

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

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

Petitioners,

-against-

Board of Elections of the State of New York;
Kristen Zebrowski Stavisky, in her official
capacity as Co-Executive Director of the Board of
Elections of the State of New York; Raymond J.
Riley, III, in his official capacity as Co-Executive
Director of the Board of Elections of the State of
New York; Peter S. Kosinski, in his official
capacity as Co-Chair and Commissioner of the
Board of Elections of the State of New York;
Henry T. Berger, in his official capacity as Co-
Chair and Commissioner of the Board of Elections
of the State of New York; Anthony J. Casale, in
his official capacity as Commissioner of the Board
of Elections of the State of New York; Essma
Bagnuola, in her official capacity as Commissioner
of the Board of Elections of the State of New
York; Kathy Hochul, in her official capacity as
Governor of New York; Andrea Stewart-Cousins,
in her official capacity as Senate Majority Leader
and President *Pro Tempore* of the New York State
Senate; Carl E. Heastie, in his official capacity as
Speaker of the New York State Assembly; and
Letitia James, in her official capacity as Attorney
General of New York,

Respondents,

-and-

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

Intervenors-Respondents.

Appellate Division Index No.:
2026-00384

New York County Index No.:
164002/2025

**INTERVENOR-RESPONDENTS’
MEMORANDUM OF LAW IN
SUPPORT OF EMERGENCY
MOTION FOR INTERIM STAY,
STAY AND LEAVE TO APPEAL**

EMERGENCYDOCKET.COM

TABLE OF CONTENTS

	Page
PRELIMINARY STATEMENT	1
BACKGROUND	4
A. CD11’s Boundaries Have Been In Place For Decades	4
B. Petitioners Bring This Action Under Only One Theory—Article III, Section 4 Of The New York Constitution Incorporates The Influence-District Requirement Found In The Later-Enacted NYVRA—And The Parties Litigate This Case Under That Theory	7
C. The Case Proceeds To Trial, Where The Parties Present Evidence Tailored To Petitioners’ NYVRA Influence-District Theory	10
D. The Supreme Court Rejects Petitioners’ NYVRA-Based Theory, And Then Adopts An Approach That No Party Asked For	17
LEGAL STANDARD.....	21
ARGUMENT.....	22
I. Intervenor-Respondents Are Certain To Succeed On The Merits Of Their Appeal.....	22
A. The Supreme Court’s Adjudication Of This Case Under A Test That No Party Proposed—including With Elements That No Party Submitted Evidence On—Is An Egregious Violation Of The Due Process Clause, Basic Principles Of Fairness, And The Party Presentation Principle	22
B. Article III, Section 4 Does Not Authorize The Greenwood/Stephanopoulos Crossover District Theory That The Supreme Court Adopted	28
C. The Supreme Court Ordered The IRC To Adopt A Racial Gerrymander That Violates The U.S. Constitution, A Point That The Supreme Court Inexplicably Refused Even To Address.....	38
D. The Supreme Court Violated The U.S. Constitution’s Elections Clause	45
II. A Stay Pending Appeal Is The Only Way To Prevent Substantial Prejudice To Intervenor-Respondents And Ensure That A Congressional Map Is In Place For The Upcoming Election Cycle.....	49
III. The Court Should Also Grant Leave To Appeal Directly To The Court Of Appeals Given The Importance Of The Issues Involved And The Need To Avoid Chaos In The Impending 2026 Congressional Elections.....	52
CONCLUSION.....	53

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Abbott v. Perez</i> , 585 U.S. 579 (2018).....	40
<i>Ala. Legis. Black Caucus v. Alabama</i> , 575 U.S. 254 (2015).....	38, 42
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023).....	10, 30, 40, 42
<i>Am. Surety Co. v. Baldwin</i> , 287 U.S. 156 (1932).....	23
<i>Am. Transit Ins. Co. v. Sartor</i> , 3 N.Y.3d 71 (2004).....	29
<i>Asian Ams. Advancing Just.-L.A. v. Padilla</i> , 41 Cal. App. 5th 850 (2019).....	34
<i>Aurecchione v. N.Y. State Div. of Human Rights</i> , 98 N.Y.2d 21 (2002).....	29
<i>Aurora Loan Servs., LLC v. Moreno</i> , 166 A.D.3d 933 (2d Dep’t 2018).....	23, 26
<i>Babigian v. Wachtler</i> , 69 N.Y.2d 1012 (1987).....	22, 53
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009).....	<i>passim</i>
<i>Bethune-Hill v. Va. State Bd. of Elections</i> , 580 U.S. 178 (2017).....	38, 39, 40, 42
<i>Bicknell v. Hood</i> , 6 N.Y.S.2d 449 (Sup. Ct. Yates Cnty. 1938).....	29, 30, 32
<i>Bouie v. City of Columbia</i> , 378 U.S. 347 (1964).....	23, 24
<i>Bush v. Gore</i> , 531 U.S. 98 (2000).....	47, 48

<i>City of Richmond v. J.A. Croson Co.</i> , 488 U.S. 469 (1989).....	41, 44
<i>Clarke v. Town of Newburgh</i> , 237 A.D.3d 14 (2025).....	11, 12
<i>Columbia Mem’l Hosp. v. Hinds</i> , 38 N.Y.3d 253 (2022).....	29
<i>Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs</i> , 906 F.2d 524 (11th Cir. 1990)	33
<i>Cooper v. Harris</i> , 581 U.S. 285 (2017).....	<i>passim</i>
<i>Corbett v. Scott</i> , 243 N.Y. 66 (1926).....	22, 52
<i>Deutsche Bank Nat. Tr. Co. v. Royal Blue Realty Holdings, Inc.</i> , 2016 N.Y. Slip Op. 31510(U), 2016 WL 4194201 (Sup. Ct. N.Y. Cnty. Aug. 8, 2016)	22
<i>Fisher v. Univ. of Tex. at Austin</i> , 570 U.S. 297 (2013).....	41, 44
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970).....	23
<i>Greenlaw v. United States</i> , 554 U.S. 237 (2008).....	24, 25
<i>Grisi v. Shainswit</i> , 119 A.D.2d 418 (1st Dep’t 1986)	21
<i>Harkenrider v. Hochul</i> , 38 N.Y.3d 494 (2022).....	5, 27, 28, 29
<i>Hoffmann v. N.Y. State Indep. Redistricting Comm’n</i> , 41 N.Y.3d 341 (2023).....	5, 6, 49
<i>Hormel v. Helvering</i> , 312 U.S. 552 (1941).....	23
<i>In re Colo. Ind. Cong. Redistricting Comm’n</i> , 497 P.3d 493 (Colo. 2021).....	34
<i>In re Sherill</i> , 188 N.Y. 185 (1907).....	28

<i>Kobrick v. New York State Div. of Hous. & Cmty. Renewal</i> , 2012 N.Y. Slip Op. 52150(U), 2012 WL 5870726 (Sup. Ct. N.Y. Cnty. Nov. 20, 2012)	21, 22
<i>Lassiter v. Dep’t of Soc. Servs.</i> , 452 U.S. 18 (1981).....	23
<i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399 (2006).....	9, 25, 35
<i>League of Women Voters of Mich. v. Johnson</i> , 902 F.3d 572 (6th Cir. 2018)	51
<i>Lynch v. City of New York</i> , 40 N.Y.3d 7 (2023)	28
<i>McCormick v. United States</i> , 500 U.S. 257 (1991).....	51
<i>McGrath v. Toys “R” Us, Inc.</i> , 3 N.Y.3d 421 (2004).....	29
<i>Misicki v. Caradonna</i> , 12 N.Y.3d 511 (2009).....	24
<i>Moore v. Harper</i> , 600 U.S. 1 (2023).....	<i>passim</i>
<i>Mullane v. Cent. Hanover Bank & Tr. Co.</i> , 339 U.S. 306 (1950).....	23
<i>N. C. Dep’t of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.</i> , 588 U.S. 262 (2019).....	23
<i>Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1</i> , 551 U.S. 701 (2007).....	40
<i>People ex rel. Abrams v. Apple Health & Sports Clubs, Ltd., Inc.</i> , 80 N.Y.2d 803 (1992).....	23
<i>People ex rel. Bridgeport Sav. Bank v. Feitner</i> , 191 N.Y. 88 (1908).....	29, 35, 37
<i>People v. Collier</i> , 223 A.D.3d 539 (1st Dep’t 2024)	23
<i>People v. Hawkins</i> , 11 N.Y.3d 484 (2008).....	22, 52

<i>Petteway v. Galveston County</i> , 111 F.4th 596 (5th Cir. 2024)	33
<i>Pokoik v. Dep’t of Health Servs. of Cnty. of Suffolk</i> , 220 A.D.2d 13 (2d Dep’t 1996)	50
<i>Reich v. Collins</i> , 513 U.S. 106 (1994)	23, 24
<i>Shaw v. Hunt</i> , 517 U.S. 899 (1996)	40, 43, 44
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993)	38, 42
<i>Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023)	35, 40, 41, 44
<i>Tax Equity Now NY LLC v. City of New York</i> , 173 A.D.3d 464 (1st Dep’t 2019)	21
<i>Thomas v. Bethlehem Steel Corp.</i> , 95 A.D.2d 118 (3d Dep’t 1983)	29
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986)	9, 31
<i>United States v. Hays</i> , 515 U.S. 737 (1995)	52
<i>United States v. Sineneng-Smith</i> , 590 U.S. 371 (2020)	24, 25
<i>United Student Aid Funds, Inc. v. Espinosa</i> , 559 U.S. 260 (2010)	23, 26
<i>Wells Fargo Bank, N.A. v. St. Louis</i> , 229 A.D.3d 116 (2d Dep’t 2024)	24, 25
<i>Wis. Legislature v. Wis. Elections Comm’n</i> , 595 U.S. 398 (2022)	<i>passim</i>
<i>Zakrzewska v. New School</i> , 14 N.Y.3d 469 (2010)	29, 30, 32
Statutes	
42 U.S.C. § 1973	30

52 U.S.C. § 10301.....	30, 32, 33
52 U.S.C. § 10303.....	30, 32
CPLR § 5519.....	21, 49
CPLR § 5601.....	1
N.Y. Elec. Law § 17-206.....	7, 10, 11
N.Y. State Law §§ 110–12.....	6
NYCRR § 500.22.....	22, 52

Constitutional Provisions

N.Y. Const. art. III, § 4.....	<i>passim</i>
N.Y. Const. art. III, § 5-b.....	5
U.S. Const. art. I, § 4.....	45

Other Authorities

2023 NY Assembly Bill A9304.....	6
2023 NY Senate Bill S8639.....	6
N.Y. Court of Appeals, <i>The New York Court of Appeals Civil Jurisdiction and Practice Outline</i> (July 2023).....	22
N.Y. GIS Clearinghouse, <i>GIS Data, NYS Congressional Districts</i> (Oct. 7, 2025).....	6

PRELIMINARY STATEMENT

The order on appeal here has thrown New York’s elections into chaos on the eve of the 2026 Congressional Election, which is slated to begin on February 24, 2026. The order has no chance of surviving appellate review, and leaving it in place will only cause massive irreparable harm and prejudice to New York voters, including Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, the “Intervenor-Respondents”). **Intervenor-Respondents thus respectfully request emergency relief from the New York appellate courts by no later than February 10, 2026, making clear that the 2026 Congressional Election can begin on February 24, 2026 under the current congressional map.¹ If the New York appellate courts are unable to provide such relief by February 10, Intervenor-Respondents intend to seek emergency relief from the U.S. Supreme Court so that the 2026 Congressional Election can take place under the entirely lawful current map starting on February 24.**

This case involves an entirely meritless challenge to the 11th Congressional District (“CD11”), which has had the same general configuration for decades. CD11 is represented by Congresswoman Malliotakis, the daughter of a Greek immigrant and Cuban refugee, and it has been won by both Democrats and Republicans in the last decade. Just two years ago, the

¹ It is unclear whether Intervenor-Respondents are able to take a direct appeal from the Supreme Court’s decision and order to the New York Court of Appeals, or whether they must instead seek relief in the Appellate Division. The Supreme Court labeled its order as a non-final disposition and stated that “this case shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order.” Affirmation of B. Moskowitz (“Moskowitz Aff.”), Ex.A (“Order”) at 18. And so it appears that because no final judgment has been issued, Intervenor-Respondents may well need to file their appeal in the Appellate Division, although it is not certain. *See* CPLR § 5601(b)(2). But if that is correct, then Intervenor-Respondents could never seek relief from the Supreme Court’s order in the Court of Appeals for the same reason, unless this Court grants leave to seek such review (or if there is a dissent authored by two Justices in the Appellate Division). *See id.* § 5601(a)–(b). Given the uncertainty on these matters, Intervenor-Respondents have filed Notices of Appeal in both courts, Moskowitz Aff., Exs.DD, EE, and have also requested in this Motion that this Court grant Intervenor-Respondents leave to appeal directly to the Court of Appeals, *see infra* Part II.

