

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-

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

Intervenor-Respondents.

Appellate Division Case No.:
26-00384

NY County Index No.:
164002/2025

**APPELLANTS-RESPONDENTS' MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR A DISCRETIONARY STAY**

[*counsel for Appellants-Respondents are listed on the following page*]

Of Counsel:

Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.

CULLEN AND DYKMAN LLP
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9440

*Counsel to Appellants-Respondents Peter S.
Kosinski, Anthony J. Casale, and Raymond J.
Riley, III*

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PRELIMINARY STATEMENT

Appellants Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York (“BOE”), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III, in his official capacity as Co-Executive Director of the BOE (collectively, “Appellants”) respectfully submit this memorandum of law in support of their emergency motion for an interim stay, stay pending appeal, and leave to appeal from the January 21, 2026 Decision and Order of Supreme Court, New York County (Pearlman, J.) (the “Decision and Order”), and in support of the motion of Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Law, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, the “Intervenor-Respondents”) seeking the same relief (NYSCEF Doc. No. 9). Appellants adopt and expressly incorporate herein the arguments and fact submissions made by the Intervenor-Respondents.

On the eve of the election season, Supreme Court declared that the decades-old configuration of the 11th Congressional District (“CD-11”) is unconstitutional under Article III, § 4(c)(1) of the NY Constitution. Supreme Court also enjoined “any” election until the non-party Independent Redistricting Commission completes a new map of CD-11 that complies with a vague yet explicitly race-based standard woven out of whole cloth and without any adversarial briefing by the parties.

The irreparable harm resulting from Supreme Court’s Decision and Order is immediate and profound. By enjoining all election activity, Supreme Court’s ruling threatens to disrupt the timely and orderly administration of the 2026 election cycle, which is set to commence with designating petitions on February 24, 2026. This uncertainty not only jeopardizes the rights of candidates and political parties to participate in a timely and fair electoral process, but also risks disenfranchising

voters who may be left without clear information about their districts or representation. Moreover, the abrupt halt to election preparations erodes public confidence in the integrity and reliability of New York's electoral system, causing confusion and diminishing trust in the democratic process. These harms cannot be remedied after the fact, as the loss of a fair and orderly election process is, by its nature, irreparable.

Supreme Court's Decision and Order also is deeply flawed on the merits. This entire proceeding rests on Petitioners' position that the standard for an Article III, § 4(c)(1) vote dilution claim is the dramatically relaxed New York Voting Rights Act ("NYVRA"), which was adopted eight years *after* Article III, § 4(c)(1). Supreme Court rejected this argument out of hand, holding that application of the NYVRA standard to the NY Constitution "is impermissible" (Decision and Order at 5). At that point, Supreme Court should have dismissed this proceeding. Erroneously, it did not and proceeded, without any input from the parties, to invent an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims. Since Appellants were denied the opportunity to litigate any standard other than the one advanced by Petitioners, due process and the principle of party presentation require reversal of the Decision and Order.

Even if Supreme Court's new standard for Article III, § 4(c)(1) were accepted, the Decision and Order must still be reversed because Petitioners did not offer any evidence demonstrating that a reconstituted district could satisfy the new standard, and Supreme Court made no such finding. According to Supreme Court's novel standard for so-called "crossover districts," minority voters must be able to select their candidates of choice in a *primary* election and minority voters must be decisive in the *selection of candidates* in the reconstituted district. Petitioners, however, did not offer any evidence regarding primary elections in CD-11, let alone evidence as to whether minority voters are able to select their candidates of choice or whether minority voters are decisive in

candidate selection in the reconstituted district. Since Petitioners indisputably failed to satisfy a *prima facie* element of their claim—the availability of a remedy—their claim must be dismissed as a matter of law.

Supreme Court also applied the incorrect standard in declaring that the 2024 Map is unconstitutional. Redistricting legislation such as the 2024 Map may be declared unconstitutional only upon a showing “*beyond reasonable doubt* that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible” (*Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [emphasis added] [internal citations and punctuation omitted]). Supreme Court never referenced this standard and instead invalidated the 2024 Map based on its finding that CD-11’s current lines are merely “a *contributing* factor in the lack of representation for minority voters” (Decision and Order at 12 [emphasis added]) and that the totality of circumstances “provide *strong support* for the claim that Black and Latino votes are being diluted” (*id.* at 13 [emphasis added]). Applying this incorrect standard is reversible error particularly since Supreme Court made no attempt to reconcile the 2024 Map with the Constitution.

Finally, the dispositive basis of Supreme Court’s remedy—“adding Black and Latino voters from elsewhere”—is on its face racial, which triggered strict scrutiny analysis under the Equal Protection Clause of the Fourteenth Amendment. Neither Supreme Court nor Petitioners, however, demonstrated that this race-based remedy serves a compelling state interest, much less that it is narrowly tailored to achieve that interest. Thus, the Decision and Order violates the Equal Protection Clause and must be reversed.

STATEMENT OF THE CASE

This proceeding arises from a constitutional challenge to New York’s 2024 Congressional Map under Article III, Section 4(c)(1) of the New York State Constitution. On January 21, 2026, the Supreme Court, New York County (Pearlman, J.), issued a Decision and Order declaring that the decades-old configuration of CD-11 unconstitutionally dilutes the voting strength of Black and Latino voters, and it enjoined Appellants from conducting any election under the current map. The Court further directed the non-party Independent Redistricting Commission to reconvene and complete a new congressional map by February 6, 2026. Appellants now seek an emergency stay of this order pending appeal.

The Decision and Order presents grave legal errors and threatens immediate, irreparable harm to the orderly administration of the 2026 election cycle, which is set to commence on February 24, 2026, when candidates may begin circulating designating petitions. A stay is essential to prevent chaos and confusion in New York’s electoral system while this Court considers the substantial issues on appeal.

I. Petitioners’ claims as pleaded below

Petitioners initiated this special proceeding on October 24, 2025—some nineteen months after the 2024 Congressional Map was enacted into law. The Petition asserted a single claim: that the configuration of CD-11, which encompasses all of Staten Island and a portion of southern Brooklyn, violates the prohibition against racial vote dilution set forth in Article III, Section 4(c)(1) of the New York Constitution.

