [1972] ["The Federal constitutional requirement of substantial equality of population among legislative districts is pre-eminent and our State constitutional requirements must be harmonized with the Federal standard."]). The Parties do not dispute that federal law constrains redistricting. As the Court of Appeals observed in *Harkenrider*, the NY Constitution not only embodies "longstanding constitutional constraints on redistricting" but also "those required by federal law — such as conformity with the 'one person, one vote' principle . . . and with the federal Voting Rights Act" (*Harkenrider*, 38 NY3d at 519 n 13 [internal citations and punctuation omitted]).

12. *Second*, at the state level, Article III, § 4(c) is subject to "state constitutional requirements," not the requirements of state "statutes," such as the subsequently enacted NYVRA. The juxtaposition is dispositive. Where the framers and the voters intended to incorporate statutes, they said so—at the federal level only. Where they intended state constraints, they specified "constitutional" requirements, but omitted statutes.

13. Reading Article III, § 4(c) to import state statutory standards would rewrite the clause, collapse the voters' textually distinct references to "federal . . . statutes" and "state constitutional requirements," and violate the canon that a constitutional provision must be given effect rather than rendered surplusage (*Hoffman v New York State Independent Redistricting Comm.*, 41 NY3d 341, 359 [2023] ["Indeed, our well-settled doctrine requires us to give effect to each component of the [constitutional] provision or statute to avoid a construction that treats a word or phrase as superfluous"] [citations and internal quotations omitted]).

14. Redistricting jurisprudence confirms that, under Article III, § 4(c)'s "subject to" clause, federal law controls where it applies, and state constitutional requirements govern beyond

that. In *Wolpoff v Cuomo*, the Court of Appeals upheld deviations from state redistricting requirements where necessary to comply with federal equal-population and federal Voting Rights Act mandates—underscoring that the federal Constitution and federal VRA provide the operative external constraints contemplated by Article III, § 4(c) (80 NY2d 70, 77-78 [1992] ["The issue before us on these appeals is not whether the Senate redistricting plan technically violates the express language of the State Constitution. No one disputes that such a technical violation has occurred, and in *Matter of Orans,* we recognized that such violations were inevitable if the Legislature was to comply with Federal constitutional requirements."]; *see also Harkenrider*, 38 NY3d at 519 n 13 [noting that the NY Constitution is constrained by "the federal Voting Rights Act"]).

15. The Court must also reject Petitioners' interpretation of "subject to" under well-settled principles of statutory interpretation. The interpretive maxim *expressio unius est exclusion alterius* means "the expression of one is the exclusion of others" (Statutes § 240; *see also Matter of 1605 Book Ctr., Inc. v Tax Appeals Trib. of State of N.Y.*, 83 NY2d 240, 245-46 [1994]). Under this canon of construction, "where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded" (*People v Page*, 35 NY3d 199, 206-07 [2020]). Courts apply this maxim where, as is the case with Article III, § 4(c) and the NYVRA, the words of the constitution or statute "are free from ambiguity and express plainly, clearly and distinctively the legislative intent" so that "the intent of the Legislature [may] be discerned from the language of the statute . . . without resort to extrinsic materials such as legislative history or memoranda" (*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]; *Silver v Pataki*, 3 AD3d 101, 107 [1st Dept 2003] [applying maxim to Article VII, § 4 of the New York State Constitution]).

16. Article III, § 4(c) states that it is "*[s]ubject to* the requirements of the federal constitution and statutes and in compliance with state constitutional requirements" (emphasis added). The provision conspicuously omits any reference to state statutes. Thus, "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 (Statutes § 240; *see generally County of Niagara v Daines*, 96 AD3d 1433, 1435 [4th Dept 2012] [rejecting State's proposed interpretation of Social Services Law § 365]).

17. Similarly, to the extent Petitioners manufacture a challenge to the CD-11 map under the NYVRA, the maxim also bars expansion of the plain and unambiguous language of that statute. By its express terms, the "loosened requirements" for a voter dilution claim under the NYVRA are limited to a "board of elections or political subdivision" (Election Law § 17-206 [2] [a]). Had the Legislature intended to extend the "loosened requirements" to congressional, assembly, or senate elections, it would have expressly done so in the statute (*Matter of Marian T.*, 36 NY3d 44, 51 [2020] ["Had the Legislature intended to limit judicial discretion in that manner, it would have said so in the statute"]; *Pearson v Pearson*, 81 AD2d 291, 294 [2d Dept 1981] [rejecting proposed construction of Domestic Relations Law § 170(5) and noting that "had the Legislature intended any such result, it would have so stated in the statute"]; *see generally* Statutes § 74 ["A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended"]).