Legislature adopted a map with the same general configuration, with an overwhelming majority of Black and Latino senators and assembly members voting in favor of the map maintaining CD11's current boundaries, including Respondents Andrea Stewart-Cousins and Carl E. Heastie. Notwithstanding the foregoing, Petitioners brought a Hail Mary lawsuit last year advancing the thesis that because the Black and Latino voters who together make up about 23% of CD11 are expected to elect their candidate of choice at least 25% of the time,² this somehow means that these voters do not win enough elections and are entitled to an "influence district" under Article III, Section 4 of the New York Constitution. Petitioners contended that these groups must have a new map where their preferred candidates are expected to win more than half of all congressional elections, which would be accomplished by removing a bipartisan mix of Asian and White voters who live in Southern Brooklyn from CD11 and replacing them with almost uniformly Democratic White voters from Lower Manhattan. Petitioners' *only* legal theory was that Article III, Section 4—adopted in 2014—somehow incorporates the influence district standards in the New York Voting Rights Act of 2022 ("NYVRA"), which apply on their face only to local elections. Even though Petitioners inexplicably waited 18 months after the Legislature's adoption of the map to bring their lawsuit, they demanded that the Supreme Court order the Legislature to adopt their racial reconfiguration of CD11 for the 2026 Congressional Election.

The Supreme Court's decision, issued late last week, rejected much of what Petitioners asked for, but then adopted an approach and remedy that is just as legally indefensible. The Supreme Court correctly dispatched Petitioners' *only* theory of the case—that Article III, Section 4

² Together, Black and Latino residents comprise approximately 30% or less of Staten Island, Moskowitz Aff., Ex.R ("Borelli Rep.") at 7; *infra* p.13, and comprise less than 23% of CD11's voting-age population, *infra* p.11. Although the relevant inquiry involves voting outcomes in the current congressional district, even if the Court were to look only at the percentage of Black and Latino residents on Staten Island, these residents are achieving near-proportionality with respect to election outcomes.

of the New York Constitution incorporates the “influence district” standards in the NYVRA—while also rejecting Petitioners’ remedy of creating an “influence district” by adding White voters from Lower Manhattan into CD11. But rather than dismiss the case as it should have, the Court adopted a different theory gleaned from an *amicus* brief submitted by two academics, based upon those Professors’ suggestion—not grounded in any analysis of the New York Constitution—of what constitutes a so-called “coalition crossover” district. Several elements of the Professors’ test that the Supreme Court adopted involve evidentiary issues and burdens of proof that no party or expert in this case even opined upon. To make matters even worse—if that were possible—even though the parties briefed at length whether a racial reconfiguration of CD11 would violate the U.S. Constitution’s Equal Protection Clause, the Supreme Court ignored that issue entirely. And to top all of this off, the Court blocked any elections from taking place under New York’s current congressional map, while ordering the Independent Redistricting Commission (“IRC”) to implement the Court’s racial gerrymander by no later than February 6, 2026—without even considering whether the IRC could work that quickly and without acknowledging the practical reality that the Court’s directive to the IRC would be automatically stayed pending appeal under CPLR Section 5519(a) as soon as any of the Respondents appealed (which has now occurred).

This Court should end the needless chaos that the Supreme Court’s order has unleashed, where New York’s entirely lawful map is now enjoined with no end in sight. That the order is unlikely to survive review is an understatement. The Court’s adoption and application of a test that no party asked for or submitted evidence on is an egregious violation of due process and basic fairness principles. The Court’s incorporation of *amici*’s theory into Article III, Section 4—with no basis in the constitutional text or history, and without even the benefit of adversarial briefing—is so indefensible as to violate not only the New York Constitution itself but also the U.S.

Constitution's Elections Clause under *Moore v. Harper*, 600 U.S. 1 (2023). And the order's disregard for the U.S. Supreme Court by not even addressing how its decision could possibly comply with that Court's Equal Protection Clause caselaw, notwithstanding substantial briefing on that issue, is inexplicable.

The equities call out for an immediate stay of the Supreme Court's order prohibiting the 2026 Congressional Election from taking place under the current congressional map—which appears to apply to every congressional district in the State—while also staying all further proceedings in the Supreme Court. The People have the right to start the election on February 24 under the lawful map that the Legislature adopted, including as to CD11. A stay of the Supreme Court's order and proceedings will allow the appellate courts to sort out the many errors in that Court's decision, which will very likely end up requiring dismissal of Petitioners' lawsuit. But at the absolute minimum, if their case somehow survives appeal, it will need to be changed entirely under a legal standard that complies with Article III, Section 4's text, and is consistent with U.S. Supreme Court caselaw. All of that can take place after the 2026 elections, which Petitioners cannot legitimately complain about given their inexplicable delay in launching this lawsuit.

BACKGROUND

A. CD11's Boundaries Have Been In Place For Decades

What is now New York's CD11 first linked Staten Island with the Southern Brooklyn neighborhoods of Bay Ridge and Dyker Heights in 1982, expanding in 1992 to include Bath Beach and parts of Gravesend and Bensonhurst. Moskowitz Aff., Ex.B ("Trende Rep.") at 19–20. Apart from minor alterations in 2002 and 2012, CD11—renumbered from CD13 in 2012—has retained that configuration, tying Staten Island and Southern Brooklyn. *Id.* at 21–22.

Following the 2020 census, population shifts rendered New York's "2012 congressional apportionment . . . unconstitutional" and required "the drawing of new district lines," giving the

IRC its “first opportunity” to redistrict under the “procedures established by the 2014 constitutional amendments” to the New York Constitution (the “2014 Amendments”). *Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022) (citation omitted); *see* N.Y. Const. art. III, §§ 4, 5-b. The IRC ultimately deadlocked, and so the Legislature purported to adopt its own congressional redistricting plan that Governor Hochul signed into law on February 3, 2022. *Harkenrider*, 38 N.Y.3d at 504–05. The Court of Appeals in *Harkenrider* struck down that map as unconstitutional on both procedural and substantive grounds. *Id.* at 508–20. To remedy the procedural flaw, *Harkenrider* ordered the Steuben County Supreme Court to “adopt [a] constitutional map[]” itself, 38 N.Y.3d at 524, which resulted in the *Harkenrider* Map, *see Harkenrider*, Index No. E2022-0116CV, NYSCEF Doc. No.670 at 1–2, 5; *see also Harkenrider*, Index No.E2022-0116CV, NYSCEF Doc. No.696 at 1 (adopting modified map correcting technical violations). The *Harkenrider* Map largely maintained CD11’s historical boundaries, linking Staten Island and Southern Brooklyn. *See Harkenrider*, Index No. E2022-0116CV, NYSCEF Doc. No.670 at 25.

The *Harkenrider* Map governed New York’s 2022 congressional election, *see Hoffmann v. N.Y. State Indep. Redistricting Comm’n*, 41 N.Y.3d 341, 354–55 (2023), and, as relevant here, Congresswoman Malliotakis was reelected to represent CD11, Moskowitz Aff., Ex.C (“Malliotakis Aff.”) ¶ 2. Congresswoman Malliotakis is the daughter of immigrants—her father is from Greece, and her mother is a Cuban refugee of the Castro dictatorship—and she was first elected to the U.S. House of Representatives in 2020, making her the first Latino and minority to represent CD11. *Id.* ¶ 3. Her election also made her the only elected Republican member of Congress representing *any* part of New York City. *See* N.Y. GIS Clearinghouse, GIS Data, NYS

Congressional Districts (Oct. 7, 2025).³ Congresswoman Malliotakis won reelection again in 2024 and is the incumbent elected Congressman from CD11. Malliotakis Aff. ¶ 2.

Following the 2022 congressional election, certain petitioners challenged the *Harkenrider* Map based on its procedural flaws in a special proceeding, asking the New York courts to order the IRC to reconvene and submit a new proposed map to the Legislature under the 2014 Amendments and thus replace the *Harkenrider* Map for future elections. *Hoffmann*, 41 N.Y.3d at 355. The Court of Appeals agreed in *Hoffmann*, holding that “the IRC should comply with its constitutional mandate [under the 2014 Amendments] by submitting to the legislature . . . a [] congressional redistricting plan and implementing legislation,” which plan was to govern congressional elections in New York beginning in 2024. *Id.* at 370. The IRC thereafter proposed a congressional map for the Legislature’s consideration, *see* 2023 NY Senate Bill S8639; 2023 NY Assembly Bill A9304; *see also* Moskowitz Aff., Ex.D (N.Y. State Indep. Redistricting Comm’n, *Congressional Plan 2024*), which map the IRC had overwhelmingly approved in a 9-1 vote, Moskowitz Aff., Ex.E at 1. The IRC’s proposal only slightly modified the *Harkenrider* Map without making any changes to CD11, *see id.*, and received strong bipartisan support, *see id.* at 2. Large bipartisan majorities in the Assembly and Senate approved the IRC’s proposal with only minor changes—and none to CD11, *see* Moskowitz Aff., Ex.F—with the overwhelming majority of Black and Latino senators and assembly members in the Legislature voting in favor of the map maintaining CD11’s current boundaries, including Respondents Andrea Stewart-Cousins and Carl E. Heastie.⁴ Respondent Governor Hochul signed the congressional map into law on February 28, 2024. N.Y. State Law §§ 110–12 (the “2024 Congressional Map”).

³ Available at <https://data.gis.ny.gov/datasets/sharegisny::nys-congressional-districts/explore>.

⁴ Available at <https://legiscan.com/NY/rollcall/S08653/id/1401640>.

B. Petitioners Bring This Action Under Only One Theory—Article III, Section 4 Of The New York Constitution Incorporates The Influence-District Requirement Found In The Later-Enacted NYVRA—And The Parties Litigate This Case Under That Theory

On October 27, 2025, Petitioners filed their Petition in New York County Supreme Court initiating the special proceeding below and naming as Respondents the Board of Elections of the State of New York (the “Board”) and certain state officials, in their official capacities. Moskowitz Aff., Ex.G (“Pet.”) at 1. Petitioners’ sole theory was that Article III, Section 4 of the New York Constitution incorporates the influence-district mandate in the later-enacted NYVRA, and that CD11 reduces the “influence” that Black and Latino voters “could” have in elections in CD11 under that standard. *Id.* ¶¶ 9–12, 98, 100–02. The remedy that Petitioners sought was to redraw CD11 “to create a minority influence district that pairs Staten Island with lower Manhattan,” *id.* ¶ 13, replacing a bipartisan mix of Asian and White voters in CD11 with Democrat-favoring White voters from Lower Manhattan, Moskowitz Aff., Ex.H (“Alford Rep.”) at 9, 13–14.

Before trial, the parties filed memoranda of law, all of which focused on the sole theory that Petitioners presented in the Petition—namely, that Article III, Section 4 incorporates the NYVRA’s “influence” district standards. Moskowitz Aff., Ex.I; Moskowitz Aff., Ex.J (“Gov.Ltr.”); Moskowitz Aff., Ex.K (“Int’r.Resp’t.Br.”); Moskowitz Aff., Ex.L. The only parties that took an active part in the proceedings were Petitioners, Respondents Kosinski, Casale, and Riley, and Intervenor-Respondents—Congresswoman Malliotakis and a number of citizen voters (the “Individual Voters”) from CD11. Int’r.Resp’t.Br.; Moskowitz Aff., Ex.L. As Intervenor-Respondents explained in their briefing, the New York Constitution does not incorporate the NYVRA, which was adopted eight years after the 2014 Amendments and only applies to local New York “board[s] of elections” and “political subdivision[s].” N.Y. Elec. Law § 17-206(2)(a); Int’r.Resp’t.Br.10–20. Intervenor-Respondents further explained that, if the Supreme Court did

accept Petitioners' sole Article-III-Section-4-equals-NYVRA theory, it would need to interpret the NYVRA's "usually be defeated" inquiry to require a showing that minority-preferred candidates are routinely defeated in elections across the entire jurisdiction, which Petitioners could not do (as demonstrated by Intervenor-Respondents' expert reports). *Id.* at 20–31. In addition, Intervenor-Respondents argued at great length that ordering the redrawing of CD11 based upon race would violate the U.S. Constitution's Equal Protection Clause. *Id.* at 32–39.

Respondents Hochul, Stewart-Cousins, Heastie, and James (the "State Respondents") did not oppose the Petition—even though Respondent Hochul signed the map into law, and Respondents Stewart-Cousins and Heastie voted for it—but purported to remain neutral. They did explain that "the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or State Legislative Districts" as it is "clearly limited to political subdivisions." Gov.Ltr.2. And while they contended that Article III, Section 4 "provide[s] broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law," they did not advance any standard for the Court to apply. *Id.* at 3–5.

Two sets of *amici* submitted briefs arguing for the Court to apply their own alternative approaches. *See* Moskowitz Aff., Ex.M ("NYCLU et al. Am.Br.") at 11; Moskowitz Aff., Ex.N ("Prof.Am.Br.") at 19–20. Most relevant for what the Supreme Court ultimately ordered here, in their *amicus* brief, Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos urged the Court to interpret the Petition as raising a "coalition crossover district" claim (rather than the "influence" district claim set forth in the Petition). Prof.Am.Br.7, 19–20. Under this theory, voters from two or more protected classes may band together to bring a vote-dilution claim (the "coalition" aspect), and can elect their preferred candidates with support from majority voters (the "crossover" aspect). *See id.* at 7. This theory differs significantly from the test for proving a vote-

dilution claim under Section 2 of the federal VRA, where plaintiffs must initially satisfy the three *Gingles* factors—including by showing, first, that the minority group is “sufficiently large and geographically compact to constitute a majority” in a reasonably configured district—and then show that, under the totality of the circumstances, the “political process is [not] equally open to minority voters.” *Thornburg v. Gingles*, 478 U.S. 30, 50, 79 (1986) (citation omitted). By contrast, in a so-called “coalition crossover” district, Prof.Am.Br.7, minority groups need not be “sufficiently large and geographically compact to constitute a majority,” *see Gingles*, 478 U.S. at 50, so long as those groups can team up with certain majority voters to “elect the minority coalition’s preferred candidates,” Prof.Am.Br.7.