The centerpiece of Petitioners’ legal theory was that the NYVRA, a state statute enacted in 2022—eight years after the 2014 constitutional redistricting amendments took effect—provides the analytical framework for evaluating claims under Article III, Section 4(c)(1). Petitioners alleged that the NYVRA requires the creation of coalition and minority influence districts in which

racial minorities can form coalitions with other racial minorities and White voters to influence elections and elect representatives of their choice. Petitioners asserted this dramatically relaxed standard because it would permit them to achieve what they could not accomplish under established federal law: a judicial reconfiguration of CD-11 to radically alter its partisan geography. Petitioners expressly conceded that their vote dilution claim fails under federal law and that Black and Latino voters in CD-11 cannot constitute a majority in any reasonably configured single-member district.

Petitioners alleged that the Black and Latino population on Staten Island has grown significantly since 1980 while the White population has declined, yet the current configuration of CD-11 perpetuates the alleged dilution of minority voting strength. They alleged that voting is racially polarized in CD-11, that there is a history of discrimination affecting Black and Latino residents, and that racial appeals continue to be made in political campaigns. Based upon these allegations, Petitioners sought a declaration that the 2024 Congressional Map violates Article III, Section 4(c)(1), a permanent injunction barring Appellants from using the 2024 Map in any future elections, and an order directing that a new map be adopted pairing Staten Island with portions of lower Manhattan to create what Petitioners styled a minority influence district.

The relief Petitioners sought is unprecedented. They asked the Court to dismantle a district configuration that has existed since 1980—linking Staten Island with portions of Brooklyn—and replace it with a novel configuration linking Staten Island across open water to lower Manhattan. The evident purpose of this proposal was to import White Democratic voters from lower Manhattan into CD-11 while removing Republican-leaning voters from the district, transforming the only Republican-held congressional seat in New York City into a district favoring Democratic candidates.

II. Appellants' motion to dismiss

Appellants, together with Intervenor-Respondents, filed comprehensive motions to dismiss the Petition. These motions demonstrated that the proceeding must be dismissed because the plain and unambiguous terms of Article III, Section 4(c)(1) expressly require it to be interpreted in accordance with federal statutes—not New York State statutes such as the NYVRA. Article III, Section 4 explicitly provides that redistricting of congressional districts shall be conducted subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements. The deliberate inclusion of “federal statutes” alongside the omission of “state statutes” creates an irrefutable inference that the Legislature intended to exclude subsequently enacted state legislation, including the NYVRA, from the analytical framework governing congressional redistricting challenges.

Appellants further demonstrated that, as a matter of law, the NYVRA cannot modify Article III, Section 4 as Petitioners claimed. The NYVRA was enacted years after Article III, Section 4(c)(1) took effect, and there is no legislative history suggesting that the constitutional provision should be influenced by legislation passed afterward. Under settled canons of constitutional and statutory construction, the exclusion of state statutes from the constitutional text was intentional and must be given effect.

Appellants also argued that even if Article III, § 4(c)(1) provides vote dilution protections, the governing legal standard remains the *Gingles* preconditions established by the U.S. Supreme Court in *Thornburg v Gingles* and its progeny. Under *Gingles*, a minority group must demonstrate, among other things, that it is sufficiently large and geographically compact to constitute a majority in a single-member district. In *League of United Latin American Citizens v Perry* (“LULAC”), the Supreme Court explicitly held that Section 2 of the Voting Rights Act does not mandate the creation of minority influence districts where the minority population cannot form a majority. Because New

York specifically modeled Article III, Section 4 on Section 2 of the VRA—and because LULAC was decided well before the 2014 redistricting amendments—Petitioners’ claim seeking the creation of an influence district fails under any proper reading of the constitutional text.

Appellants raised substantial objections under the U.S. Constitution as well. They demonstrated that Petitioners’ requested remedy—redrawing CD-11 with the express goal of providing Black and Latino voters increased electoral influence—constitutes race-based redistricting that triggers strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court has consistently held that the Equal Protection Clause prevents a State, absent sufficient justification, from separating its citizens into different voting districts on the basis of race. Appellants argued that neither Petitioners nor the Court could demonstrate that this race-based remedy serves a compelling state interest, let alone that it is narrowly tailored to achieve that interest.

Finally, Appellants argued that the proceeding was barred by laches. Petitioners delayed bringing their challenge for nineteen months after the 2024 Map was enacted into law. This delay prejudiced the orderly conduct of elections and created the very time pressure that Petitioners now invoke to justify extraordinary judicial intervention on the eve of the election season.

III. The trial evidence

Supreme Court conducted an expedited evidentiary hearing over several days in early January 2026.

A. Petitioners’ evidence

Petitioners’ principal expert on racially polarized voting was Dr. Maxwell Palmer, a tenured professor of political science at Boston University. Dr. Palmer testified that he analyzed twenty elections from 2017 to 2024 and concluded that voting in CD-11 is racially polarized, meaning

that Black and Latino voters supported the same candidates of choice while White voters cohesively opposed those candidates. He testified that the Black and Latino–preferred candidate was defeated in fifteen of the twenty elections examined, winning only five times and by narrow margins (Ex. B 155:9-24).

Critically, Dr. Palmer’s analysis was limited to general elections and did not include any analysis of primary elections. This limitation proved fatal to Petitioners’ case under the standard ultimately adopted by Supreme Court, which requires that minority voters be decisive in primary elections. Dr. Palmer also conceded on cross-examination that he did not attempt to determine the cause of the polarization he observed, testifying that assessing why voters might prefer different candidates was not the purpose of his analysis (Ex. C 226:9-13).

Perhaps most damaging to Petitioners’ case, Dr. Palmer conceded that the improved performance of minority-preferred candidates in Petitioners’ Illustrative Plan was driven by partisan geography—specifically, by importing White Democratic voters from lower Manhattan into the district. This concession established that Petitioners’ proposed remedy was not designed to empower minority voters but to alter the partisan composition of CD-11 (*Id.* 235:13-25; 236:1-7).

Petitioners’ demography expert, William S. Cooper, prepared the illustrative map that Petitioners offered as their proposed remedy. Mr. Cooper did not analyze any election results. Mr. Cooper’s illustrative plan would increase White non-Hispanic citizen voting age population by approximately 2.6 percentage points while only marginally increasing Black and Hispanic CVAP (Ex. D 553:22-25). He further conceded that he did not analyze whether his illustrative plan would constitute an unconstitutional partisan gerrymander under Article III, Section 4(c)(5), which

prohibits drawing districts to discourage competition or favor particular political parties (Ex. C 364:1-15).

B. Appellants' evidence

Appellants offered the testimony of Dr. John Alford, a tenured professor of political science at Rice University with extensive experience testifying in redistricting and voting rights cases. Dr. Alford accepted Dr. Palmer's methodology and used his data in forming his own conclusions. His analysis went beyond merely verifying Dr. Palmer's statistical results. In addition, he examined the race of the candidates in each election Dr. Palmer studied and reached a fundamentally different conclusion about the nature of the polarization (Ex. E 675:17-25; 676:6-9; 678:8-18; 681:14-25; 682:2-25; 683:1-7).