18. Since the Legislature did not, this Court must infer that the Legislature intended to omit or exclude congressional, assembly, and senate elections from the NYVRA and its analytical framework (*Golden v Koch*, 49 NY2d 690 [1980] [holding that restrictions on the New York City Mayor's power to vote on budget modifications "is limited only in the specific instances delineated" in the New York City Charter]).

19. There is no risk that this may result in inconsistent application of voter dilution standards because the NYVRA applies only to municipal and local elections, which further confirms that this is a purely legislative matter. This is an issue that the courts cannot address, let alone remedy—only the Legislature may do so (*Davis v State*, 54 AD2d 126, 129 [3d Dept 1976] ["[I]f the legislature had intended the statute to include the matter in question, it would have been easy for them to have said so and to have expressly included it"] [quoting Statutes § 74]; *see also Rodriguez v Pataki*, 308 F Supp 2d 346, 352 [SDNY 2004], *affd,* 543 US 997 [2004] ["New York's . . . redistricting laws are well within the purview and political prerogative of the State Legislature], *affd* 543 US 997 [2004]). If the Legislature wishes to extend the NYVRA to congressional, assembly, and senate elections it must first persuade the People to amend the NY Constitution and it also must amend the NYVRA. Until then, voter dilution claims under Article III, § 4(c) are subject to the federal VRA and the *Gingles* standard.[3]

20. As a fallback, Petitioners have previously argued that federal law is a "floor" and "states may go further."[4] However, the relevant question here is not whether a state could choose

[3] Even if the Legislature amended the NYVRA to extend its analytical framework to congressional, assembly and State senate elections, Petitioners' Illustrative Map still would fail under Article III, § 4(c) since it unquestionably violates § 4(c)(3) ("[e]ach district shall be as compact in form as practicable") and § 4(c)(5) (requiring consideration of "the maintenance of cores of existing districts, of preexisting political subdivisions, . . . and of communities of interest").
[4] Petitioners' Reply Mem. at 8.

to do more as a policy matter, but whether New York actually 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."

21. Nor would reading Article III as written render it a "redundancy" or "read [it] out of the State Constitution."[5] 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.

22. 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 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"]).

23. 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

[5] *Id*. at 6 (quoting State Respondents' Letter at 3).

than federal law."[6] 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]).

24. 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.

B. Article III, § 4(c) is modeled after Section 2 of the federal VRA and does not mandate the creation of influence districts

25. On its face, Article III, § 4(c) was modeled on Section 2 of the federal VRA. The operative constitutional text mirrors the federal statute's focus on whether, "based on the totality of the circumstances," racial or language minority groups have "less opportunity . . . to participate in the political process and to elect representatives of their choice" (*compare* 52 USC § 10301 [b] *with* NY Const art. III, § 4 [c]).

26. The text and structure of Article III, § 4(c) is materially identical to Section 2 and there is absolutely no textual basis to infer that it goes beyond Section 2. The provision (a) includes an identical "totality of circumstances" inquiry; (b) identically provides for an "opportunity . . . to elect representatives of their choice"; and, (c) like its federal counterpart, sits alongside traditional, race-neutral redistricting criteria (contiguity, compactness, equal population, core retention, and communities of interest), reflecting the same balance between minority electoral opportunity and the traditional principles that federal law requires.

27. While the Legislature chose to expressly include "influence" in the subsequently enacted NYVRA, there is nothing in the NY Constitution that includes "influence."

[6] Petitioners' Reply Mem at 3, 6; *see also* State Respondents' Letter at 3-4.

28. Critically, it is the "policy" of New York courts to "adopt, whenever reasonable and practical," the federal construction of similar state laws (*Marx v Bragalini*, 6 NY2d 322, 333 [1959] [adopting federal construction of "similar tax provisions"]).