Professors Greenwood and Stephanopoulos then offered the Court a standard to apply in assessing that purported “coalition crossover” claim. Relying on Justice Souter’s dissenting opinion in *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 485–86 (2006) (“*LULAC*”) (Souter, J., concurring in part and dissenting in part), they argued that to prove such a claim on the merits, Petitioners would need to present evidence of a reasonable alternative map where “minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election,” Prof.Am.Br.21. Under this standard, the Professors advised that “the Court should expect to see data from both primary and general elections” to determine whether a reasonable crossover district was possible. Prof.Am.Br.21. The Professors did not perform any analysis of Article III, Section 4 of the New York Constitution or otherwise suggest that the language of this provision allows for crossover-district claims. *See generally id.* Although the Professors offered this standard to replace the first *Gingles* factor—which, again, requires vote-dilution plaintiffs to show that it is possible to create a reasonably configured “majority-minority”

district in which the minority group makes up a majority of the electorate, *see id.* at 9–10—they did not otherwise suggest changing the *Gingles* two-step framework, which requires that a vote-dilution plaintiff meet the three *Gingles* factors and then “show, under the totality of circumstances, that the political process is not equally open to minority voters” to prove a Section 2 violation, *id.* at 9 (quoting *Allen v. Milligan*, 599 U.S. 1, 18 (2023)).

In their reply briefing, Intervenor-Respondents made clear that litigating this case under one of the new theories that *amici* articulated or on some other theory that the Supreme Court invented would violate due process, given that these theories had not been vetted in any of the adversarial briefing in the case, nor were the parties’ expert reports tailored to these theories’ particularities. Moskowitz Aff., Ex.O at 10–13. Rather, the parties prepared their briefing and expert reports in accordance with the only theory put forth in the Petition—that the NYVRA’s standards apply to Petitioners’ Article III, Section 4 vote-dilution claim. *Id.* at 11–13.

C. The Case Proceeds To Trial, Where The Parties Present Evidence Tailored To Petitioners’ NYVRA Influence-District Theory

At trial, the parties presented evidence only on the legal theory in the Petition: that Article III, Section 4 incorporates the NYVRA’s standards. Those standards require a plaintiff to first satisfy the NYVRA’s threshold “usually be defeated” inquiry—that is, “that candidates or electoral choices preferred by members of the protected class would usually be defeated.” N.Y. Elec. Law § 17-206(2)(b)(ii). If the plaintiff makes that showing, then it must also demonstrate either that (a) “voting patterns of members of the protected class within the political subdivision are racially polarized” (the “racially-polarized-voting test”), 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” (the “totality-of-the-circumstances test”). *Id.* In addition, the plaintiff must show that “there is an alternative practice that would allow the minority

group to ‘have equitable access to fully participate in the electoral process.’” *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 39 (2025) (quoting N.Y. Elec. Law § 17-206(5)(a)).

With respect to the “usually be defeated” threshold and racially-polarized-voting test, Petitioners presented Dr. Maxwell Palmer, who testified that Black and Latino-preferred candidates won five out of twenty (or 25%) of the elections in CD11 that Dr. Palmer analyzed between 2017 and 2024. Moskowitz Aff., Ex.P, Trial Transcript (“Tr.”) at 194:15–18. Dr. Palmer admitted that his analysis omitted CD11’s 2018 congressional election, where the Black and Latino-preferred candidate won. Tr.197:11–198:22. Including that election in Dr. Palmer’s set would have increased Black and Latino-preferred candidates’ win percentage from 25% to 28%. Tr.199:3–10. But whether that election is counted or not, Black and Latino individuals account for less than 23% of CD11’s voting-age population (or less than 30% of Staten Island), making a 25% or 28% win percentage near proportionality. *See id.*; Borelli Rep.7; *infra* p.13. Despite this near-proportionality, Dr. Palmer concluded that winning 25% of some elections met his definition of “usually defeated.” Tr.194:23–195:4. He did not consider that “Black and Hispanic preferred candidates routinely win elections . . . in New York City and New York State,” and failed to consider how Black and Latino candidates of choice fared in other districts in New York. Tr.205:8–13; Tr.211:13–17.

For the totality-of-the-circumstances test, Petitioners offered Dr. Thomas Sugrue, who “conducted research on historical and current patterns of racial discrimination, racial segregation, and racial disparities in socio-economic status in New York City, with a focus on [Staten Island].” Moskowitz Aff., Ex.Q (“Sugrue Rep.”) at 3–4. Dr. Sugrue’s historical discussion of Staten Island excluded facts that did not fit his narrative, Moskowitz Aff., Ex.R (“Borelli Rep.”) at 3–4, including the State’s history of civil rights activism and Staten Islanders’ significant advancements

in the areas of civil rights and racial equality, *id.* at 5, 7, 19–29. Nor did Dr. Sugrue discuss how Staten Island is replete with public and private organizations committed to helping minorities, including by ensuring access to the political process, and that the hate crime rate is far lower there than in Manhattan. *Id.* The only purported example of a past voting qualification having been used in New York—literacy tests—was banned over 50 years ago, and Dr. Sugrue could not link their use to any existing voting conditions in Staten Island. *Id.* at 4–5. Rather, New York and Staten Island have expanded language services to help minority voters. *Id.* at 31–33. Dr. Sugrue’s discussion of the alleged racial socioeconomic disparities on Staten Island likewise ignored the substantial progress made on that front in recent decades. *Id.* at 5, 37–45. He provided no evidence that Blacks and Latinos have been excluded from public office, while ignoring or attempting to downplay the significant success that minority candidates, like Congresswoman Malliotakis, *have* achieved. *Id.* at 4. And Dr. Sugrue’s evidence of racial appeals in political campaigns ignored congressional campaigns, provided an incomplete account of Staten Island’s secession campaign, and simply summarized four unrelated campaign incidents over more than a decade. *Id.* at 52–58.

To show an “alternative practice,” *Clarke*, 237 A.D.3d at 39, Petitioners presented Mr. William Cooper, who “develop[ed] an illustrative plan that would join Staten Island with Manhattan in a reconfigured CD-11,” Tr.302:10–14; Moskowitz Aff., Ex.S (“Cooper Rep.”) ¶ 22, by “shift[ing] the boundaries of CD 11 to retain all of Staten Island and then adds most, but not all, of the portion of Lower Manhattan currently occupied by CD 10,” Cooper Rep. ¶ 43. His map then moved “Bensonhurst and Bath Beach—two more predominantly Chinese-American neighborhoods in Brooklyn—”into CD10, as well as “[p]art of the Financial District” and “22 persons in Tribeca.” *Id.* ¶ 44. Although he purported to “follow[] traditional redistricting principles” when preparing his map, he admitted that his illustrative CD11 “scores worse for

compactness than the currently enacted map,” Tr.305:7–20; Cooper Rep. ¶ 54, and his testimony showed that Petitioners’ proposal for CD11 disregarded communities of interest, *see* Tr.259:20–21; Tr.317:23–318:22; Tr.318:23–319:21; Tr.323:6–25; Tr.327:9–13; Tr.329:24–330:1; Tr.330:12–331:6, essentially admitting that he knew nothing about the similarities or differences between Staten Island and Lower Manhattan, *see* Tr.259:20–21 (Mr. Cooper admitting that he was “not that familiar” with New York City); Tr.320:4–6 (when asked whether there are any similarities between Staten Island and the Financial District, Mr. Cooper testifying that he “ha[d] a very tasty outdoor pizza in the Financial District” that he “bought [] from a Spanish-speaking gentleman,” and that “there are Spanish speakers in Staten Island”). Regarding his complete lack of knowledge of the relevant communities of interest, Mr. Cooper explained that he “was under the assumption there would probably be petitioners here to testify as there usually are in federal court.” Tr.329:15–20. Petitioners remarkably presented no such witnesses.

Mr. Cooper also admitted that his illustrative plan “doesn’t make Black or Latino voters a numerical population majority” in CD11. Tr.347:22–24. Black and Latino residents comprise approximately 30% of Staten Island’s population, Cooper Rep.8 & Figure 3; Borelli Rep.7, and comprise only 22.70% of the voting-age population in CD11, *id.* at 9 & Figure 2. In Petitioners’ proposed illustrative CD11, voting-age Black and Latino residents would comprise just 24.71% of the population—still less than a quarter of the total citizen-age population in CD11. *Id.* at 18 & Figure 9. The population of White voting-age residents would also increase, from 59.76% in the current CD11 to 62.31% in the proposed illustrative CD11. *Id.* at 9 & Figure 2; *id.* at 18 & Figure 9. Under Mr. Cooper’s map, White voters would support the Black and Latino-preferred candidate with 41.8% of the vote. Moskowitz Aff., Ex.T (“Palmer Rep.”) at 6; Tr.213:13–20. With these White voters voting for the Black and Latino-preferred candidate, that candidate would

win the general election in Mr. Cooper's CD11 16 out of 18 times, or 88.89% of the time. *See* Palmer Rep.8.

Turning to Intervenor-Respondents' experts, on the "usually defeated" prong of the analysis, they put forward Drs. Stephen Voss and Sean Trende. As Dr. Voss explained, Dr. Palmer's results "were inaccurate and not reliable based on the method and data he used," Tr.596:5–7, he implied a "higher level of confidence and a sort of false sense of precision th[a]n really [was] warranted," Tr.596:8–10, and he "overestim[ed] cohesion among some of the groups in the electorate and overestim[ed] racial polarization compared to what is defensible," Tr.596:12–15. Dr. Trende, for his part, concluded that Black and Latino-preferred candidates—that is, Democrats—routinely win New York State and in New York City, including in CD11. Trende Rep.5. No Republican has won a mayoral race since 2005, been elected Comptroller since 1938, or *ever* been elected NYC Public Advocate. *Id.* At the citywide level, Democrats won every statewide election that Dr. Palmer analyzed. *Id.* Dr. Trende also examined the election results at the individual congressional district level, showing that the Black and Latino-preferred candidates win every district wholly within or around New York City other than CD11, constitute 73% of the New York congressional delegation statewide, and won more votes in four of the eleven elections in Dr. Trende's dataset in CD11. *Id.* at 7–8. Dr. Trende's results for CD11 differ from Dr. Palmer's primarily because Dr. Palmer included the results from local races held in odd-numbered years when congressional races are not held. *Id.* at 5. Dr. Trende explained that those elections provide less "probative" information than congressional elections. *Id.* at 5 & n.1.

With respect to the totality-of-the-circumstances test, Intervenor-Respondents presented the report and testimony of Mr. Joseph Borelli, who walked through each of the NYVRA's totality-of-the-circumstances factors. Mr. Borelli explained, among other things, that Dr. Sugrue's

description of racial disparities in CD11 ignores the significant and thriving Asian community on Staten Island and the noteworthy advancements made by Staten Islanders in the areas of civil rights and racial equality. Borelli Rep.3–4. Staten Island was heavily involved in the abolition movement, and a full history of racial discrimination in New York shows significant progress in addressing racial discrimination in housing, employment, and voting rights on the state and national levels through both legal decisions and legislation. *Id.* at 19–20. There is no evidence that members of the protected class have been excluded from public office, and, to the contrary, racial and ethnic minorities have had great success on Staten Island in recent years—indeed, CD11, which encompasses the entirety of Staten Island, is represented by Latino Congresswoman Nicole Malliotakis in the House of Representatives. *Id.* at 29. There is also no evidence that Black and Latino voters or candidates have been denied access to the ballot, financial support, or other support, *id.* at 33, and disparities between Whites and Blacks and Latinos on Staten Island in areas such as education, employment, and housing have decreased in recent years, *id.* at 37–39.

These experts also put on extensive criticisms of Petitioners’ illustrative map. Mr. Borelli explained that the diverse populations and physical distance between Staten Island and Lower Manhattan have ensured that they have little in common, such that it is impractical to group the two areas together. *Id.* at 3. Staten Island’s average number of vehicles per household is nearly six times that of Manhattan’s, *id.*, and whereas those in Lower Manhattan want to “break[] the car culture,” those on Staten Island could not take their kids to school, go to the grocery store, or even really get to the ferry without a car, Tr.743:2–18. By contrast, Staten Island has much in common with Brooklyn—indeed, during the first half of 2025, of all Staten Island homebuyers that came from New York City (excluding those already living on Staten Island), 92% came from Brooklyn. Borelli Rep.18–19. Dr. Trende similarly made clear that the illustrative map’s low compactness

scores were not justified because he removed intervening waterways and analyzed only CD11's land areas when there is no precedent for that approach. Trende Rep.17. Dr. Trende also showed that Mr. Cooper overstated his case regarding precedent supporting his connecting of Staten Island to Manhattan—the only congressional map that Mr. Cooper relied upon was drawn just seven years after the Verrazano-Narrows Bridge opened (over 50 years ago), before which traveling to Brooklyn and Manhattan required ferry rides and driving to other places in New York required going through New Jersey. *Id.* at 18. In addition, Mr. Cooper's illustrative map made the polarization numbers in each illustrative district look better than in the current CD11 and CD10 “not because it groups protected minority populations who have been separated from each other artificially by district lines” but instead because White Republicans “are cracked away from like-minded voters.” Moskowitz Aff., Ex.U (“Voss Rep.”) at 6; *see* Tr.623:21–25.