Dr. Alford concluded that the polarization Dr. Palmer identified is partisan, not racial, in origin. He testified that voters in CD-11—whether Black, Latino, or White—support candidates of the same party at nearly identical rates regardless of the candidate's race. Specifically, Dr. Alford demonstrated that Black voters in CD-11 supported Black Democratic candidates at approximately 89.6 percent while supporting non-Hispanic White Democratic candidates at approximately 90.9 percent—a statistically indistinguishable difference. Similarly, White voters supported Black Democratic candidates at nearly the same rate as they supported White Democratic candidates. Dr. Alford's analysis established that the divergent voting patterns in CD-11 are best explained by partisan affiliation rather than race, meaning that what Petitioners labeled as racial polarization is fundamentally partisan polarization (*Id.* 678:19-25; 679:1-8; 680:14-25; 681:1-25; 685:1-25; 687:1-13; 701:1-18).

This testimony was devastating to Petitioners' claim. Neither Petitioners nor Dr. Palmer offered any evidence to rebut Dr. Alford's determination that the polarization in CD-11 is partisan

rather than racial. Supreme Court did not address this un rebutted expert testimony, nor did it make any credibility findings about Dr. Alford or any other expert witness.

Appellants' demography expert, Thomas Bryan, an applied demographer with three decades of experience including service at the U.S. Census Bureau, provided extensive analysis of Petitioners' proposed illustrative district. Mr. Bryan demonstrated that Petitioners' proposed remedy—linking Staten Island with lower Manhattan—would degrade traditional redistricting criteria (Ex. D 541:18-542:3). His analysis showed that the Illustrative Plan is less geographically compact than the existing CD-11 and separates rather than unites communities of interest, including splitting the cohesive Chinese-American community in Chinatown.

Mr. Bryan's analysis further revealed the disproportionate harm Petitioners' plan would inflict upon Asian voters. Approximately 57.1 percent of Asian citizen voting age population would be moved out of CD-11 under Petitioners' plan, compared to only about 31.5 percent of total population (Ex. D 533:9-19). The Illustrative Plan would reduce Asian CVAP in CD-11 by roughly 4.6 percentage points, from about seventeen percent to approximately twelve percent—a significant diminution of Asian electoral influence that Petitioners' theory of vote dilution protection ignores entirely (Ex. D 554:6-8).

Mr. Bryan's precinct-level analysis further exposed the unabashed partisan motivation underlying Petitioners' proposed remedy. He testified that the precincts Mr. Cooper's illustrative map removes from CD-11 voted heavily Republican in 2024, while the precincts imported from lower Manhattan favored Democrats (Ex. D 537:2-583:19). The net effect of this reconfiguration would be to transform CD-11 from a district that voted 64.1 percent Republican in 2024 to an artificially competitive district—an outcome that Mr. Bryan characterized as partisan line-drawing

by any meaningful measure (Ex. O at 62, 73). Mr. Bryan’s testimony was unrebutted at trial, and Supreme Court’s Decision and Order did not conclude otherwise.

C. Post-Trial submissions

Appellants’ post-trial briefing emphasized the constitutional limitations on Supreme Court’s remedial authority. Appellants demonstrated that Petitioners’ Illustrative Map constitutes an unconstitutional partisan gerrymander in violation of Article III, Section 4(c)(5). The evidence showed that Petitioners’ plan would transform the only Republican-held congressional district in New York City into a district favoring Democratic candidates—not by empowering minority voters, but by substituting Democratic-leaning White voters from Manhattan for Republican-leaning voters of all backgrounds on Staten Island.

On the question of remedy, Appellants filed a Memorandum of Law arguing that the Court lacks authority to order the Legislature to enact specific redistricting legislation. The Legislature, as a body, is not and could not properly be a party to the proceeding. The constitutional framework established in Article III, Section 5 requires that the Legislature be given a full and reasonable opportunity to correct any legal infirmities in redistricting legislation. Appellants argued that the only lawful remedies available are those endorsed in prior redistricting cases: allowing the Legislature to redraw the district, ordering the Independent Redistricting Commission to reconvene and propose a new map for legislative consideration, or—in extraordinary circumstances—appointing a special master.

Appellants provided affidavit testimony from Raymond J. Riley, III, Co-Executive Director of the Board of Elections, establishing the election calendar deadlines and demonstrating the practical impossibility of implementing a remedial map in time for the 2026 primary elections if the Court’s remedy process extended beyond early February 2026 (Ex. R).

IV. Supreme Court’s Decision and Order violated fundamental principles of due process

A fundamental due process error infected the proceeding below. Petitioners exclusively argued that the NYVRA’s standards should be applied to Article III, § 4, and Appellants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy to that theory. When Supreme Court rejected the NYVRA standard as impermissible, due process and the principle of party presentation required dismissal. Instead, without any notice to the parties and without requesting supplemental briefing on the applicable legal standard, Supreme Court adopted an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims—a standard that no party had advocated and that Appellants were denied any opportunity to litigate.

Supreme Court agreed with Appellants that applying the NYVRA’s standard in this proceeding would be impermissible. The Court found that Article III, § 4(c)(1)’s text directly contradicts Petitioners’ argument since the NYVRA was enacted years after the constitutional provision took effect. The Court further agreed that the exclusion of state legislation from Article III, § 4(c)(1)’s text was intentional and that there is no legislative history suggesting that the constitutional provision should be influenced by subsequently enacted legislation.

At that point, Supreme Court should have dismissed the proceeding. Instead, Supreme Court proceeded without any input from the parties to invent an entirely new, explicitly race-based standard for Article III, § 4(c)(1) claims. The Court concluded that the New York Constitution provides greater protections against racial vote dilution than federal law and rejected Appellants’ argument that Petitioners must satisfy the first *Gingles* precondition requiring the minority group to constitute a majority in a reasonably configured single-member district. The Court reasoned that because the New York Constitution is purportedly “more sweeping” than the VRA, a lower

threshold applies, and minority voters need only comprise a sufficiently large portion of the district's primary voting population to influence electoral outcomes.

The Court adopted a novel three-pronged standard for so-called crossover districts. Under this standard, a reconstituted district "adding Black and Latino voters from elsewhere" is required when: first, minority voters are able to select their candidates of choice in the primary election; second, these candidates must usually be victorious in the general election; and third, the reconstituted district should increase the influence of minority voters such that they are decisive in the selection of candidates.