29. As the Court of Appeals has explained, where state and federal law is similar, the state law "should generally be construed in light of Federal precedent and given a different interpretation only where State policy, differences in the statutory language or the legislative history justify such a result" (*Matter of Anheuser-Busch, Inc. v Abrams*, 71 NY2d 327, 335 [1988]; *Weiner v City of New York*, 190 AD3d 517, 518 [1st Dept 2021] [when a state law is "modeled after its federal counterpart, it is appropriate to look to federal jurisprudence for guidance"]).

30. Here, since Article III, § 4(c) is not just modeled after Section 2, but materially identical to it, this Court will interpret it consistently with federal precedent.

31. The Supreme Court has expressly held that Section 2 does not mandate the creation of influence districts (*League of United Latin Am. Citizens v Perry*, 548 US 399, 446 [2006] ["The failure to create an influence district . . . thus does not run afoul of § 2 of the Voting Rights Act."]; *see also Anne Harding v County of Dallas, Texas*, 948 F3d 302, 311 [5th Cir 2020] ["We are pointed to no case in which the ability to create an influence district was considered sufficient to establish a § 2 vote dilution claim."]; *Rodriguez v Pataki*, 308 F Supp 2d 346, 378 [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"]).

32. Section 2 law also does not mandate "crossover" districts (where less than a majority can prevail with white crossover support). In *Bartlett v Strickland*, the Supreme Court squarely held that Section 2 does not require drawing crossover districts and reaffirmed that the

first Gingles precondition demands that the protected group be sufficiently large and geographically compact to form a numerical majority in a reasonably configured single-member district (*Bartlett v Strickland*, 556 US 1, 17 [2009]).

33. The *Gingles* framework controls Section 2 vote dilution claims. To proceed past the threshold, plaintiffs must establish: (1) the minority group is sufficiently large and geographically compact to comprise a majority in a reasonably configured single-member district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc to usually defeat the minority's preferred candidate. It is well settled that failure to satisfy any one precondition is fatal to a Section 2 claim.

34. Since Article III, § 4(c) was modeled on Section 2 and uses the same operative terms, the *Gingles* framework should guide this Court's analysis of Petitioners' state constitutional claim. Construing the NY Constitution consistently with federal law ensures administrable, well-settled standards and avoids the prospect of endless counter-litigation that follows when "influence" alone suffices without the limiting majority-minority threshold established by *Gingles*.[7]

IV. The NYVRA does not govern congressional redistricting and cannot be read into the NY Constitution

A. Statutory scope

35. Any argument concerning "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

[7] VEC Doc. No. 1-44 ("Alford Report") at 15; VEC Doc. No. 1-43 ("Bryan Report") ¶¶ 202-204.

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.

36. There can be no avoidance of the first *Gingles* precondition on the basis that it purportedly "captures the statutory language in Section 2" that protects a singular "*class* of citizens.'"[8] 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 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**

[8] Petitioners' Reply Mem. at 6.

> **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]).

37. Thus, 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."]).

38. 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.*).

39. 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.

40. Any 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 have contended "[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)."[9] 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]).

41. Petitioners have argued 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."[10] But Section 2 uses that same "their choice" phrasing (52 USC § 10301 [b]), and the Supreme Court still imposed the first precondition. Petitioners have offered 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.

[9] Respondents' Mem. at 6.
[10] Petitioners' Reply Mem. at 6.

42. Petitioners argue that the "best approach" for interpreting Article III, § 4(c) is to ignore long-settled federal law to which Article III, § 4(c) is subject and instead apply the vote dilution framework set forth in NYVRA. This argument is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law. By its express terms, the NYVRA applies only to local elections, not congressional elections, and was enacted eight years *after* the People adopted Article III, § 4(c). Petitioners make this argument, despite expressly admitting the NYVRA "does not, by its terms, directly regulate congressional redistricting."[11]

B. As a subsequently enacted statute, the NYVRA cannot, as a matter of law, modify Article III, § 4 of the Constitution

43. New York law also bars the Legislature from altering or enlarging constitutional standards by statute. "The Constitution is the supreme law of the state" (*Browne v City of New York*, 213 AD 206, 211 [1st Dept 1925], *affd* 241 NY 96 [1925]). As such, the Constitution:

> is higher in authority than any law, direction, or order made by any body or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made. In any case of conflict, the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity"

(*id.*, *quoting* Cooley, Constitutional Limitations [7th Ed., pg. 76]).