Finally, Respondents put forward Mr. Thomas Bryan and Dr. John Alford, who explained, among other things, that Mr. Cooper's illustrative plan moved precincts from CD10 to CD11 that voted approximately 80% Democratic in recent statewide and congressional contests, while moving precincts from CD11 to CD10 that voted only about 42–47% Democratic. Moskowitz Aff., Ex.V (“Bryan Rep.”) at 71; *see* Alford Rep.9. Mr. Cooper also carved out Chinatown and “numerous blocks” outside of Chinatown “that contain other relatively low performing democratic precincts.” Tr.540:16–24. In other words, the illustrative plan's main effect was to strengthen the White Democratic vote in CD11 while diminishing the representational strength of Asians—the largest existing minority group in that district under the enacted map. Bryan Rep.74; Alford Rep.9. Black and Latino voters' average support for their preferred candidate *decreases* under Dr. Cooper's illustrative map. Alford Rep.9 (noting that “the slight increase in the number of Black and Hispanic voters in the illustrative district is at least partially offset by the decline in cohesion

among Black and Hispanic voters in the illustrative district”). As Dr. Alford explained, what “accounts for the improved performance for minority preferred candidates (Democrats)” in the illustrative district is that “White voters in existing CD 11 gave an average of 23.8% of their vote to the Democratic candidate, compared to an average support among White voters of 41.8% for the Democratic candidates in the illustrative district.” *Id.*

D. The Supreme Court Rejects Petitioners’ NYVRA-Based Theory, And Then Adopts An Approach That No Party Asked For

On January 21, 2026, the Supreme Court held that CD11 is “unconstitutional under Article III, Section 4(c)(1) of the New York State Constitution” and ordered the IRC to “reconvene to complete a new Congressional map . . . by February 6, 2026.” Order at 18.

The Court did not adjudicate the case under Petitioners’ theory and, in fact, explicitly rejected that theory. As the Court explained, accepting Petitioners’ theory of adopting the NYVRA’s standard for evaluating vote-dilution claims under Article III, Section 4 would be “impermissible” because the “the text of the state constitution directly contradicts the notion that the Court can use the NY VRA, a state statute, to interpret a constitutional vote dilution claim,” “the NY VRA [was] passed years after the redistricting amendments were ratified,” and “there is no legislative history that provides any evidence that Article III, Section 4(c)(1) should be influenced by legislation that would be passed after the amendment took effect.” *Id.* at 5.

While the rest of the Supreme Court’s opinion is frankly difficult to follow because it confusingly intermixes under labels such as “violation” and “remedy” considerations that every voting dilution case and scholar discusses as a matter of proving the relevant violation, the Court ultimately adopted the coalition-crossover-district theory that Professors Greenwood and Stephanopoulos proposed in their *amicus* brief. *See supra* pp.8–10. The Court rejected Intervenor-Respondents’ argument that the standard for evaluating a vote-dilution claim under Article III,

Section 4 of the New York Constitution should be the same standard that applies to vote-dilution claims under Section 2 of the federal VRA, Order at 5–7, and then explained that “[t]o determine whether ordering a redrawing of the congressional lines is a proper remedy, Petitioners must first show that minority voters make up a sufficient portion of the district’s population,” *id.* at 13. Relying primarily on the Professors’ *amicus* brief, the Court “adopt[ed] a three-pronged standard for evaluating a proposed crossover district in a vote dilution case pursuant to Article III, Section 4(c)(1).” *Id.* at 15. The first prong provides that “a proposed district should count as a crossover district if minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election.” *Id.* The second prong requires that “these candidates must usually be victorious in the general election.” *Id.* And the third prong states that “the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates.” *Id.* Regarding the second prong, the Court further clarified that the “usually be victorious” requirement “should only be interpreted to the extent that minority-preferred candidates win *more often than not.*” *Id.* (emphasis added). And on the third prong, while the Court did not provide a definition for the term “decisive,” the Court held that minority voters must “be ‘decisive’ *in primary races* so that crossover districts cannot be used to achieve vote dilution in favor of a different political party.” *Id.* (emphasis added); *see* Prof.Am.Br.8 (arguing that “[w]hether minority voters outnumber majority voters in the relevant primary election is a proxy for this degree of political strength”). “Otherwise, it would be relatively simple to use vote dilution claims to establish districts in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not.” *Id.* at 15.

Despite holding that crossover-district plaintiffs “must” meet this three-pronged standard to succeed on their claim, *see id.* at 13, at no point did the Supreme Court assess whether Petitioners’ proposed illustrative map (or any other evidence they submitted) actually met the Court’s new criteria. And, indeed, Petitioners had not submitted evidence on the Court’s newly adopted criteria. In particular, Petitioners did not submit any evidence on primary elections in their proposed illustrative district, such that there was no evidence on whether minority voters “are able to select their candidates of choice in the primary election,” whether these selected candidates are “usually [] victorious in the general election,” or whether minority voters would “be ‘decisive’ in primary races.” *See id.* at 15. In fact, the Supreme Court rejected Petitioners’ entire approach in designing their proposed illustrative district—which rested on increasing the White Democratic vote in CD11, *supra* pp.7–8—explaining that what the New York Constitution would require under the Court’s view is “adding Black and Latino voters from elsewhere” so that these voters do not “remain a diluted population indefinitely.” Order at 13.

The Supreme Court did conduct a modified version of the totality-of-the-circumstances inquiry—the second step in the *Gingles* two-step framework and the second step under the Professors’ approach, *see supra* pp.9–10, but which the Supreme Court discussed first, unlike in any vote dilution case that Intervenor-Respondents are aware of. *See* Order at 7–13. On this score, the Court did have some evidence before it, as the totality-of-the-circumstances test is part of the inquiry under the NYVRA (the standard that the parties actually litigated). The Court found that the “totality of the circumstances” “provide strong support for the claim that Black and Latino votes are being diluted in the current CD-11” because Petitioners showed “strong evidence of [a] racially polarized voting bloc,” a “history of discrimination that impacts current day political participation and representation,” and “that racial appeals are still made in political campaigns

today.” *Id.* at 12–13. The Court first found that “racially polarized voting has been clearly demonstrated” based on Petitioners’ expert Dr. Palmer’s analysis that Black and Latino-preferred candidates won 5 of the races out of the “20 most recent elections in CD-11 used in [Dr. Palmer’s] analysis.” *Id.* at 8–9. The Court then determined that Petitioners demonstrated a “history of discrimination against minority voters in CD-11 [that] still impacts those communities today.” *Id.* at 9. The Court explained this conclusion by repeating Petitioners’ expert Dr. Sugrue’s opinions, adopting almost every point he made about historical discrimination against Blacks and Latinos in New York and/or Staten Island in his report or trial testimony, without question—let alone mention of Intervenor-Respondents’ and Respondents’ expert opinions and testimony rebutting Dr. Sugrue’s conclusions. *See id.* at 9–10. The Court also, remarkably, credited Dr. Sugrue’s “testimony” that “de facto segregation remains the norm” today in New York State and Staten Island. *Id.* at 10. According to the Court, Petitioners demonstrated that this “discrimination” has also had “political” impacts in CD11 because “Black, Latino, and Asian State Islanders’ political representation and participation in politics still lags behind White Staten Islanders.” *Id.* The Court found that conclusion reasonable because Black, Latino, and Asian voters had lower average turnout rates than White voters in the 2020, 2022, and 2024 elections and because even though CD11 often elects minority candidates—like Congresswoman Malliotakis—and has for decades, “representation [is] still low.” *Id.* at 10–11. Turning next to “overt and subtle racial appeals . . . in campaigns,” the Court found that Petitioners showed these to be “common in campaigns in CD11,” *id.* at 11, despite identifying only three purported examples of alleged racial appeals in campaigns from “the 1960s” to “2017,” *id.* at 11–12. In all, the Court concluded from a one-sided examination of just four factors (out of the eleven under the NYVRA and seven under *Gingles*) that “a totality of the circumstances analysis indicates that as drawn” CD11 “result[s] in the denial

or abridgment of’ Black and Latino voters’ voting rights under the all-things-considered second step of the *Gingles* two-step inquiry. *Id.* at 12–13.

The Court declined Petitioners’ invitation “for the Court to adopt” “new district lines” and did not accept Petitioners’ proposed illustrative map, reasoning that Article III, Section 5(b) of the New York Constitution and the Court of Appeals’ *Harkenrider* and *Hoffmann* decisions required the Court “to reconvene the IRC to redraw the CD-11 map so that it comports with the standard described above.” *Id.* at 15–17. The Court ordered that “new congressional lines must be completed by February 6, 2026.” *Id.* at 17. And, most relevant for this stay motion, the Court enjoined Respondents “from conducting any election” under the 2024 Congressional Map “or otherwise giving any effect to [its] boundaries” as drawn, and ordered that the case “shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order.” *Id.* at 18.

LEGAL STANDARD

When an appeal is pending based on an order from the Supreme Court, the court “to which an appeal is taken” “may stay all proceedings to enforce the judgment or order appealed from pending an appeal or determination on a motion for permission to appeal.” CPLR § 5519(c). Moreover, the appellate courts also have “inherent authority” to stay proceedings in the Supreme Court while an appeal is pending. *Tax Equity Now NY LLC v. City of New York*, 173 A.D.3d 464, 465 (1st Dep’t 2019) (granting discretionary stay pending appeal of denial of motion to dismiss). This power derives from the courts’ “responsibility, so essential to the proper administration of justice, to control their calendars and to supervise the course of litigation before them.” *Kobrick v. New York State Div. of Hous. & Cmty. Renewal*, 2012 N.Y. Slip Op. 52150(U), 2012 WL 5870726, at *3 (Sup. Ct. N.Y. Cnty. Nov. 20, 2012) (quoting *Grisi v. Shainswit*, 119 A.D.2d 418, 421 (1st Dep’t 1986)). Granting a discretionary stay is appropriate where the appellant shows

there is merit in the appeal, *Deutsche Bank Nat. Tr. Co. v. Royal Blue Realty Holdings, Inc.*, 2016 N.Y. Slip Op. 31510(U), 2016 WL 4194201, at *4 (Sup. Ct. N.Y. Cnty. Aug. 8, 2016), and that “prejudice or irreparable damage will result from a denial of the stay,” *Kobrick*, 2012 WL 5870726, at *3.

When considering whether to grant a motion for leave to appeal to the Court of Appeals, courts consider whether the appeal presents “issues [that] are novel or of public importance.” NYCRR § 500.22(b)(4). That is because the Court of Appeals’ role includes “address[ing] important legal [i]ssues” by, for instance, “develop[ing] emerging areas” of law and “[c]onstru[ing] statutes in developing areas of regulation.” N.Y. Court of Appeals, *The New York Court of Appeals Civil Jurisdiction and Practice Outline* 17 (July 2023)⁵; accord *People v. Hawkins*, 11 N.Y.3d 484, 493 (2008) (“authoritatively declare and settle the law uniformly throughout the state” regarding “legal issues of statewide significance”); *Babigian v. Wachtler*, 69 N.Y.2d 1012, 1014 (1987) (“issues of law of particular significance . . . that merit[] the attention of [the Court of Appeals]”); *Corbett v. Scott*, 243 N.Y. 66, 67 (1926) (“a question of law” that the Court of Appeals has not yet “passed on”).

ARGUMENT

I. Intervenor-Respondents Are Certain To Succeed On The Merits Of Their Appeal

A. The Supreme Court’s Adjudication Of This Case Under A Test That No Party Proposed—including With Elements That No Party Submitted Evidence On—is An Egregious Violation Of The Due Process Clause, Basic Principles Of Fairness, And The Party Presentation Principle

1. The Fourteenth Amendment’s Due Process Clause “centrally concerns the fundamental fairness of governmental activity,” *N. C. Dep’t of Revenue v. Kimberly Rice Kaestner* 1992 Fam.

⁵ Available at <https://www.nyscourts.gov/ctapps/forms/civiloutline.pdf>.

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

Consistent with these fairness principles, trial courts must base their decisions “solely on the legal rules and evidence adduced at the hearing,” *Goldberg v. Kelly*, 397 U.S. 254, 271 (1970), and not “surprise[]” litigants with “final decision [] of issues upon which they have had no opportunity to introduce evidence,” *Hormel v. Helvering*, 312 U.S. 552, 556 (1941). A trial court cannot make a “*sua sponte* determination” without providing a party “the opportunity to present evidence refuting the court’s [] determination.” *Aurora Loan Servs., LLC v. Moreno*, 166 A.D.3d 933, 935 (2d Dep’t 2018) (citation omitted). Rather, the “principle of party presentation” requires courts to “rely on the parties to frame the issues for decision.” *United States v. Sineneng-Smith*,

590 U.S. 371, 375 (2020) (quoting *Greenlaw v. United States*, 554 U.S. 237, 243 (2008)). To remain “bastions of due process,” courts must not “seize upon an issue not raised by any party . . . , without providing . . . notice of the issue and an opportunity for all parties to be heard on it.” *Wells Fargo Bank, N.A. v. St. Louis*, 229 A.D.3d 116, 122 (2d Dep’t 2024); see also *Misicki v. Caradonna*, 12 N.Y.3d 511, 519 (2009) (explaining that the Court of Appeals is “not in the business of blindsiding litigants, who expect us to decide their appeals on rationales advanced by the parties, not arguments their adversaries never made”).