Supreme Court erred in granting relief absent any proof that a reconstituted district satisfying its novel standard is even possible. Petitioners failed to offer, and Supreme Court did not find, any evidence that Black and Latino voters could be decisive in primary elections, let alone any evidence showing Black and Latino voters could influence primary election outcomes under their Illustrative Plan. Dr. Palmer confined his analysis to general elections and did not analyze a single primary election. Mr. Cooper did not analyze election results at all. In fact, the premise of Petitioners' Illustrative Map was to add White Democrats from lower Manhattan with only negligible increases to the Black and Latino voter population.

Despite the conspicuous lack of proof that any such reconstituted district is possible, Supreme Court put the cart before the horse and declared the 2024 Map unconstitutional. It then directed the IRC to complete a new Congressional Map in compliance with its Order without any evidence that it is possible to create a map that complies with that Order.

The Court declined to order the specific district lines Petitioners proposed. Instead, it ordered the IRC to reconvene and propose new congressional district lines that remedy the constitutional violation by February 6, 2026. The Court further enjoined Appellants from

conducting any election under the 2024 Congressional Map or otherwise giving any effect to the boundaries of the map as drawn. This injunction, though purportedly directed at CD-11, applies to any election conducted under the current map—meaning the injunction effectively operates statewide.

Appellants filed a Notice of Appeal on January 26, 2026, which pursuant to CPLR 5519(a)(1) automatically stayed the executory portions of the order—specifically, the directive to the IRC to reconvene by February 6, 2026 (*Hoffmann v New York State Ind. Redistricting Commn.*, 41 NY3d 341, 357 [2023] [holding that automatic stay applied to similar directive to the IRC]). The automatic stay does not apply, however, to the declaratory and prohibitory injunctive portions of the order, including the injunction barring any election under the 2024 Map. As a result of the automatic stay of the remedial process coupled with the ongoing injunction, an untenable situation has emerged: it is now clear that a remedial map cannot be proposed, let alone enacted, by February 6, 2026, yet the Board of Elections remains enjoined from preparing for elections under the existing map.

The accompanying affirmation of Raymond J. Riley, III establishes that the 2026 election calendar formally commences on February 24, 2026—less than one month away—which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). The Board of Elections and local boards must perform substantial preparatory work before petitioning may begin, including processing voter registrations to publish the list of registered voters by congressional district, designating polling places, and preparing to receive ballot access documents. Many of these administrative tasks must be completed on a fixed schedule, and each task builds upon prerequisite tasks that must be completed first.

Since Supreme Court’s injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11. The entire statewide congressional election apparatus has been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins.

For these reasons, set forth in further detail below, this Court should issue an interim stay of Supreme Court’s order, grant a stay of the order, and grant such and further relief as is just and equitable.

LEGAL STANDARD

Appellants filed a Notice of Appeal from the Order on January 26, 2026. Pursuant to CPLR 5519(a)(1), Appellants’ appeal automatically stayed “all proceedings to enforce the judgment or order appealed from pending the appeal” (CPLR 5519 [a] [1]). The automatic stay applies to the “executory” portions of the order appealed from—that is, those directives that “command a person to do an act” (*Matter of Kar-McVeigh, LLC v Zoning Bd. of Appeals of Town of Riverhead*, 93 AD3d 797, 799 [2d Dept 2012], quoting *Pokoik v Dept. of Health Services of County of Suffolk*, 220 AD2d 13, 15 [2d Dept 1996]). Thus, the automatic stay applies to the portion of the Order directing the IRC to “reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026” (Decision and Order at 18; *Hoffmann v New York State Ind. Redistricting Commn.*, 41 NY3d 341, 357 [2023] [holding that “the Appellate Division’s order [directing the IRC to “commence its duties forthwith”] was automatically stayed pursuant to CPLR 5519 (a) (1)” and denying motion to vacate the stay]).

The automatic stay does not apply, however, to the non-executory portions of the Decision and Order, including the declaration that CD-11 is unconstitutional and the prohibitory injunction enjoining Appellants “from conducting any election [under the 2024 Congressional Map] . . . or otherwise giving any effect to the boundaries of the map as drawn” (Order at 18).

This Court may nevertheless stay the remaining portions of the Order pursuant to CPLR 5519(c) and its “inherent power” (*Schwartz v New York City Hous. Auth.*, 219 AD2d 47, 48 [2d Dept 1996] [describing the court’s “inherent power to grant a stay of acts or proceedings, which, although not commanded or forbidden by the order appealed from, will disturb the status quo and tend to defeat or impair our appellate jurisdiction”]; *see also Schneider v Aulisi*, 307 NY 376, 383-84 [1954] “[T]he Supreme Court has inherent power in a proper case to restrain the parties before it from taking action which threatens to defeat or impair its exercise of jurisdiction.”]).

This Court may consider “any relevant factor” in granting a discretionary stay as “there is no single factor in determining whether to grant a stay” (*Schaffer v VSB Bancorp, Inc.*, 68 Misc 3d 827, 834 [Sup Ct, Richmond County 2020], quoting *Deutsche Bank Nat. Tr. Co. v Royal Blue Realty Holdings, Inc.*, 2016 WL 4194201 *4 [Sup Ct, NY County 2016]). Courts generally consider “the apparent merit or lack of merit of the appeal, the harm that might result to the appellant if the stay is denied, and the potential prejudice to the respondent if the stay is granted” (*Gur Assoc. LLC v Convenience on Eight Corp.*, 83 Misc 3d 903, 906 [Civ Ct 2024], quoting § 8 N.Y. Prac., Civil Appellate Practice § 9:4 [3d ed.]; *see also Colt v New Jersey Tr. Corp.*, 86 Misc 3d 1272(A) [Sup Ct, NY County 2025]; *People ex rel. Schneiderman v Coll. Network, Inc.*, 53 Misc 3d 1210(A) [Sup Ct, Albany County 2016]).

ARGUMENT

I. Appellants are likely to succeed on the merits

A. Supreme Court’s rejection of Petitioners’ proposed NYVRA standard required dismissal because principles of due process prohibited it from adopting a novel, unbriefed standard that Appellants were denied an opportunity to litigate

Petitioners exclusively argued in this proceeding that the NYVRA’s standards should be applied to Article III, § 4, and they structured their pleadings, proof, and requested remedy around the NYVRA’s unique features. Petitioners argued that the NYVRA, under certain circumstances, “requires the creation of coalition and minority influence districts, or districts in which racial minorities can form coalitions with other racial minorities and white voters to influence elections and elect representatives of their choice” (Ex. A ¶ 46). They did so because this dramatically relaxed standard would allow Petitioners to achieve their clear objective—radically altering the partisan geography of CD-11 by importing White Democratic voters from lower Manhattan, as shown in Petitioners’ Illustrative Map. Petitioners did not offer any alternative standard and conceded that their dilution claim fails under federal law.