44. The Legislature is without power to amend the Constitution absent ratification by the people (NY Const art. XIX, § 1; *Browne*, 213 AD at 222 ["It has been decided many times that the provisions of a Constitution which regulate its amendment are not directory but mandatory, and that a strict observance of every substantial requirement is essential to the validity of the proposed amendment."]).

[11] Petitioners' Memorandum of Law in Support of Petition dated November 19, 2025 (NYSCEF No. 63) ("Petitioners' Mem.") at 2.

45. This Court cannot effectively engraft the NYVRA into Article III, § 4(c) as this would clearly violate these principles. In effect, this would require the Court to make a substantive change to the Constitution's framework that may be made only by constitutional amendment. Petitioners' theory would invert that hierarchy by allowing a 2022 statute to supply controlling standards for a 2014 constitutional amendment that carefully delineates the bodies of law to which it is subject.

46. In support of their strained theory, Petitioners relied solely on *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]tate statutory or common law defining the scope of the individual right in question'"[12] (*id.* at 438). The Court of Appeals, however, expressly limited the Harris decision to "*any preexisting*" state statutory or common law in assessing the scope of the right (*id.* [emphasis added]).

47. Petitioners have cited no authority for their novel proposition that courts may use a *subsequently* enacted statute to discern the intent of the People as embodied in a previously adopted constitutional provision, nor could they (*see generally* *Nassau Ins. Co. v Guarascio*, 82 AD2d 505, 515 [2d Dept 1981] [noting that subsequent amendments generally cannot be considered as indicating the intention of the Legislature in adopting earlier statutes]).[13]

[12] Petitioners' Mem. at 15.

[13] Petitioners have never offered any authority for the proposition that, because a statute and constitutional provision are supposedly similar in scope, the subsequently enacted statute's specific analytical framework must be applied to the earlier adopted constitutional provision. Nor is there any basis to use the NYRVA as an interpretive guide, since Petitioners do not dispute that Article III, § 4(c) is plain and unambiguous. Thus, the Court may discern the People's intent without resort to extrinsic aids, including subsequently enacted statutes (Statutes § 76; *Roth v Michelson*, 55 NY2d 278, 283 [1982] ["[A] primary principle of statutory interpretation is that legislative intent, when unobscured by ambiguity or inconsistency, is to be determined by taking the legislative language literally"]).

48. As a state statute, the NYVRA cannot override the NY Constitution's plain text. Regardless of its independent scope or remedies in local and municipal elections, the NYVRA cannot define, modify, or expand the constitutional standards under Article III, § 4(c). Petitioners' request to apply NYVRA's standards to interpret the NY Constitution disregards the provision's plain language, collapses its deliberate federal-versus-state structure, and contravenes bedrock principles of New York constitutional law. This Court should reject that request and apply Article III, § 4(c) as written: subject to the requirements of the federal Constitution and federal statutes, including the federal VRA.

V. Petitioners Fail on the merits under any plausible standard

A. The "Usually Defeated" threshold is not satisfied

49. Under section 2(b)(ii) of the NYVRA, a plaintiff alleging vote dilution in a district-based election system must make a threshold showing that "candidates . . . preferred by members of the protected class *would usually be defeated*" and either (A) racially polarized voting or (B) under the "totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired."

50. This Court should give the phrase "usually be defeated" its plain and ordinary meaning—namely, that candidates preferred by the protected class would regularly or almost always lose. "[T]he text of a provision 'is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning'" (*Matter of Albany Law School v New York State Off. of Mental Retardation and Dev. Disabilities*, 19 NY3d 106, 120 [2012] [internal citation omitted]). Where a term is undefined, New York Courts "construe words of ordinary import with their usual and commonly understood meaning" and often rely on

"dictionary definitions as useful guideposts in determining the meaning of a word or phrase" (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016]).

51. "Usually" should be construed in accordance with its common usage. "Usually" is defined as (1) "[o]rdinary; customary" and "[e]xpected based on previous experience, or on a pattern or course of conduct to" by Black's Law Dictionary, (2) "in the way that most often happens" by the Cambridge Dictionary, and (3) "according to the usual or ordinary course of things : most often: as a rule" in the Merriam-Webster Dictionary (Black's Law Dictionary, usual [12th ed. 2024]; Merriam-Webster Online Dictionary, usually [https://www.merriam-webster.com/dictionary/usually]; Cambridge Online Dictionary, usually [https://dictionary.cambridge.org/dictionary/english/usually]). In other words, "usually" refers to events that occur customarily, normally, or with consistent frequency.