2. Here, the Supreme Court adjudicated this case under a standard that Petitioners did not advance, which “unfairly” and unconstitutionally “bait[ed] and switch[ed]” Intervenor-Respondents, *Reich*, 513 U.S. at 111, violating the party-presentation principle, see *Sineneng-Smith*, 590 U.S. at 375, depriving the parties of the “right of fair warning,” and transgressing basic principles of fairness, *Bouie*, 378 U.S. at 352.

The parties “frame[d] the issues for decision” by litigating a single legal theory throughout this case. *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243). The Petition’s sole theory was that the Supreme Court should “apply the same standards set forth under the NY VRA to adjudicate” Petitioners’ Article III, Section 4 claim, Pet. ¶ 50, and determine—under that NYVRA standard—whether “[a] minority influence district is both possible and required” in CD11, Pet. ¶¶ 97–102. Given that “fram[ing],” *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243), Intervenor-Respondents prepared expert evidence refuting Petitioners’ claim under the standards set forth in the NYVRA and presented extensive merits briefing under that theory and as informed by those experts, see Int’r.Resp’t.Br.20–31; see generally *Trende Rep.*; *Voss Rep.*; *Borelli Rep.* Petitioners’ own evidence focused on the NYVRA standards as well. See generally *Cooper Rep.*; *Sugrue Rep.*; *Palmer Rep.* While two sets of non-

party *amici* urged the Supreme Court to adopt their own separate standards, *see* NYCLU et al. Am.Br.11; Prof.Am.Br.19–20, no party briefed the constitutionality of those standards or submitted evidence tailored to those standards.

The Supreme Court failed to “rely on the parties to frame the issues for decision,” *Sineneng-Smith*, 590 U.S. at 375 (quoting *Greenlaw*, 554 U.S. at 243), and instead adopted a wholly different standard to resolve this case “without providing . . . notice of the issue and an opportunity for all parties to be heard on it,” *Wells Fargo Bank*, 229 A.D.3d at 122. It held that “Article III, Section 4(c)(1)’s language indicate[s]” that “crossover claims” “are allowed in actions in the state of New York,” and then “adopt[ed]” a “standard for evaluating a proposed crossover district” based on U.S. Supreme Court dissenting opinions and the “legal scholarship” of *amici curiae*. Order at 14–15. In particular, the Court cited Justice Souter’s dissent in *LULAC*, 548 U.S. 399, urging the U.S. Supreme Court to recognize certain crossover claims where “minority voters . . . constitute a majority of those voting in the primary of the . . . party tending to win in the general election.” Order at 14 (quoting *LULAC*, 548 U.S. at 485–86 (Souter, J., concurring in part and dissenting in part)).⁶ The Court then adopted *amici*’s proposed standard for “crossover claims.” *See id.* at 14–15 (citing NYCLU et al. Am.Br.139). The Court held that to prove a crossover district claim, a plaintiff must show that in a proposed district, “minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election,” those candidates win the general election “more often than not,” and minority voters’ preference in the primary election is “decisive”—*i.e.*, they are not simply “grouped with White voters who

⁶ The Supreme Court also suggested that Justice Breyer’s dissent in *LULAC* was important to its analysis, but, in addressing this dissent, quoted language from Justice Souter’s dissenting opinion. *See* Order at 14. This mistake appears to have its origin in the *amicus* brief submitted by the NYCLU, NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and Center for Law and Social Justice, where *amici* incorrectly attributed the same language to Justice Breyer, rather than Justice Souter. *See* NYCLU et al. Am.Br.22.

would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not.” *Id.* at 15.

The Supreme Court’s decision egregiously violates due process. Neither Petitioners nor their experts proposed a “crossover” district to prove Petitioners’ vote-dilution claim, under the Professors’ test or otherwise. Yet, the Supreme Court announced a new test post-trial requiring Petitioners to put forward a reasonably configured district shown through both primary and general election data to permit minority voters to nominate their preferred candidates in the dominant-party primary and to see those candidates “usually” prevail in the general election. Order at 15. **But no party submitted any evidence at all about whether minority voters are decisive in any party’s primary in any actual or proposed district, much less whether they control candidate selection in a proposed crossover district that satisfies this new three-prong test.** *See id.* Notably, the *amici* that the Supreme Court relied upon recognized that “the Court should expect to see data from both primary and general elections” if Petitioners were to prove a crossover claim. Prof.Am.Br.21. That data was simply never before the Court, meaning that the Court could not even apply its own test in concluding that CD11’s current configuration violates Article III, Section 4 of the New York Constitution. Order at 13–16; *see supra* pp.10–11. By deciding this case under an approach that Petitioners did not allege (and, indeed, submitted no evidence to support as to multiple elements), the Supreme Court denied Intervenor-Respondents the “minimum” guarantees of due process, *Mullane*, 339 U.S. at 313, by failing to provide them a meaningful “opportunity to present their objections,” *United Student Aid Funds*, 559 U.S. at 272. That is reversible error. *See Aurora Loan Servs.*, 166 A.D.3d at 935.

The Supreme Court’s error is all the more egregious because Petitioners did not even try to prove a claim under the Court’s belatedly adopted theory. Petitioners bore the burden of proof

on their claim, *see, e.g., Harkenrider*, 38 N.Y.3d at 519, and the Supreme Court itself determined that, to prove this claim, Petitioners were *required* to “first show that minority voters make up a sufficient portion of the [proposed] district’s population” to satisfy the Supreme Court’s new “crossover” criteria, Order at 13. In other words, Petitioners had to prove the existence of a reasonable alternative crossover district that satisfied the new criteria that the Supreme Court embraced—namely, a reasonably configured district in which minority voters can select their candidates of choice in the dominant party’s primary and are “decisive” in those primary contests, with those candidates prevailing “more often than not” in the general election—*before* the Court could order the remedy of redrawing CD11. *See id.* at 14–16; *see also* Prof.Am.Br.21–22. That showing necessarily would entail evidence from both primary and general elections demonstrating how minority voters actually perform, and whether they in fact control the outcome in the proposed crossover district. *See* Prof.Am.Br.21–22. **But Petitioners made no such showing—and the Supreme Court did not hold otherwise. Indeed, remarkably, the Supreme Court did not analyze at all whether Petitioners had presented any evidence under its new test.**

Because the Supreme Court sprang this new test on the parties after trial, none of the parties had an opportunity to submit evidence regarding it. The few pieces of evidence that the Supreme Court did discuss—involving the totality-of-the-circumstances inquiry, which is only the second step under the Professors’ test (and, indeed, *Gingles*)—did not support the Supreme Court’s conclusion on the second step of *Gingles*. Order at 12. Although the Supreme Court purported to rely on the *Gingles*’ totality-of-the-circumstances second-step factors, it only assessed a few of these factors, declining to analyze factors that clearly weighed against Petitioners’ claim. Order at 7. Without bothering to address Intervenor-Respondents’ and Respondents’ contrary evidence, the Supreme Court held that “the history of discrimination against minority voters in CD-11 still

impacts those communities today” based primarily on historical practices (such as redlining and literacy tests) that are no longer in effect and, remarkably, gave credit to Dr. Sugrue’s testimony that “de facto segregation remains the norm,” despite there being no evidence to support that assertion. *Id.* at 9–10. The trial evidence showed the opposite: that Staten Island “was often at the forefront of efforts countering unequal treatment of minorities,” has made “significant progress” “in addressing racial discrimination,” and “has strived to end hate and discrimination.” Borelli Rep.4–5. The Supreme Court further concluded that racial appeals are “common in campaigns in CD11,” but identified only three purported instances of alleged racial appeals in campaigns, two of which were decades old and the most recent of which occurred in 2017. *Id.* at 11–12. None of this evidence suggests that racial appeals are “common” in political campaigns in CD11, and none of the evidence suggested that “the political processes leading to nomination or election . . . are not equally open to participation by” Black and Latino voters in CD11. *See Gingles*, 478 U.S. at 43 (citation omitted). As for racially polarized voting, there was no evidence or testimony suggesting that the current win percentage for Black and Latino-preferred candidates in CD11—25% or 28%, *see supra* p.11—is in any way problematic, where the voting-age Black and Latino populations together comprise only 22.70% of CD11, Cooper Rep.9 & Figure 2, and less than 30% of Staten Island, Borelli Rep.7.

B. Article III, Section 4 Does Not Authorize The Greenwood/Stephanopoulos Crossover District Theory That The Supreme Court Adopted

1. When construing the New York Constitution, courts give “the language used its ordinary meaning” and apply well-settled principles of construction. *In re Sherill*, 188 N.Y. 185, 207 (1907); *see Harkenrider*, 38 N.Y.3d at 509. The court must give effect to “the entire” provision “and every part and word thereof,” *Lynch v. City of New York*, 40 N.Y.3d 7, 13 (2023) (citation omitted), “avoiding a construction that treats a word or phrase as superfluous,” *Columbia Mem’l*

Hosp. v. Hinds, 38 N.Y.3d 253, 271 (2022) (citation omitted). A court errs by “amend[ing]” a provision to “add[] words that are not there.” *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). And if a law is open to two interpretations, “one of which would obey and the other violate the Constitution, the universal rule of courts is to select the former.” *People ex rel. Bridgeport Sav. Bank v. Feitner*, 191 N.Y. 88, 97–98 (1908).

Courts “presume[]” that the Legislature “does not act in a vacuum” and was “aware of the law existing at th[e] time” it enacted the provision at issue. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep’t 1983). When a state-law provision is either “modeled after a federal statute,” *Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (Sup. Ct. Yates Cnty. 1938), or is “substantively and textually similar to [its] federal counterpart[],” courts generally construe the provision “consistently with federal precedent” interpreting the federal law, and “striv[e] to resolve federal and state” claims in the same way, *Zakrzewska v. New School*, 14 N.Y.3d 469, 479 (2010) (citation modified); see also *Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25–26 (2002). That is especially so when “state and local provisions overlap with federal” provisions involving “civil rights,” as “these statutes serve the same remedial purpose . . . to combat discrimination.” *McGrath v. Toys “R” Us, Inc.*, 3 N.Y.3d 421, 429 (2004).

2. Article III, Section 4 of the New York Constitution does not even arguably incorporate the Greenwood/Stephanopoulos crossover-district theory that the Supreme Court adopted. The People amended the New York Constitution in 2014 to address a history of “partisan and racial gerrymandering.” See *Harkenrider*, 38 N.Y.3d at 503. Today, Article III, Section 4 provides that, “[s]ubject to the requirements of the federal constitution and statutes,” the “following principles shall be used in the creation” of congressional districts: “Districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of” “racial or language minority

voting rights,” but instead “shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.” N.Y. Const. art. III, § 4(c)(1). Article III, Section 4 says nothing about drawing “crossover” districts or any of the aspects of the Greenwood/Stephanopoulos cross-over district theory.

Article III, Section 4 is “modeled after,” *Bicknell*, 6 N.Y.S.2d at 453–54, and “substantively and textually similar,” *Zakrzewska*, 14 N.Y.3d at 479, to Section 2 of the federal VRA. Congress enacted the VRA in 1965 in an “attempt[] to forever banish the blight of racial discrimination in voting” by creating “stringent new remedies for voting discrimination.” *Allen*, 599 U.S. at 10 (citations omitted). In its original form, Section 2 ensured that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color.” 42 U.S.C. § 1973 (1970). Congress amended Section 2 in 1980, however, after the U.S. Supreme Court determined that it did not “prohibit laws that are discriminatory only in effect.” *Allen*, 599 U.S. at 11–14. Section 2 now provides that no “standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which *results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or” “because he is a member of a language minority group.” 52 U.S.C. §§ 10301(a) (emphasis added), 10303(f)(2). In its current form, Section 2 prohibits providing racial or language minorities, “less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice,” “based on the totality of circumstances.” *Id.* § 10301(b).

Section 2 prohibits the “dispersal of a group’s members into districts in which they constitute an ineffective minority of voters,” which is referred to as “vote dilution.” *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (citation modified). The Supreme Court has created “three threshold conditions” for proving such a claim: (1) a “‘minority group’ must be ‘sufficiently large and geographically compact to constitute a *majority*’ in some reasonably configured legislative district,” (2) “the minority group must be ‘politically cohesive,’” and (3) “a district’s white majority must ‘vote[] sufficiently as a block’ to usually ‘defeat the minority’s preferred candidate.’” *Id.* at 301–02 (emphasis added) (quoting *Gingles*, 478 U.S. at 50–51). Since the creation of these *Gingles* factors, the U.S. Supreme Court has been steadfast in their application, rejecting alleged violations of Section 2 where the minority group at issue cannot constitute a majority in a reasonably configured district.

As particularly relevant here, the U.S. Supreme Court has concluded that Section 2 does not require crossover districts for that very reason. *Bartlett v. Strickland*, 556 U.S. 1, 21–23 (2009) (plurality op.). The Court explained that in districts in which minority groups cannot form a majority, they have “the same opportunity to elect their candidate as any other political group with the same relative voting strength,” and that is all that Section 2 requires. *Id.* at 5 (plurality op.). Section 2, the Court reasoned, “does not protect any possible opportunity or mechanism through which minority voters could work with other constituencies to elect their candidate of choice.” *Id.* at 21 (plurality op.). And it certainly “does not guarantee minority voters an electoral advantage,” *id.* at 20 (plurality op.), which is what would occur if the Court were to allow crossover claims. The Court then warned that “disregarding the majority-minority rule . . . would involve the law and courts in a perilous enterprise,” “invit[ing] divisive constitutional questions that are both unnecessary and contrary to the purposes of” the VRA. *Id.* at 21–23 (plurality op.).