Appellants challenged that argument as pleaded and demonstrated that this proceeding must be dismissed because: (1) the plain and unambiguous terms of Article III, § 4(c)(1) expressly require it to be interpreted in accordance with federal statutes and not New York State statutes, including the NYVRA; (2) as a matter of law, the NYVRA cannot modify Article III, § 4, as Petitioners claimed in their Petition and supporting papers; and, (3) under settled canons of constitutional and statutory construction there is an irrefutable inference that the Legislature intended to omit congressional elections from the analytical framework contained in the NYVRA. Since Petitioners did not offer any other standard to be applied to their Article III, § 4(c)(1) claim, Appellants did not address any other standard (other than the governing federal law), much less offer arguments and proof on any other standard.

Supreme Court agreed with Appellants and held that applying the NYVRA's standard in this proceeding would be "impermissible" (Decision and Order at 5). It found that Article III, § 4(c)(1)'s text directly contradicts Petitioner's argument since the NYVRA was enacted years after Article III, § 4(c)(1). Additionally, Supreme Court agreed with Appellants that the exclusion of "state legislation," such as the NYVRA, from Article III, § 4(c)(1)'s text was intentional and there is no legislative history suggesting that Article III, § 4(c)(1) "should be influenced by legislation that would be passed after" the constitutional enactment took effect (Decision and Order at 5).

Despite rejecting the only standard advanced by Petitioners and briefed by the parties, the Supreme Court fabricated from whole cloth an entirely new standard for vote dilution claims under Article III, § 4(c)(1). This is clear reversible error because due process and the principle of party presentation constrain adjudication of this case to the arguments and facts the parties actually advanced.

The U.S. Supreme Court has made clear that "[i]n our adversarial system of adjudication, we follow the principle of party presentation," under which courts "rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present" (*United States v Sineneng-Smith*, 590 US 371, 375 [2020]).¹ As another recent decision put it, "courts call balls and strikes; they don't get a turn at bat" (*Clark v Sweeney*, 607 US ___, No. 25-52, 2025 WL 3260170, at *1 [Nov. 24, 2025] [internal punctuation omitted]). New York adheres to the same rule: deciding a case on "a distinct ground that [the court] winkled out wholly on [its] own would pose an obvious problem of fair play" because courts are "not in the business of blindsiding litigants, who expect [courts] to decide their appeals on rationales advanced by the

¹ This rule applies "in both civil and criminal cases, in the first instance and on appeal" (*Sineneng-Smith*, 590 US at 375).

parties, not arguments their adversaries never made” (*Misicki v Caradonna*, 12 NY3d 511, 519 [2009]).

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

Here, the trial court’s creation of a new standard unrelated to any of the standards actually litigated by the parties has worked a manifest injustice to Appellants. The NYVRA standard articulated by Petitioners determined the elements they had to plead and prove, the evidence the parties marshalled, and the remedial possibilities the Court could consider. Petitioners chose a specific standard, and Appellants litigated this case in reliance on Petitioners’ choice and the way they framed their case. Appellants tailored their motion to dismiss, constitutional arguments, expert submissions, and entire trial strategy and presentation to that theory. As a matter of due process, the Supreme Court cannot reject the only standard litigated by the parties and adopt something wholly new.

To be clear, Petitioners brought this proceeding with the singular intent of establishing the NYVRA framework as the standard for vote dilution claims under Article III, § 4(c)(1). Quite candidly, Petitioners alleged the NYVRA would pave the way for their plan to radically alter CD-11’s partisan geography while leaving its minority composition intact. For this reason, the trial

court was not free to adopt its own standard, particularly since it did not request supplemental briefing from the parties regarding the standard to be applied for claims under Article III, § 4(c)(1).² By adopting a new, entirely unbriefed standard without notice and after the trial record has been closed, the trial court “radically transformed” this case (*see Sineneng-Smith*, 590 US at 379).

B. Petitioners failed to establish a prima facie case, and Supreme Court erred as a matter of law, because Petitioners failed to establish a viable remedy

Even if this Court could look past this glaring error, reversal is still required because Petitioners failed to establish a *prima facie* case of vote dilution under Supreme Court’s newly adopted standard.

Under this novel standard, a proposed crossover district “adding Black and Latino voters from elsewhere” is required when a “three-pronged standard” is satisfied (Decision and Order at 13, 15). First, this standard requires that “minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election”; second, “these candidates must usually be victorious in the general election”; and, third, “the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates” (Decision and Order at 15). Supreme Court clarified that the third prong “requires minority voters to be ‘decisive’ in primary races” (*id.*).

Supreme Court erred in granting relief absent any proof that such a “reconstituted” district is even possible under its standard, let alone whether such a district would comply with the NY Constitution’s other requirements of contiguity, compactness, non-partisanship, and maintenance of cores, pre-existing political subdivisions and communities of interest (NY Const., Art. III, § 4

² By contrast, Supreme Court did request supplemental briefing from the parties on available remedies. Inexplicably, Supreme Court did not disclose its intent to adopt an un-briefed standard and did not request briefing on the issue. Now, after a trial and with the election season at our doorstep, that error cannot be remedied.

[c] [3]-[5]). In the absence of such proof, Petitioners failed to establish, and Supreme Court failed to find, an “injury in fact” sufficient to support any redressable constitutional injury (*Soc’y. of Plastics Indus., Inc. v County of Suffolk*, 77 NY2d 761, 772 [1991]).

A redressable injury is a *prima facie* element of a vote-dilution claim. That is, “[u]nless minority voters possess the *potential* to elect representatives in the absence of the challenged [voting] structure or practice, they cannot claim to have been injured by that structure or practice” (*Thornburg v Gingles*, 478 US 30, 51 n 17 [1986]). As one court aptly put it, “[b]ecause the very concept of vote dilution implies—and, indeed, necessitates—the existence of an undiluted practice against which the fact of dilution may be measured, a [VRA] Section 2 Plaintiff will usually postulate a reasonable alternative voting practice to serve as the benchmark undiluted practice” (*Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] [internal citation omitted] *aff’d sub nom.*, 601 Fed Appx 255 [5th Cir 2015]).