52. Nothing in the NYVRA supplies a technical definition of "usually," and no contextual cue suggests a specialized or idiosyncratic meaning. To the contrary, the statute's structure and purpose confirm that the phrase functions as a threshold indicator of systemic electoral disadvantage—*i.e.*, a condition in which candidates of choice for the protected class do not merely lose occasionally or sporadically, but are defeated as a matter of course. Reading "usually" to mean "regularly" or "almost always" calibrates the threshold to capture entrenched patterns of defeat while avoiding any distortion that would trivialize the standard (*e.g.*, by equating "usually" with "sometimes").

53. Additionally, in the context of a district-based system, the Court should consider whether the preferred candidates are "usually" defeated across the entirety of the district, not just the particular district being challenged. Section 2(b)(ii) is directed at vote dilution in a "district-based election system," which, by definition, is a method of election implemented through a multi-

district plan. In this context, the threshold question whether minority-preferred candidates "would usually be defeated" should be evaluated across the plan as a whole, not confined to outcomes in a single electoral district. A single-district snapshot cannot capture whether the districting scheme systematically impairs the protected class's electoral opportunity—it speaks only to local partisan lean or candidate-specific dynamics. A plan-wide assessment, by contrast, asks the right question: whether, in the ordinary course, the design and interaction of districts result in the recurring defeat of the protected class's candidates of choice.

54. Focusing narrowly on one district would misread the statutory threshold and produce an unworkable rule. In any jurisdiction with normal political geography, some districts will naturally lean toward a party or coalition that is not the protected class's candidate of choice—that alone does not evidence dilution. If a single-district showing sufficed, the statute would mandate reengineering every partisan-leaning district whenever minority-preferred candidates lose there, regardless of whether the plan overall affords genuine electoral opportunity elsewhere. That is not what the NYVRA provides. The statute targets systemic dilution—patterns where the protected class's candidates of choice are regularly or almost always defeated across the map—not the ordinary operation of political preference within one safely partisan district.

55. Here, looking at New York's congressional map as a whole, the preferred candidates of Black and Latino voters are not "usually defeated." In the 2018 election, under the pre-2020 census map, every one of the thirteen House seats in and around New York City elected a Democrat, including CD-11.[14] The 2020 election was also a "landslide" for Democrats across the state, except that CD-11 swung to the Republican candidate.[15] In 2022, under the newly drawn

[14] Bryan Report ¶ 118.
[15] *Id.* at ¶ 178.

maps, all but two House seats in and around New York City elected a Democrat.[16] And in 2024, under the second set of new maps, all but CD-11 elected Democrats.[17] In total, from 2018 to 2024, the congressional map has largely favored Democrat candidates: of fifty-two House races in and around New York City, Democrats won forty-eight.[18]

B. "Totality of the Circumstances"

56. Petitioners' claim fails under Article III § 4(c)(1) because they failed to demonstrate racially polarized voting in CD-11. Courts should evaluate totality of circumstances under the federal Section 2 framework.

57. In evaluating the totality of circumstances under the Section 2 framework, the Court should consider the cause of divergent voting preferences (*Uno v City of Holyoke*, 72 F3d 973, 982 [1st Cir 1995] [holding that § 2 "does not require courts to ignore evidence that factors other than race are the real obstacles to the political success of a minority group"]; *Lewis v Alamance County, N.C.*, 99 F3d 600, 615, n. 12 [4th Cir 1996] [noting that causation "is relevant in the totality of circumstances inquiry"]; *United States v Charleston County, S.C.*, 365 F3d 341, 349 [4th Cir 2004] ["Certainly the reason for polarized voting is a critical factor in the totality analysis"]; *cf. Gingles*, 478 U.S. at 100-101 [O'Connor, J., concurring in judgment] [noting that causation evidence is part of the "overall vote dilution inquiry"]).