After Congress amended Section 2 and the Supreme Court decided *Bartlett*, in 2014, the People of New York adopted Article III, Section 4, modeling it after and utilizing substantially similar language as Section 2. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). Both provisions aim to combat discrimination and do so by prohibiting voting districts that “result[]” in the “denial or abridgement” of voting rights based on race or “language minority” status. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). And a voting district violates both provisions when, “based on the totality of the circumstances,” racial groups “have less opportunity” to “participate in the political process” and to “elect representatives of their choice.” *Compare* 52 U.S.C. §§ 10301(b), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

Because New York modeled Article III, Section 4 on Section 2 and, in so doing, utilized the same language that the U.S. Supreme Court determined does not require crossover districts, Article III, Section 4 likewise does not mandate the creation of crossover districts. *See Bicknell*, 6 N.Y.S.2d at 453–54; *Zakrzewska*, 14 N.Y.3d at 479. Article III, Section 4 mirrors Section 2 in multiple, material ways. To start, Section 2 states that no “practice,” including the drawing of district lines, “shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or*” “*because he is a member of a language minority group.*” 52 U.S.C. §§ 10301(a), 10303(f)(2) (emphases added); *see Cooper*, 581 U.S. at 292. Article III, Section 4 similarly provides that “districts shall not be drawn to have the purpose of, *nor shall they result in, the denial or abridgement of*” “*racial or language minority voting rights.*” N.Y. Const. art. III, § 4(c)(1) (emphases added). Then, Section 2 goes on to say that districts cannot be drawn such that, “*based on the totality of circumstances,*” racial or language minorities “*have less opportunity*

than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b) (emphases added). Article III, Section 4 again tracks this second provision, providing that districts “shall be drawn so that, *based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.”* N.Y. Const. art. III, § 4(c)(1) (emphasis added). In light of these similarities and given that the U.S. Supreme Court determined that Section 2 does not require the creation of crossover districts, *Bartlett*, 556 U.S. at 21–23 (plurality op.), the substantially identical Article III, Section 4 does not require the creation of crossover districts.

Accordingly, for there to be a violation of Article III, Section 4 in CD11, either the Black or the Latino populations would have to be “sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district.” *Cooper*, 581 U.S. at 301 (citation omitted).⁷ But Petitioners failed to make such a showing. Petitioners did not present any evidence suggesting that there is a “reasonably configured legislative district,” *id.*, in which the Black and Latino populations, considered independently or even combined, would constitute a majority. *See* Tr.347:22–24; *Cooper* Rep. ¶ 50 & Figure 9. To the contrary, the Black and Latino populations make up only 24.71% of the voting-age population in Petitioners’ illustrative map. *See* *Cooper* Rep. ¶ 50 & Figure 9. In the current district, voting-age Black and Latino residents comprise less than 23% of CD11’s population, *Cooper* Rep.9, and there was no evidence presented

⁷ There currently exists a circuit split over whether Section 2 authorizes coalition claims—where a plaintiff combines two racial or ethnic minority groups to obtain a majority within a district for purposes bringing a Section 2 claim. *Compare Petteway v. Galveston County*, 111 F.4th 596, 603 (5th Cir. 2024) (*en banc*) (holding that Section 2 does not permit such claims), with *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 526 (11th Cir. 1990). Although Intervenor-Respondents believe that Section 2 does not authorize coalition claims, this Court need not weigh in on that question here, given that Petitioners have not argued that the Black population or the Latino population can form a majority in a reasonably configured district whether added together or not.

suggesting that it is possible to redraw CD11 so that Black and Latino residents comprise over 50% of the population. Petitioners' claim therefore fails under the first *Gingles* factor. *Cooper*, 581 U.S. at 301.⁸

The specific crossover-district requirement proffered by Professors Greenwood and Stephanopoulos—that a “minority population is sufficiently large [to] nominate its preferred candidate in the primary and see this candidate take office after the general election,” Prof.Am.Br.20—appears nowhere in the New York Constitution’s text. Again, Article III, Section 4 provides only that districts be drawn so that “racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.” N.Y. Const. art. III, § 4(c)(1). It does not say that minority groups that cannot otherwise form a majority in a given jurisdiction are entitled to a *greater* opportunity to elect representatives of their choice than other members of the electorate. *See id.* But that is what the Professors’ crossover-district theory entails: because that theory requires that districts be drawn so that minority groups can form political coalitions with a majority group to elect their candidates of choice, a crossover district gives minority groups a political preference over other members of the electorate within that same district that has no basis in Article III.

⁸ Interpreting a State’s redistricting provisions by reference to analogous provisions in the VRA makes sense. The Supreme Court of Colorado, for example, looked to the VRA to interpret a state constitutional amendment in *In re Colorado Independent Congressional Redistricting Commission*, 497 P.3d 493 (Colo. 2021). The amendment prevented a redistricting plan from denying or abridging a person’s right to vote because of “race or membership in a language minority group, including diluting the impact of [a] racial or language minority’s group’s electoral influence.” *Id.* at 505 (citation omitted). Although the amendment had dilution and influence language not found in the VRA, the court concluded that the amendment was “coextensive with the VRA provisions as they existed in 2018 and create[d] no further [redistricting] requirements” or any “additional protections for [minority] voters in the form of influence, crossover, or coalition districts.” *Id.* at 512. It relied, *inter alia*, on the fact that the General Assembly had failed to define the terms “dilution” or “electoral influence,” “which [was] curious if [that] language was intended to establish new protections beyond those existing in federal law.” *Id.* at 510; *see also Asian Ams. Advancing Just.-L.A. v. Padilla*, 41 Cal. App. 5th 850, 872 (2019) (giving the phrase “single language minority” in a California election statute the same meaning as in the federal VRA because the California legislature “undoubtedly would have, said so” if it intended the phrase “to have a different meaning under state law”). This reasoning is even more compelling here given the greater extent to which the language of Article III, Section 4 parallels Section 2. *Supra* pp.30–33.

Finally, the doctrine of constitutional avoidance compels interpreting Article III, Section 4 to not mandate the creation of crossover districts (including under the Greenwood/Stephanopoulos theory), *Bridgport*, 191 N.Y. at 97–98, where requiring such districts raises “serious constitutional concerns under the Equal Protection Clause” of the Fourteenth Amendment, *Bartlett*, 556 U.S. at 21 (plurality op.). The Equal Protection Clause permits racial classifications only “as a last resort,” making its “driving force” the “imperative of racial neutrality.” *Id.* (citation omitted). But if Article III, Section 4 “were interpreted to require crossover districts,” “it would unnecessarily infuse race into virtually every redistricting” by “[i]njecting [a] racial measure” into the redistricting process. *Id.* at 21–22 (plurality op.) (citation omitted). It would require the “perilous enterprise” of mapdrawers “relying on a combination of race and party to presume an effective majority” and “predictions” that they “would hold together as an effective majority over time” as opposed to considering only “objective” redistricting criteria. *Id.* at 22–23 (plurality op.). These constitutional concerns are part of why the U.S. Supreme Court has interpreted Section 2 as not requiring the creation of crossover districts, *id.* at 21 (plurality op.), or minority influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.), and the Court has only become more skeptical of race-based government action in its recent precedent, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) (“*SFFA*”).

3. The Supreme Court erred in concluding that Article III, Section 4 authorizes crossover claims, including under the Professors’ theory. Despite acknowledging that “crossover claims were rejected under the VRA in *Bartlett*,” the Supreme Court nevertheless held that “Article III, Section 4(c)(1)’s language indicate[s] that they are allowed in actions in the state of New York.” Order at 14. But nowhere does the Supreme Court explain why that would be the case. Rather, the Court’s sole determination on this score was that the 2014 redistricting amendments were

intended to “expand on those provided by the federal government” in the federal VRA. *Id.* at 6. But even assuming that Article III, Section 4 is more expansive than the federal VRA in some manner, *but see infra* pp.29–33, it does not follow that Article III, Section 4 authorizes crossover district claims at all, let alone under the Greenwood/Stephanopoulos theory. Article III, Section 4 does not mention crossover districts, and instead simply guarantees that districts be “drawn so that, based on the totality of the circumstances, racial or minority language groups do not have *less opportunity* to participate in the political process than other members of the electorate and to elect representatives of their choice.” N.Y. Const. art. III, § 4(c)(1) (emphasis added).

Further, under the Supreme Court’s interpretation, Article III, Section 4 would require drawing districts so as to provide minority groups with *more* opportunity than other members of the electorate to elect representatives of their choice. As the Supreme Court explained, a crossover district is one where minority voters’ preferred candidates are “usually [] victorious in the general election,” that is, where “minority-preferred candidates win *more often than not.*” Order at 15 (emphasis added). In other words, the Supreme Court’s interpretation “grant[s] minority voters ‘a right to preserve their strength for the purposes of forging an advantageous political alliance.’” *Bartlett*, 556 U.S. at 14–15 (plurality op.) (citation omitted). However, “[n]othing” in Article III, Section 4 “grants special protection to a minority group’s right to form political coalitions,” *id.*, nor does this provision “guarantee minority voters an electoral advantage” over other voters, *id.* at 20 (plurality op.), such that they must win more than half of the time. The Supreme Court’s interpretation will “place courts in the untenable position of predicting many political variables and tying them to race-based assumptions,” requiring courts to engage in “speculative” and “elusive” inquiries, such as: “What percentage of white voters supported minority-preferred candidates in the past? How reliable would the crossover votes be in future elections? What types

of candidates have white and minority voters supported together in the past and will those trends continue? Were past crossover votes based on incumbency and did that depend on race? What are the historical turnout rates among white and minority voters and will they stay the same?” *Id.* at 17 (plurality op.). As the U.S. Supreme Court explained in *Bartlett*, courts “are inherently ill-equipped to make decisions based on highly political judgments of the sort that crossover-district claims would require,” *id.* (plurality op.) (citation omitted), and reading such a requirement into Article III, Section 4 would render this constitutional provision exceedingly difficult, if not impossible, to apply consistently in practice.

The Supreme Court did not even bother to address the serious constitutional concerns inherent in its crossover-district theory. *See Bridgeport*, 191 N.Y. at 97–98; *Bartlett*, 556 U.S. at 21 (plurality op.). The Supreme Court held that, to draw a crossover CD11, mapmakers will need to “add[] Black and Latino voters from elsewhere” in a way that ensures that these voters’ preferred candidates will win more than half of the time. Order at 13–15. The Supreme Court determined that a crossover district must be drawn to ensure that minority voters’ preferred candidate “win[s] more often than not”—even if these voters constitute less than a majority of the district’s total population. Order at 15. If the newly drawn district also exhibits racially polarized voting (which the U.S. Supreme Court has recognized is a common condition, *Cooper*, 581 U.S. at 304 n.5), then the Supreme Court’s invented test will necessarily entail that the candidate favored by other racial groups will *lose* more often than not. In other words, the Supreme Court’s interpretation of Article III, Section 4 will “unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions,” and “result[ing] in a substantial increase in the number of mandatory districts drawn with race as ‘the predominant factor motivating the

legislature’s decision.” *Bartlett*, 556 U.S. at 21–22 (plurality op.) (citation omitted). As explained above, constitutional avoidance canon mandates against precisely this result. *Supra* p.35.

C. The Supreme Court Ordered The IRC To Adopt A Racial Gerrymander That Violates The U.S. Constitution, A Point That The Supreme Court Inexplicably Refused Even To Address

1. “The Equal Protection Clause of the Fourteenth Amendment limits racial gerrymanders in legislative districting plans.” *Cooper*, 581 U.S. at 291. A State violates the Equal Protection Clause if it “separat[es] its citizens into different voting districts on the basis of race” without “sufficient justification.” *Id.* (quoting *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017)). When “race was the predominant factor motivating the [mapdrawer’s] decision to place a significant number of voters within or without a particular district,” strict scrutiny applies. *Id.* (citation omitted); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995). This doctrine ensures that redistricting does not reinforce “impermissible racial stereotypes,” *Shaw v. Reno*, 509 U.S. 630, 647 (1993) (“*Shaw I*”), or result in a district “being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group,” *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (citation omitted). And it applies regardless of whether the mapdrawer is a legislature, *Cooper*, 581 U.S. at 291, or a court, *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 401 (2022).

Drawing a district based on race triggers strict-scrutiny review because doing so establishes that “race furnished the predominant rationale for that district’s redesign.” *Cooper*, 581 U.S. at 299–301. That is so because the only way for a mapdrawer to achieve such an express racial goal is to move voters “within or without a particular district” based on race until the goal is met—the definition of race predominating over a district’s design. *Id.* at 291, 299–300. That conclusion remains true even if the district at issue “respects traditional [redistricting] principles” so long as race was nevertheless the one “criterion that, in the [mapdrawers’ view], could not be

compromised.” *Bethune-Hill*, 580 U.S. at 189 (citations omitted; alterations omitted). For example, in *Wisconsin Legislature*, the U.S. Supreme Court held that the “intentional addition of a seventh majority-black district” in Wisconsin’s legislative map alone subjected the map to “strict-scrutiny” review—despite arguments that the map complied with traditional redistricting principles—because “race [was] the predominant factor motivating the placement of voters in or out of [that] particular district,” such that no further showing was needed to show that the map constituted “race-based redistricting.” 595 U.S. at 402–03.