For this reason, under well-developed federal law, a vote-dilution injury is established through the submission of an illustrative map demonstrating that the challenged practice is capable of lawful remedy through the creation of a new district (*see e.g. Allen v Milligan*, 599 US 1, 20 [2023] [agreeing with District Court that the plaintiffs’ illustrative maps established a violation of section 2]; *see also Johnson v De Grandy*, 512 US 997, 1008 [1994] [“[T]he first *Gingles* condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice”]).

The plaintiff bears the burden of establishing such “hypothetical redistricting schemes” (*Fairley v Hattiesburg, Miss.*, 584 F3d 660, 669 [5th Cir 2009]). “Without a satisfactory remedial plan, [a] plaintiff[] cannot succeed” (*Rose v Secretary, State of Georgia*, 87 F4th 469, 475 [11th Cir 2023] [internal citations and punctuation omitted]). In other words, “the issue of remedy is part

of the plaintiff's prima facie case in section 2 vote dilution cases" and the "[t]he inquiries into remedy and liability, therefore, *cannot be separated . . .*" (*Nipper v Smith*, 39 F3d 1494, 1530-31 [11th Cir 1994] [emphasis added]).

While federal courts require illustrative maps in connection with the first *Gingles* precondition requiring a majority-minority district, that distinction is irrelevant here. Indeed, although both Petitioners and Supreme Court contend *Gingles* does not apply, Petitioners nevertheless proffered an Illustrative Map in support of their claims, implicitly conceding its requirement. More importantly, like the first *Gingles* precondition, Supreme Court's standard contemplates a remedy that involves increasing minority representation within a remedial district. As Supreme Court put it, a remedial district requires "adding Black and Latino voters from elsewhere" (Decision and Order at 13). While Supreme Court did not identify a minimum percentage of Black and Latino voters, it held that these added voters must be "decisive" in primary elections (Decision and Order at 15). As with the first *Gingles* precondition, this element can only be established through presentation of an illustrative map proving that some new configuration would allow minority voters to be decisive in primaries while complying with the NY Constitution's requirements for contiguity, compactness, non-partisanship, and maintenance of cores, pre-existing political subdivisions and communities of interest (NY Const., Art. III, § 4 [c] [3]-[5]).

Petitioners, however, utterly failed to establish that any such "reconstituted district" could potentially satisfy this standard. They failed to offer, and Supreme Court did not find, any evidence that Black and Latino voters could be "decisive" in primary elections, let alone any evidence showing Black and Latino voters could influence primary election outcomes under their Illustrative Plan. Dr. Palmer confined his analysis to general elections and did not analyze a single

primary election (*see generally* Ex. B 152-179; Ex. C 183-241). Mr. Cooper did not analyze election results at all (*see generally* Ex. C 241-376). In fact, the premise of Petitioners' Illustrative Map was to add *White Democrats* from lower Manhattan with only negligible increases to the Black and Latino voter population (Ex. C 235:13-25; 236:1-7).

Despite the conspicuous lack of proof that any such reconstituted district is possible, Supreme Court put the cart before the horse and declared the 2024 Map unconstitutional. It then directed the IRC to “complete a new Congressional Map in compliance with this Order” without any evidence that it is possible to create a map that complies with its Order.

Since it is undisputed that Supreme Court made no such findings, and the trial court record is devoid of evidence that would allow this Court to remedy this fatal defect, Appellants are likely to succeed on the merits of their appeal.

C. Supreme Court failed to find that the 2024 Map is unconstitutional beyond a reasonable doubt

The lack of record evidence supporting Supreme Court's finding is even worse because it expressly failed to apply the proper standard of review for a constitutional challenge.

As a statutory enactment, the 2024 Map enjoys “a strong presumption of constitutionality” (*Cohen v Cuomo*, 19 NY3d 196, 201 [2012]). The presumption applies with particular force to redistricting challenges and prohibits the courts from upsetting “the balance struck by the Legislature and declar[ing] the redistricting plan unconstitutional” unless the challengers rebut this strong presumption (*id.* at 201-202 [internal punctuation omitted]). Accordingly, “redistricting legislation will be declared unconstitutional by the courts only when it can be shown beyond reasonable doubt that it conflicts with the Constitution after every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been

found impossible” (*Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [internal citations and punctuation omitted]); *see generally* *People v Viviani*, 36 NY3d 564, 576 [2021] [“The party attempting to strike down a statute as facially unconstitutional bears the heavy burden” of proving beyond a reasonable doubt that the statute is in conflict with the Constitution] [internal citations and punctuation omitted]). Courts “strike [statutes] down only as a last unavoidable result” (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted]).

Supreme Court failed to acknowledge the beyond a reasonable doubt standard, much less apply it to Petitioners’ voter dilution claim. Thus, Supreme Court’s sweeping determination that the 2024 Map is unconstitutional rests on a fundamentally incorrect standard.

For example, Supreme Court found that “the current lines of CD-11 are a *contributing* factor in the lack of representation for minority voters” (Decision and Order at 12). It then applied a similarly relaxed standard in evaluating the trial proof, holding that “Petitioners have shown *strong evidence* of racially polarized voting bloc” (*id.* [emphasis added]).³

Based upon this limited evidence,⁴ the trial court could not and did not conclude that, beyond a reasonable doubt, the 2024 Map conflicts with Article III, § 4(c)(1). Rather, the trial court only concluded that “these circumstances provide *strong support* for the claim that Black and Latino votes are being diluted in the current CD-11” (Decision and Order at 13 [emphasis added]).

³ In any event, the finding that there is “strong evidence” of racial polarization is contradicted by the trial record as Respondents’ expert testified that the polarization in CD-11 is partisan, not racial (Ex. E 685:17-25; 686:1-25; 687: 1-13). Petitioners and their expert did not dispute that there is partisan polarization in CD-11 and, in fact, Petitioners’ expert conceded that the improved performance of minority preferred candidates in Petitioners’ Illustrative Plan was driven by partisan geography through importing White Democratic voters (Ex. C 235:13-25; 236:1-7). The trial court did not address the expert testimony regarding the lack of evidence of racial polarization nor did it make any credibility findings about Respondent’s expert, or any expert for that matter.

⁴ The trial court only considered three of the *Gingles* circumstances: racially polarized voting, history of discrimination and purported racial appeals in political campaigns (Decision and Order at 8-12).

Compounding this problem, the trial court made no attempt to reconcile the 2024 Map with Article III, § 4(c)(1) nor did it determine that such reconciliation is impossible (*Harkenrider*, 38 NY3d at 509).