58. As part of this causation analysis, courts consider evidence that partisanship is the cause of the racially divergent voting (*Charleston County*, 365 F3d at 349; *Pierce v N. Carolina State Bd. of Elections*, 97 F.4th 194, 222-23 [4th Cir 2024] [evaluating "whether partisanship, rather than race, drove polarization in North Carolina"]; *League of United Latin Am. Citizens,*

[16] *Id.* at ¶ 179.
[17] *Id.* at ¶ 181.
[18] *Id.* at ¶ 190.

Council No. 4434 v Clements, 999 F2d 831, 855 [1993] [holding that, under Section 2 of the Voting Rights Act, plaintiffs must prove race, not partisan affiliation, is the predominant determinant of political preference to establish legally significant racial bloc voting]).

59. Dr. Alford testified that there is no evidence in Dr. Palmer's report showing that CD-11 voters' preferences change based on the race of the candidate and that Black voters support Black Democratic and White Candidates at "almost exactly the same percentage."[19] Based upon his analysis of Dr. Palmer's data, including the race of the candidates in the elections considered by Dr. Palmer, Dr. Alford concluded that the polarization in CD-11 was partisan and that there was no empirical evidence in Dr. Palmer's analysis demonstrating racial polarization.[20]

60. Neither Petitioners nor Dr. Palmer rebutted Dr. Alford's determination that there is partisan polarization in CD-11 and Dr. Palmer ultimately admitted during cross-examination that partisan polarization exists in CD-11.[21]

61. Petitioners only contend that Dr. Alford's analysis is irrelevant because the causation (*i.e.*, the "why") for polarization does not matter.[22] That is incorrect. In *Pierce v North Carolina Board of Elections*, Dr. Alford, as he did here, used the analysis of the plaintiffs' expert and concluded that it "demonstrates that the party affiliation of the candidates is sufficient to fully explain the divergent voting preferences of Black and White voters in the 2020 and 2022 North Carolina elections" (*Pierce v N. Carolina State Bd. of Elections*, 713 F Supp 3d 195, 238 [EDNC 2024] [finding that "Dr. Alford persuasively shows that black North Carolinians are not more likely to support black Democratic candidates than white Democratic candidates"]).

[19] Tr. 686.
[20] Tr. 684:21-687:14.
[21] Tr. 235:13-25; 236:1-7.
[22] Tr. 185:13-23.

62. On appeal, the Fourth Circuit rejected the plaintiffs' argument that Dr. Alford's analysis is irrelevant and held that "[a]lthough caselaw does not require the minority-preferred candidate to be a member of the minority group, a model that accounts for the candidate's race can provide probative evidence about causation" (*Pierce v N. Carolina State Bd. of Elections*, 97 F.4th 194, 223 [4th Cir 2024]).

63. Here, the only probative trial evidence of the causation for polarization in CD-11 is Dr. Alford's analysis of the race of the candidates in the elections included in Dr. Palmer's report and Petitioners failed to challenge that evidence. Accordingly, the trial evidence demonstrates that the divergent voting patterns in CD-11 among White and Black and Hispanic voters "are best explained by partisan affiliation" (*League of United Latin American Citizens, Council No. 4434*, 999 F2d at 861). Petitioners, therefore, cannot demonstrate vote dilution under Section 2 or Article III, § 4(c)(1) (*Pierce*, 97 F4th at 223).

VI. Petitioners' requested remedy is an unconstitutional partisan gerrymander

64. Petitioners' map is not a neutral adjustment to better reflect demographic realities. It is a surgical political project that transforms the only Republican-held congressional district into one that unmistakably favors Democratic candidates.

65. Bryan's analysis of Cooper's Illustrative Plan confirms this point. Under the 2024 map, CD-11 is geographically coherent and electorally stable, and its minority CVAP profile has been steady across the post-census cycles.

66. Cooper's wholesale reconfiguration, by contrast, targets electoral performance through two coordinated moves: exporting a large set of Republican-performing precincts out of CD-11 and importing heavily Democratic precincts from Lower Manhattan across five miles of

open water.[23] In 2024, the precincts Cooper removes voted approximately 80% Republican across federal contests, while the precincts he imports from CD-10 voted about 58% Democratic.[24]

67. Bryan's precinct-level analysis shows that, under Cooper's plan, CD-11 shifts from a 64.1% Republican result in 2024 to an inorganically engineered "dead heat."[25] That is partisan line-drawing by any meaningful measure. Petitioners' suggestion that this "competitiveness" is a virtue ignores that Article III forbids drawing districts to discourage competition or disfavor incumbents (NY Const. art. III, § [c] [5] ["Districts shall not be drawn to *discourage competition* or for the purpose of *favoring or disfavoring* incumbents or other particular candidates or political parties"] [emphasis added]).