Similarly, in *Cooper*, the Court held that North Carolina’s state legislative map triggered strict-scrutiny review under the predominant rationale test without any need for the Court to discuss the district’s compliance with traditional redistricting principles because there was direct evidence that the North Carolina General Assembly had “purposefully established a racial target” in drawing that district—namely ensuring that Black voters “ma[d]e up no less than a majority of the voting-age population” there. 581 U.S. at 299–301. A party satisfies the predominant-rationale test by showing that “race was the predominant factor motivating the [map-drawer’s] decision to place a significant number of voters within or without a particular district” through one of three evidentiary pathways: “[1] direct evidence of legislative intent, [2] circumstantial evidence of a district’s shape and demographics, or [3] a mix of both.” *Id.* at 291. This test requires a litigant “simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district.” *Id.* at 318 (citation omitted).

Thus, a mapdrawer triggers strict-scrutiny review when there is evidence that he drew the at issue map with an express race-based purpose, as that race-based goal constitutes “direct evidence of [] intent” alone sufficient to satisfy the test. *Id.* at 291. The U.S. Supreme Court has

consistently reaffirmed these principles, repeatedly concluding that drawing district lines with race as the “predominant motive for the design of the district as a whole”—that is, redistricting with a specific racial goal—triggers strict scrutiny. *See, e.g., Bethune-Hill*, 580 U.S. at 192–93; *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03.

Once a law triggers strict scrutiny, the law’s proponent must demonstrate that the law is “narrowly tailored to achieving a compelling state interest,” otherwise the law will violate the Equal Protection Clause. *Wis. Legislature*, 595 U.S. at 401. The U.S. Supreme Court has only recognized two compelling state interests that can potentially justify race-based government action. First, States have a compelling interest in “remediating specific, identified instances of past discrimination that violated the Constitution or a statute.” *SFFA*, 600 U.S. at 207; *see Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). However, “generalized assertion[s] of past discrimination” do not suffice. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) (“*Shaw II*”). Second, the Court has “long assumed” that attempting to comply with Section 2 of the VRA is a “compelling interest” in the redistricting context that could justify drawing district lines with predominately racial motives. *Cooper*, 581 U.S. at 292; *see also Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02.⁹ Notably, the Court has only made that assumption because Section 2 is the rare race-based statute that can survive strict-scrutiny review due to its “exacting requirements” and safeguards that narrowly tailor its application. *Allen*, 599 U.S. at 30.

⁹ In *Louisiana v. Callais*, 606 U.S. ____, 2025 WL 1773632 (June 27, 2025), the U.S. Supreme Court ordered and heard reargument on the question of whether a State’s drawing of a majority-minority district under Section 2 of the federal VRA satisfies the Equal Protection Clause, and so potentially appears poised to cut back on its longstanding assumption that a State’s compliance with Section 2 of the VRA is a compelling state interest.

For a race-based law to be “narrowly tailored,” the law’s use of race must be “necessary” to “achiev[ing] [the law’s] interest.” *SFFA*, 600 U.S. at 206–07 (citations omitted). Narrow tailoring requires that “the means chosen to accomplish the government’s asserted purpose must be *specifically and narrowly framed* to accomplish that purpose”—an exacting standard. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 311 (2013) (citations omitted) (emphasis added). For example, to satisfy strict scrutiny, a State that claims a compelling interest in remediating a specific instance of past intentional discrimination must demonstrate that its chosen remedy is “necessary to cure [the] effects” of that particular discrimination. See *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 510 (1989) (plurality op.); accord *SFFA*, 600 U.S. at 249 (Thomas, J., concurring).

2. The court below remarkably did not address whether requiring a race-based redrawing of CD11 would violate the U.S. Constitution’s Equal Protection Clause, despite Intervenor-Respondents raising this argument repeatedly and at length in pre-trial briefing, Int’r.Resp’t.Br.32–39; Moskowitz Aff., Ex.O at 15–29, during opening statements, Tr.27:9–28:19, and in post-trial briefing, Moskowitz Aff., Ex.W at 99–120. Intervenor-Respondents very clearly directed their argument toward *any* judicially-adopted, race-based redrawing of CD11, so the fact that the Supreme Court rejected both Petitioners’ theory and their remedial approach of adding Democrat White voters from Lower Manhattan into CD11 does nothing to lessen the Equal Protection Clause problem with its order. Indeed, it is beyond any serious dispute that the Supreme Court’s “crossover” district remedy—which orders a change to CD11’s boundaries so that Black and Latino candidates will win more elections by “adding Black and Latino voters from elsewhere,” Order at 13—triggers and fails strict scrutiny review, and so violates the Equal Protection Clause.

a. The Supreme Court’s remedy is expressly race-based and therefore must satisfy strict-scrutiny review. That remedy mandates placing voters in or out of CD11 based not just

predominantly, *Cooper*, 581 U.S. at 299–301; *Bethune-Hill*, 580 U.S. at 192–93, but entirely upon racial considerations. As the Supreme Court itself explained, to create the new crossover district that the Court just ordered, the IRC will need to “add[] Black and Latino voters from elsewhere” in order to achieve the goal of giving Black and Latino voters the benefit of increased electoral power. Order at 13. In other words, the “predominant motive for the design of the district as a whole” is race-based, *Bethune-Hill*, 580 U.S. at 192–93; *see also Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03, because the map-drawers must move new voters into the district and/or take current voters out of the district to change racial outcomes of elections, until Black and Latino voters have enough “actual influence” to be “decisive in the selection of candidates,” Order at 15. While States may be permitted to draw a district that happens to be a crossover district even where the State is “aware of racial considerations” or “racial demographics,” no State is allowed to draw such a district where “the overriding reason for choosing [it]” is “race for its own sake” without first satisfying strict scrutiny. *Allen*, 599 U.S. at 30–31 (citations omitted). That would inflict the very harm that the Equal Protection Clause prohibits: using racial stereotypes, presuming that members of the same racial or ethnic group share political preferences, and signaling that the district exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

Even if a crossover district that the IRC adopted under the Supreme Court’s mandate were to comply with traditional redistricting principles,¹⁰ it would still trigger strict scrutiny because the Court’s order constitutes “direct evidence of [] intent” to draw the map to achieve an express race-based purpose. *Cooper*, 581 U.S. at 291; *see Wis. Legislature*, 595 U.S. at 401–04. Any IRC

¹⁰ Petitioners’ proposed map clearly violated those principles, which is presumably why the Supreme Court did not even attempt to address it, including Mr. Cooper’s disastrous testimony admitting that he knew nothing about the communities of interest at issue when drawing the map, *supra* pp.12–14.

map’s potential compliance with such principles is irrelevant because there is “direct evidence” here that race is “the predominant consideration in deciding to place a significant number of voters within or without a particular district.” *Cooper*, 581 U.S. at 291, 318 (citation omitted). Namely, the Court held that in order to remedy the racial vote-dilution that it purported to identify in CD11, mapmakers must “add[] Black and Latino voters from elsewhere” into CD11, Order at 13, until they no longer have “insufficient” “political power” to influence elections, *id.* at 12. That “direct evidence” of drawing the new CD11 to achieve a “purposefully established [] racial target” is all that is necessary to trigger strict scrutiny under the predominant-rationale test. *Cooper*, 581 U.S. at 291, 299–301; *see Wis. Legislature*, 595 U.S. at 399–404.

b. Neither the Supreme Court nor Petitioners came close to carrying Petitioners’ burden to show that the racial reconfiguration of CD11 satisfies strict scrutiny; indeed, they did not even try.

Racially redrawing CD11 does not further any compelling government interest. Petitioners did not present any evidentiary basis—let alone the requisite “strong” evidentiary basis—to conclude that race-based action is “necessary” to remediate “*identified* discrimination.” *Shaw II*, 517 U.S. at 909–10 (emphasis added; citation omitted). The Supreme Court’s order referenced long-discontinued practices, such as redlining and the fact that “New York state”—like many other States—required “literacy tests to vote” beginning “[i]n the 1920s,” Order at 10, but these are the type of “generalized assertion[s] of past discrimination” that do not constitute a compelling state interest to engage in race-based action, *Shaw II*, 517 U.S. at 909–10. And even if these past discriminatory practices were responsible for lower “education rates” and “socioeconomic status” for Blacks and Latinos in Staten Island, Order at 10, Petitioners presented no evidence, let alone “strong” evidence, that engaging in race-based *redistricting* is somehow “necessary” to remediate that “discrimination,” *Shaw II*, 517 U.S. at 909–10. The Supreme Court’s reliance on “overt and

subtle racial appeals . . . in campaigns in CD-11,” Order at 11, fares no better in establishing a compelling interest that would justify the race-based action here. Three sporadic, isolated instances of arguably discriminatory appeals in campaigns over a period of *eight decades* cannot possibly constitute a “strong” evidentiary basis establishing that the insidious practice of race-based redistricting is absolutely “necessary” to achieve any legitimate state interest *today*. *Shaw II*, 517 U.S. at 909–10; *see SFFA*, 600 U.S. at 207. In any event, New York—like all States—also lacks Congress’ constitutional authority to use voting-rights laws to remedy societal discrimination, further demonstrating that mandating cross-over districts advances no compelling *state* interest. *See City of Richmond*, 488 U.S. at 490–91, 495 (citation omitted).

Even if there were some compelling interest here, there was no record evidence even remotely suggesting that any race-based district would be narrowly tailored to achieving that interest. To be “narrowly tailored,” a statute’s use of race must be “necessary” to “achiev[ing] [the law’s] interest.” *SFFA*, 600 U.S. at 206–07 (citations omitted) (emphasis added). That demanding standard is only satisfied where “the means chosen to accomplish the government’s asserted purpose [are] specifically and narrowly framed to accomplish that purpose.” *Fisher*, 570 U.S. at 311 (citations omitted). For example, if a State relies on its compelling interest in remediating a specific instance of past intentional discrimination to pass a race-based law, then its selected remedy must be “necessary to cure [the] effects” of that identified discrimination. *See City of Richmond*, 488 U.S. at 510 (plurality op.); *accord SFFA*, 600 U.S. at 249 (Thomas, J., concurring). The proponent of such a law bears the burden of showing that a race-based remedy is “necessary” to satisfy the narrow-tailoring prong. *SFFA*, 600 U.S. at 206–07 (citations omitted). Petitioners failed to submit any evidence that could satisfy narrow tailoring here. At most, Petitioners showed that—using their own experts’ hand-picked elections—a district can be drawn

where the Black and Latino population that accounts for less than 25% of CD11 wins approximately 90% of elections—as compared to the far more proportionate 25% of elections that population wins under CD11’s current configuration. *See supra* p.11. That showing in no way establishes that engaging in race-based redistricting is *necessary* to achieve a compelling state interest. Petitioners did not even try to explain—and the Supreme Court did not address—why race-neutral measures would fail to sufficiently increase Black and Latino voters’ electoral influence in CD11 from its current baseline (winning 25% of elections even under Petitioners’ own experts’ hand-picked dataset with less than 25% of the population), if such an increase were necessary for some reason. *See supra* pp.11–14.

D. The Supreme Court Violated The U.S. Constitution’s Elections Clause

1. Under the Elections Clause, “[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof.*” U.S. Const. art. I, § 4 (emphasis added). As such, “the Elections Clause expressly vests power to carry out its provisions in ‘*the Legislature*’ of each State,” which represents “a deliberate choice that [courts] must respect.” *Moore*, 600 U.S. at 34 (citation omitted; emphasis added). Thus, when “state court[s] interpret[] [] state law in cases implicating the Elections Clause”—including cases adjudicating state-law challenges to congressional maps—they must “not transgress the ordinary bounds of judicial review” and “arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36.

The U.S. Supreme Court recently provided clarification on the appropriate role of state courts in resolving state-law challenges to congressional redistricting maps in *Moore*. In that case, North Carolina voters and voting-rights groups challenged North Carolina’s congressional map as an unlawful partisan gerrymander under the State’s constitution. *Id.* at 11. The legislative defendants in the case contended that the Elections Clause “insulates state legislatures [drawing

congressional maps] from review by state courts for compliance with state law,” *id.* at 19, whereas other parties argued that state courts have plenary power to review congressional maps and “free rein” to determine what state law is, *id.* at 34. Thus, the parties put before the Court two starkly opposed positions: one that would undermine state courts’ authority to ensure that redistricting maps comply with state law, and another that would effectively nullify the Elections Clause’s safeguards for state Legislatures’ constitutional role in redistricting. *See id.* at 34–37.

Moore adopted a middle path, cautioning state courts against relying on novel or strained interpretations of state law to exert excessive control over the congressional-redistricting process. *See id.* Although “the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law,” it also does not provide that “state courts . . . have free rein” in deciding whether a congressional map complies with state law. *Id.* at 34. In particular, state courts must “ensure that [their] interpretations of [state] law do not evade federal law,” *id.*, by “read[ing] state law in such a manner as to circumvent federal constitutional provisions,” *id.* at 34–35. Otherwise, state courts risk “transgress[ing] the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections.” *Id.* at 36. And if a state court “so exceed[s] the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution,” then the U.S. Supreme Court stands ready “to exercise judicial review.” *Id.* at 37.