Supreme Court’s express application of the incorrect standard taints the entire proceeding and mandates reversal of its determination that the 2024 Map is unconstitutional (*see Symbax, Inc. v Bingaman*, 219 AD2d 552, 553 [1st Dept 1995] [“Although the decision does not state the theory underlying that finding, if the court found fraud, it committed reversible error because it failed to adhere to the correct standard of truth”]; *Rusoff v Engel*, 89 AD2d 587, 587 [2d Dept 1982] [reversing trial court’s determination, following a nonjury trial, because the trial court incorrectly applied the preponderance of evidence standard instead of “the more stringent and demanding standard of clear and convincing proof”]).

D. Supreme Court’s remedy is inherently race-based, and Supreme Court failed to find that its remedy withstands strict scrutiny

Even assuming this Court does not find a likelihood of success based on the overwhelmingly dispositive issues discussed above, it should do so based on the fundamentally fatal flaw that Petitioners’ case, and Supreme Court’s remedy, blatantly violate the Equal Protection Clause of the Fourteenth Amendment.

The Equal Protection Clause “prevents a State, in the absence of ‘sufficient justification,’ from ‘separating its citizens into different voting districts on the basis of race’” (*Cooper v Harris*, 581 US 285, 291 [2017], quoting *Bethune-Hill v Virginia State Bd. of Elections*, 580 US 178, 187 [2017]). When race is the “predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district” and “racial considerations predominated over others, the design of the district must withstand strict scrutiny” (*id.* at 292). In other words, strict scrutiny applies whenever race is the overriding consideration in redistricting

such that “traditional race-neutral districting principles” are “subordinated” to racial considerations (*Miller v Johnson*, 515 US 900, 916 [1995]).

Supreme Court did not even attempt to disguise the racial basis of its remedy. The Decision and Order expressly states that “without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely” (Decision and Order at 13). This language alone establishes that race is the predominant—indeed, the determinative—factor in the redistricting remedy ordered by the court. The explicit goal is to reconfigure the district by relocating voters based on their race, which is precisely the kind of racial sorting the Equal Protection Clause strongly forbids.

Moreover, Supreme Court’s novel “three-pronged standard” for evaluating so-called “crossover districts” is facially race-based. Under this standard: (1) “minority voters” must be able to “select their candidates of choice in the primary election”; (2) “these candidates must usually be victorious in the general election”; and, (3) “the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates” (Decision and Order at 15). Each prong of this test turns entirely on the racial composition of the electorate. The standard mandates that district lines be drawn to ensure that minority voters—defined by race—achieve a specified level of electoral influence. This is not a race-neutral inquiry into traditional redistricting principles—it is an explicit racial classification that triggers strict scrutiny under established Supreme Court precedent (*Shaw v Hunt*, 517 US 899, 907 [1996] [“[S]trict scrutiny applies when race is the ‘predominant’ consideration in drawing the district lines”], quoting *Miller*, 515 US at 916; *Bush v Vera*, 517 US 952, 959 [1996] [plurality opinion] [same]).

There can be no dispute that race was Supreme Court’s predominant consideration. It openly declared that its remedy is designed to “add[] Black and Latino voters from elsewhere”

(Decision and Order at 13). Supreme Court’s candid acknowledgment of racial motivation satisfies the predominance inquiry and squarely subjects the Decision and Order to strict scrutiny.

E. Neither Petitioners nor the Court identified a compelling state interest or that race-based redistricting is a narrowly tailored remedy

Neither Petitioners nor the Court attempted to identify a compelling government interest, let alone that their remedy is narrowly tailored to achieve that interest. In fact, despite extensive pre- and post-trial briefing on this issue, Supreme Court failed to even address this argument.

“Any exception to the Equal Protection Clause’s guarantee must survive a *daunting* two-step examination known as strict scrutiny” (*Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 206 [2023] [emphasis added] [“*SFFA*”). To survive this daunting inquiry, a race-based redistricting plan must serve a “compelling state interest” (*Miller*, 515 US at 904) and be supported by a “strong basis in evidence” (*Shaw v Hunt*, 517 US at 910 [internal citation and punctuation omitted]). “A generalized assertion of past discrimination in a particular industry or region is not adequate because it provides no guidance for a legislative body to determine the precise scope of the injury it seeks to remedy” (*id.* at 909 [internal citation and punctuation omitted]).

Here, while Petitioners offered generalized allegations of past discriminatory practices, they failed to present a strong basis in evidence, let alone any evidence that a new redistricting plan can remedy that past discrimination.

Even assuming Petitioners or Supreme Court had identified a compelling state interest in race-based redistricting, they utterly failed to show that their race-based redistricting plan is “narrowly tailored to achieve [that] compelling interest” (*Miller*, 515 US at 920). This requirement

means that the use of race must not go “beyond what was reasonably necessary” (*Shaw v Reno*, 509 US 630, 655 [1993]; *see also SFFA*, 600 US at 207).

Supreme Court’s redistricting standard cannot be narrowly tailored because it is untethered to any limiting principle (*SFFA*, 600 US at 207). It explicitly requires “adding Black and Latino voters from elsewhere” (Decision and Order at 13), and its “three-pronged standard” demands that district lines be drawn to guarantee that minority voters are “decisive” in primary elections and that their candidates “usually” prevail in general elections (*id.* at 15). Neither Petitioners nor Supreme Court provided any evidence or argument as to why sorting voters by race is “necessary” to remedy any past discrimination. Moreover, they failed to even examine whether a race-neutral remedy is unavailable.

In *Alabama Legislative Black Caucus v Alabama*, the Supreme Court held that the State of Alabama erred by asking “How can we maintain present minority percentages in majority-minority districts?” rather than asking “To what extent must we preserve existing minority percentages in order to maintain the minority’s present ability to elect the candidate of its choice?” (575 US 254, 279 [2015]). The Court held that asking the “wrong question may well have led to the wrong answer,” resulting in a redistricting plan that was not narrowly tailored (*id.*).

Here, Supreme Court committed the same error by adopting a mechanical standard that mandates a specific level of minority electoral influence—*i.e.*, that minority voters must be “decisive” and minority-preferred candidates must “usually” win—without regard to whether such a drastic remedy is necessary to cure any actual constitutional violation.

Furthermore, Supreme Court’s remedy disregards traditional redistricting principles entirely. As the Supreme Court held in *Bush v Vera*, when a district is drawn on racial lines but is “far from compact,” it cannot be narrowly tailored to any compelling interest because the VRA

“does not require a State to create, on predominantly racial lines, a district that is not reasonably compact” (*Bush v Vera*, 517 US 952, 979 [1996] [internal citation and punctuation omitted]).