68. Moreover, Petitioners' asserted "remedy" does not improve minority opportunity. Alford confirms that, in both the enacted 2024 CD-11 and Cooper's illustrative map, the combined Black-and-Latino CVAP remains under one-quarter of the district and changes only marginally under Petitioners' plan.[26]

69. At the same time, Cooper's plan increases White non-Hispanic CVAP by about 2.6 percentage points, yields only small upticks for Black and Hispanic CVAP, and sharply reduces Asian CVAP—the largest single minority group in CD-11—by roughly 4.6 percentage points (from about 17.0% to 12.4%).[27]

70. Bryan's core retention analysis shows who is actually being moved to effect Petitioners' design. Between the enacted plan and Cooper's plan, approximately 31.5% of CD-11 CVAP is relocated overall—but *57.1% of Asian CVAP* is moved out of CD-11, compared to only

[23] Bryan Report ¶¶ 63, 192
[24] *Id.* ¶ 193.
[25] *Id.* ¶¶ 62, 189, 194.
[26] Alford Report at 7.
[27] Bryan Report ¶¶ 197, 199.

12.9% of Any-Part-Black CVAP and roughly 26–28% of White non-Hispanic CVAP. The targeted removal of the largest minority group from CD-11, coupled with only fractional changes to Petitioners' preferred coalition components, further aligns with partisan engineering.

71. The nakedly partisan goal of Petitioners' proposal is confirmed by its electoral effects. As Alford and Bryan explain, Petitioners' plan accomplishes its supposed minority remedy by shipping out heavily Republican-performing precincts from CD-11 for substantially more Democratic precincts, converting a 2024 Republican margin of about 64.1% into a contrived near-tie. That is not minority-rights remediation; it is partisan gerrymandering dressed in civil-rights rhetoric.

72. In short, Petitioners' minority-rights narrative cannot be reconciled with the empirical evidence that their plan: (i) only modestly alters Black-and-Latino CVAP, (ii) materially increases White non-Hispanic CVAP, (iii) significantly diminishes Asian CVAP and removes a majority of Asian CVAP from CD-11, and (iv) severely degrades compactness and communities of interest—all while producing the precise partisan performance shift Petitioners seek.

i. Cooper's map flunks compactness

73. "[R]eapportionment is one area in which appearances do matter" (*Shaw v Reno*, 509 US 630, 647 [1993]). New York law requires congressional districts to be contiguous and "as compact in form as practicable" (NY Const., Art III § [c] [4]). Compactness has long been a feature of the NY Constitution's "anti-gerrymander provisions" (*Schneider v Rockefeller*, 31 NY2d 420, 429 [1972]).

74. Compactness refers to the geographical shape of a district. "Bizarrely shaped" districts are not compact (*Bush v Vera*, 517 US 952, 979 [1996]). While districts "need not be drawn in the form of geometric figures or perfect circles," they should "be as compact as practicable" (*Matter of Bay Ridge Community Council, Inc. v Carey*, 103 AD2d 280, 282 [2d Dept

1984], *affd,* 66 NY2d 657 [1985]). The constitutional requirement for compactness gives the Legislature discretion to account for "existing political subdivision lines, topography, means of transportation and lines of communication," but it "forbid[s] a complete departure" (*Schneider*, 31 NY2d at 429).

75. Petitioners' proposed CD-11 radically departs from an otherwise compact district. The enacted CD-11 joins Staten Island and adjacent Brooklyn via the Verrazzano Bridge—an alignment that is geographically coherent, functionally contiguous, and reflective of long-standing travel, commuting and service corridors.