Justice Kavanaugh’s concurring opinion in *Moore* squarely addressed the question of what “standard a federal court should employ to review a state court’s interpretation of state law in a case implicating the Elections Clause” in order to determine whether that interpretation exceeds the bounds of “ordinary state court review.” *Id.* at 38 (Kavanaugh, J., concurring). He analyzed

three potential standards, each of which “convey[ed] essentially the same point: Federal court review of a state court’s interpretation of state law in a federal election case should be deferential, but deference is not abdication.” *Id.* at 38–39 & n.1. Justice Kavanaugh ultimately recommended that the Court “adopt Chief Justice Rehnquist’s straightforward standard” from *Bush v. Gore*. *Id.* at 39–40. Under that standard, state courts must not “impermissibly distort[]” state law “beyond what a fair reading required.” *Id.* at 38 (citation omitted). As Chief Justice Rehnquist explained, this standard “does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*,” because affording “definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate [the Court’s] responsibility to enforce the explicit requirements of [the federal Constitution].” *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring). Justice Kavanaugh further emphasized that this approach “should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions,” and that, when evaluating state-court interpretations of state law, courts “necessarily must examine the law of the State as it existed prior to the action of the state court.” *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted). Applying this “straightforward standard,” *id.* at 39, “ensure[s] that state court interpretations of” state law governing federal election cases “do not evade federal law,” *id.* at 34 (majority op).

2. Here, the Supreme Court’s decision to insert a crossover-district mandate into Article III, Section 4 to invalidate and require the redrawing of a legislatively adopted congressional map—without even the benefits of adversarial testing—is the kind of “impermissibl[e] distort[ion]” of state law “in a federal election case,” *id.* at 38–39 & n.1 (Kavanaugh, J.,

concurring), that “[dis]respect[s] [] the constitutionally prescribed role of state *legislatures*,” *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring), and so violates the Elections Clause.

The Supreme Court’s *sua sponte* interpretation of Article III, Section 4 constitutes a radical departure from New York’s principles of constitutional interpretation. *Supra* pp.28–29. Judicially inserting a crossover-district requirement into Article III, Section 4 is an “[un]fair reading,” *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted), of state law that would impermissibly allow New York state courts to “arrogate to themselves the power vested in state legislatures to regulate federal elections,” *id.* at 36 (majority op.). As explained, nothing in Article III, Section 4 references the right to a crossover district. *Supra* pp.29–30. Rather, the Supreme Court’s newly adopted theory—instead of ensuring that “racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice,” N.Y. Const. art. III, § 4(c)(1)—rewrites Article III, Section 4 to require that minority groups have *more* opportunity than other members of the electorate to elect representatives of their choice, ensuring that “minority-preferred candidates” in a crossover district “win *more often than not*,” Order at 15 (emphasis added). The Supreme Court’s theory thus “transgress[es] the ordinary bounds of judicial review,” *Moore*, 600 U.S. at 36, and “impermissibly distorts’ state law ‘beyond what a fair reading required,’” *id.* at 38 (Kavanaugh, J., concurring) (citation omitted). This distortion of New York law “unconstitutionally intrude[s] upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution” and violates the Elections Clause. *Id.* at 36–37 (majority op.).

If *Moore*’s admonition means anything, a state court may not do what the Supreme Court did here. The Supreme Court did not apply any preexisting constitutional standard recognized in New York law, and instead came up with its own crossover-district construct—requiring, among

other things, that minority-preferred candidates “win more often than not” in a specially engineered district—without any footing in the text of Article III, Section 4 or in any prior decision of any New York court. *See* Order at 14–16. It announced that novel test for the first time in its post-trial opinion invalidating the Legislature’s map, without adversarial briefing on the test it adopted, and then declared the new standard satisfied even though the parties had no opportunity to develop or present evidence tailored to its elements. *See supra* pp.22–28. For several aspects of the Supreme Court’s test there is simply no evidence in the record at all. *Supra* pp.26–28. That is not a reasonable interpretation of the New York Constitution; it is a *post hoc* amendment of Article III, Section 4. By retroactively constitutionalizing a crossover-district theory of its own invention and then using that theory to strike down the Legislature’s congressional plan mid-decade, the Supreme Court “transgress[ed] the ordinary bounds of judicial review” and arrogated to itself the authority that the Elections Clause reserves to the Legislature, making this case as clear an Elections Clause violation under *Moore* as could be imagined. *See Moore*, 600 U.S. at 36.

II. A Stay Pending Appeal Is The Only Way To Prevent Substantial Prejudice To Intervenor-Respondents And Ensure That A Congressional Map Is In Place For The Upcoming Election Cycle

Both Intervenor-Respondents and the public will suffer serious and irreparable harm if the Supreme Court’s order and any further proceedings are not stayed pending this appeal. As things stand, the Supreme Court’s order has thrown New York’s upcoming congressional elections into chaos, leaving the State with no operative congressional map at all for the quickly approaching 2026 election cycle. The Supreme Court’s order (1) enjoins Respondents from conducting any election under the 2024 Congressional Map, and (2) directs the IRC to reconvene and draw a new congressional map by February 6, 2026. Order at 18. Several respondents—each a state official—filed a Notice of Appeal from that order on January 26, 2026, *see Williams v. Bd. of Elections of the State of N.Y.*, No.2026-00384 (1st Dep’t), triggering CPLR Section 5519(a)’s automatic stay

provision, *see* CPLR § 5519(a)(1); *Hoffmann*, 41 N.Y.3d at 356–57. But the automatic stay applies only to the “executory directions of the judgment or order appealed from which command a person to do an act,” and therefore stays only the portion of the order compelling the IRC to reconvene and draw a new map. *See Pokoik v. Dep’t of Health Servs. of Cnty. of Suffolk*, 220 A.D.2d 13, 15 (2d Dep’t 1996). It does not stay the prohibitory injunction forbidding use of the 2024 Congressional Map, and does not stop the Supreme Court from conducting further proceedings. *Id.* The result will be a vacuum: the existing, duly enacted, and lawful map is enjoined; the IRC cannot craft a replacement while the appeal is pending; and there is no other map in place under which the State can administer the 2026 Congressional Election.

That untenable situation is especially acute given the imminent election calendar. Petitioning for the 2026 congressional primary begins on February 24, 2026—less than one month from now. *See Moskowitz Aff., Ex.X* at 4. It is highly unlikely that this appeal—even if expedited—will be fully briefed, argued, and resolved before that date. Yet election officials, candidates, and voters must know the governing district lines before petitioning, ballot preparation, and voter outreach can proceed in an orderly fashion. Without a stay pending appeal, the Supreme Court’s unlawful order will prevent the 2026 Congressional Election from beginning on time under any congressional map, inflicting massive irreparable harm not only on Intervenor-Respondents, but on New York’s voters. A stay is therefore necessary to ensure that the 2026 election can proceed under the current, entirely lawful 2024 Congressional Map, rather than collapsing into the uncertainty and confusion that the order below has unleashed.

Intervenor-Respondents will suffer irreparable harm without a stay. Congresswoman Malliotakis is the duly elected Representative to the U.S. House of Representatives from New York’s CD11, and she intends to be a candidate for reelection in the upcoming election.

Malliotakis Aff. ¶¶ 2, 6. In fulfilling her solemn duty of “[s]erving [her] constituents and supporting legislation that will benefit the district and individuals and groups therein,” *McCormick v. United States*, 500 U.S. 257, 272 (1991), she must cultivate and maintain the vital “relationship between” herself as “representative” and her “constituent[s]” so that she may effectively represent them in Congress, *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 579 (6th Cir. 2018) (citation omitted). She has invested substantial time, effort, and resources in developing relationships with the voters in CD11 as it is currently configured—relationships formed in reliance on the understanding that CD11 would maintain its longstanding configuration that was recently adopted by a bipartisan majority of the Legislature. See Malliotakis Aff. ¶¶ 5–6; Moskowitz Aff., Ex.Y (“Lai Aff.”) ¶¶ 2–10; Moskowitz Aff., Ex.Z (“Medina Aff.”) ¶¶ 2–9; Moskowitz Aff., Ex.AA (“Reeves Aff.”) ¶¶ 2–9; Moskowitz Aff., Ex.BB (“Sisto Aff.”) ¶¶ 2–8; Moskowitz Aff., Ex.CC (“Togba Aff.”) ¶¶ 2–8. Now, there is no congressional map in place at all for the 2026 Congressional Election, resulting in a complete lack of clarity regarding what district Congresswoman Malliotakis can run in and disrupting these carefully built representational ties and campaign structures.

The Individual Voters will likewise suffer grave and irreparable harm if the current map remains enjoined while this appeal is ongoing. They reside within CD11 as presently drawn and have devoted substantial time, energy, and resources to supporting and campaigning on Congresswoman Malliotakis’s behalf within that district—organizing, canvassing, fundraising, and speaking to neighbors and community members on the premise that CD11’s long-stable boundaries would govern the upcoming election. See Lai Aff. ¶¶ 7–10; Medina Aff. ¶¶ 6–9; Reeves Aff. ¶¶ 6–9; Sisto Aff. ¶¶ 5–8; Togba Aff. ¶¶ 5–8. Without a map in place for the 2026 Congressional Election, Intervenor-Respondents’ prior campaigning efforts will be rendered

uncertain and the Individual Voters (and all New Yorkers) will have no guidance as to where they can vote and who they can vote for. Moreover, as the court-ordered redrawing of CD11 would necessarily rely “on racial criteria,” it promises to inflict precisely the “special representational harms racial classifications can cause in the voting context” that the Supreme Court has long condemned. *United States v. Hays*, 515 U.S. 737, 744–45 (1995); see *Shaw II*, 517 U.S. at 904. The Individual Voters have explained that they do not want to live in a racially gerrymandered district, which is an irreparable harm. See *Hays*, 515 U.S. at 744–45; *Lai Aff.* ¶ 11; *Medina Aff.* ¶ 10; *Sisto Aff.* ¶¶ 9; *Togba Aff.* ¶ 9.

In short, a stay is essential to prevent chaos for the impending 2026 Congressional Election, preserve the status quo under the lawful 2024 Congressional Map, and protect the public interest in orderly, timely elections conducted under stable and non-racially gerrymandered district lines.

III. The Court Should Also Grant Leave To Appeal Directly To The Court Of Appeals Given The Importance Of The Issues Involved And The Need To Avoid Chaos In The Impending 2026 Congressional Elections

In addition to granting an interim stay and stay pending appeal of the Supreme Court’s order, this Court should also grant leave to appeal directly to the Court of Appeals.

The legal issues presented in this appeal are of “statewide significance.” *Hawkins*, 11 N.Y.3d at 493. The decision below adopts, for the first time, a judicially crafted “crossover” vote-dilution standard under Article III, Section 4(c)(1), which departs from the framework that the U.S. Supreme Court has devised to govern vote-dilution claims under Section 2 of the federal VRA, *supra* pp.30–33, and violates the U.S. Constitution’s Equal Protection Clause and Elections Clause, *supra* pp.38–49. No prior decision of the Court of Appeals has addressed these “novel” issues, see NYCRR § 500.22(b)(4); *Corbett*, 243 N.Y. at 67, and resolution of these issues will govern future challenges to New York’s congressional and legislative maps and could well shape the conduct of the Legislature, the IRC, and the courts for decades, see *Hawkins*, 11 N.Y.3d at

493; *Babigian*, 69 N.Y.2d at 1014. Resolving this appeal will require assessing whether Article III, Section 4 authorizes crossover districts and the crossover-district standard that the Supreme Court adopted here. *See supra* pp.28–33. The appeal will also determine whether the Supreme Court’s approach complies with the Equal Protection Clause. *See supra* pp.38–45. And given the Supreme Court’s radical departure from the text and history of the New York Constitution, this appeal will address whether that Court’s order “transgress[es] the ordinary bounds of judicial review” so as to violate the Elections Clause. *Moore*, 600 U.S. at 36; *see supra* pp.45–49.

The Court of Appeals is best positioned to provide a definitive resolution to these complex and novel legal issues—at least until the federal issues reach the U.S. Supreme Court—and such resolution is needed now. As explained above, the decision to block New York’s congressional map has thrown this State’s upcoming congressional election cycle into chaos. *Supra* pp.49–50. Notably, if jurisdiction for this appeal is only proper in the Appellate Division, then the Court of Appeals will only be able to step in now if this Court grants Intervenor-Respondents permission to appeal to that Court. *See supra* n.1. Given the extraordinary public importance of ensuring stable, lawful rules for electing New York’s congressional delegation, the importance the legal issues, and the practical necessity of prompt, definitive guidance from the State’s highest court, granting leave for an immediate appeal to the Court of Appeals is appropriate.

CONCLUSION

This Court should grant Intervenor-Respondents’ motion for a stay pending resolution of this appeal, as well as granting leave to appeal directly to the Court of Appeals.

Dated: New York, New York
January 27, 2026

TROUTMAN PEPPER LOCKE LLP



BENNET J. MOSKOWITZ
875 Third Avenue
New York, New York 10022
(212) 704-6000

MISHA TSEYTLIN
111 S. Wacker Dr., Suite 4100
Chicago, Illinois 60606
(608) 999-1240

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

RETRIEVED FROM DEMOCRACYDOCS.COM