76. Cooper's map violates these principles. It stretches a tentacle across approximately five miles of Upper New York Bay to annex Lower Manhattan, which is reachable only by ferry. On all standard metrics, this destroys CD-11's compactness. Bryan's analysis reflects a Reock score drop from approximately 0.52 to 0.30 and a Polsby-Popper decline from about 0.57 to 0.28.[28] Moreover, the "eyeball test for irregularities" confirms what the numbers show—an elongated, irregular district that reaches across open water to grab distant, dense electorates for partisan gain (*Alpha Phi Alpha Fraternity Inc. v Raffensperger*, 700 F Supp 3d 1136, 1255 [ND Ga 2023]).[29]

77. Incredibly, Cooper tries to salvage this by averaging compactness scores for the separate land pieces he stitches together. This approach "lacks both precedent and logic" and is not accepted in the scientific community as valid.[30] As Bryan explains:

> To defend his creative manipulation of conventional compactness measurements, Cooper relies on a novel and counterintuitive narrative that the compactness of his Illustrative Plan should be considered as two separate pieces. This is illogical - since a necessary criterion for all redistricting endeavors is contiguity of geographic

[28] Bryan Report ¶ 141, Table V.C.2.
[29] *Id.* ¶¶ 145-147.
[30] *Id.* at ¶ 109.

> space. One cannot simply ignore areas that are either unpopulated or consist solely of water to improve compactness measures.[31]

78. In other words, compactness is assessed for the district as drawn, not, as Cooper suggests, by disaggregating land patches and ignoring the open space between them. Bryan further explains that Cooper's novel approach to compactness results in absurdities:

> If Cooper's logic is held, what are the practical limits? Could Staten Island potentially be connected to the Bronx via the East River? Going further, what about the highly compact Poughkeepsie City (nearly 90 miles up the Hudson), which has a 35.4% Black population and 22.5% Hispanic population?[43] Or perhaps Hudson City (130 miles up the Hudson), with 16.5% Black population and 10.4% Hispanic Population?[44] Those are connected to Staten Island by water? The actual compactness scores of those combinations would be effectively zero – but by Cooper's logic, the compactness would be acceptable – because each distant individual piece is compact.[32]

79. Since Cooper's compactness analysis is not generally accepted by the scientific community, it should be rejected as unreliable.

ii. Cooper's plan fractures political geography and communities of interest

80. The NY Constitution also directs map-drawers to "consider the maintenance of existing districts, of preexisting political subdivisions, . . . and of communities of interest" (NY Const. art. III, § 4 [c] [5]). Core retention "is simply a demographic accounting of the movement of persons from one district to another brought about by redistricting. A CRA is a way of quantifying precisely how a realignment affects the continuity of representation among a district's residents."[33]

81. The enacted 2024 plan satisfies core retention requirements. Using current precincts, it splits none. Cooper's Illustrative map, however, jettisons twelve current precincts

[31] *Id.* at ¶ 109.
[32] *Id.* at ¶ 136.
[33] *Id.* at ¶ 146.

without any population-equality necessity.[34] Petitioners thus cannot claim any improvement on this measure.

82. Petitioners' map also disserves the Asian community, which is the largest minority community of interest in CD-11.[35] Bryan demonstrates that Asians are the single largest minority CVAP in both CD-10 and CD-11 under the enacted map and are nearly evenly distributed between the two.[36] Cooper's plan radically disrupts this balance, ballooning the Asian population in CD-10 to roughly 224,000 and slashing it in CD-11 to about 105,000, while physically severing contiguous concentrations of Chinese residents in Lower Manhattan and reattaching Chinatown to distant, demographically dissimilar Brooklyn neighborhoods.[37]

83. Cognizant of this major flaw, Petitioners assert that their plan "unite[s]" Chinese-American communities, but the data show the opposite: it relocates and dilutes Asian CVAP in CD-11 and stitches disparate neighborhoods across non-Asian corridors.[38]

84. Petitioners' proposed plan objectively is not compact, fails the core retention analysis, and divides communities of interest. Taken together, these failings "have sufficient probative force to call for an explanation" (*Karcher v Daggett*, 462 US 725, 755 [1983] [STEVENS, J., concurring]).

VII. CONCLUSION

85. Based on the foregoing, Respondents respectfully request that this Court deny the relief sought in the Petition, dismiss this proceeding, and grant such other and further relief as this Court deems just and equitable.

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[34] *Id.* at ¶ 132.
[35] *Id.* at ¶ 55
[36] *Id.* at ¶ 28.
[37] *Id.* at ¶ 28.
[38] *Id.* at ¶ 145.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that no generative artificial intelligence program was used in the drafting of this submission.

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