Supreme Court ordered redrawing of CD-11 under a standard that, by its own terms, requires racial considerations to predominate. It provided no analysis of whether its three-pronged test is the least restrictive means of addressing any alleged vote dilution, nor did it consider whether traditional, race-neutral redistricting principles could achieve compliance with the NY Constitution. Its failure to consider race-neutral alternatives, by definition, means it is not narrowly tailored.

Since neither Petitioners nor the Court demonstrated that a race-based remedy serves a compelling state interest, and because the Court’s novel standard is not narrowly tailored to any permissible objective, the Decision and Order squarely violates the Equal Protection Clause of the Fourteenth Amendment.

II. Appellants, candidates, and voters would be irreparably harmed in the absence of a stay and the equities weigh in favor of allowing election activities to proceed

Irreparable harm is “any injury for which money damages are insufficient” (*Di Fabio v Omnipoint Communications, Inc.*, 66 AD3d 635, 636 [2d Dept 2009]; *SportsChannel Am. Assoc. v Natl. Hockey League*, 186 AD2d 417, 418 [1st Dept 1992] [collecting cases]). It is well established that voter disenfranchisement constitutes irreparable harm (*Montano v Suffolk County Legislature*, 268 F Supp 2d 243, 260 [EDNY 2003]; *Coleman v Bd. of Educ. of City of Mount Vernon*, 990 F Supp 221, 226 [SDNY 1997]; *Natl. Coalition on Black Civic Participation v Wohl*, 498 F Supp 3d 457, 474 [SDNY 2020], quoting *Arizona Democratic Party v Arizona Republican Party*, No. CV-16-03752-PHX-JJT, 2016 WL 8669978, at *11 [D Ariz Nov. 4, 2016] [“Further, if some potential voters are improperly dissuaded from exercising their franchise, it is unlikely those

voters can be identified, their votes cannot be recast, and no amount of traditional remedies such as money damages would suffice after the fact.”]).

Here, Appellants, voters, candidates, and the public at large stand to suffer irreparable harm without a stay. Supreme Court’s order presents an untenable situation. While Supreme Court purported to declare only the configuration of CD-11 as unconstitutional, it enjoined Appellants from conducting “any” election under the current map, meaning the injunction applies statewide. And although it directed the IRC to adopt a new map by February 6, 2026, that directive has been automatically stayed under CPLR 5519(a)(1) by Appellants’ appeal of the order. As a result, it is now clear that a remedial map cannot be proposed, much less enacted, by February 6, 2026.

As explained in the affirmation of Raymond J. Riley, the Co-Executive Director of the New York State Board of Elections, the election calendar formally commences on February 24, 2026, which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). As Mr. Riley attests, this statutory petitioning deadline is not the sole relevant consideration. The NYSBOE and local boards of election must perform substantial preparatory work before petitioning may begin. This preparatory work includes the processing of voter registrations in preparation for publishing the list of registered voters by congressional district, the designation of polling places, and preparation to receive all ballot access documents. Many of these administrative tasks must be completed on a fixed schedule, and in many instances, each task builds upon previous prerequisite tasks that must be completed first.

Significantly, since the Court’s injunction is not limited to CD-11, it appears to prohibit the NYSBOE and local boards of elections from engaging in preparatory work for all congressional districts statewide—or at minimum, any districts adjacent to CD-11—not merely the election for CD-11 itself.

This cascading effect means that the harm caused by the injunction is not limited to the voters and candidates in CD-11. Rather, the entire statewide congressional election apparatus has been placed in a state of suspended animation, with election administrators unable to perform the tasks that New York law requires them to complete before the petitioning period begins. As Mr. Riley attests, this situation is untenable and will inevitably result in delay, disruption, and confusion that will prejudice voters and candidates across New York—regardless of the outcome of this appeal.

This chaos can be avoided. A stay of the injunctive portion of the Decision and Order would allow the NYSBOE and local boards of elections to continue preparing for the February 24, 2026 petitioning date under the current, legislatively adopted congressional map. As Mr. Riley explains, proceeding with preparations under existing district lines would allow the election process to continue unencumbered in the event of a reversal. Candidates could continue to prepare for the election and plan to collect designating petitions under the adopted map, and boards of elections could move forward with their necessary administrative tasks for all offices and districts.

Simply put, with a stay, it would be possible for the election calendar to proceed without delay. Without a stay, regardless of the outcome of this appeal, delay and disruption are guaranteed.

Finally, the equities indisputably weigh in Appellants' favor because Petitioners cannot establish that they will sustain a more burdensome injury (*New York State Off. of Victim Services on behalf of Sutton v Wade*, 79 Misc 3d 254, 261 [Sup Ct, Albany County 2023] ["Where the movant . . . satisfies both the merits and irreparable injury prongs, the balance of the equities always tips in that party's favor absent some greater hardship that the nonmovant would suffer should the injunction issue."]; *see also Felix v Brand Serv. Group LLC*, 101 AD3d 1724, 1726 [4th Dept 2012]).

Moreover, the equities cannot weigh in Petitioners' favor because they delayed bringing their lawsuit for nineteen months after the 2024 Map was enacted. Thus, the time pressure of this litigation was entirely of Petitioners' making, tipping the equities solidly in Appellants' favor. Under circumstances such as this, even if there were hope for the Decision and Order being ultimately affirmed, the Court of Appeals has already instructed that it is preferable to allow elections to proceed in the normal course rather than injecting unnecessary chaos and confusion on the eve of an election cycle (*see Badillo v Katz*, 32 NY2d 825, 827 [1973] [finding that map was invalid but allowing elections to proceed under existing map "as a temporary measure"]). In the unlikely event the Order is affirmed, new maps may be drawn through an orderly and timely process for the 2028 election cycle.

III. This Court should grant leave to appeal to the Court of Appeals

Appellants respectfully request that this Court grant leave to appeal directly to the Court of Appeals pursuant to CPLR 5602(b)(1). Under this provisions, leave to appeal is appropriate when novel or significant issues of law are presented that involve matters of statewide importance or questions that have not previously been addressed by the Court of Appeals. This is particularly true in matters affecting the electoral process, where the need for authoritative and timely resolution is paramount (*see e.g. Harkenrider v Hochul*, 38 NY3d 494 [2022]). This case satisfies these criteria. It presents novel constitutional questions of extraordinary statewide importance that no prior decision of the Court of Appeals has addressed.

The fundamental question at the heart of this appeal—what legal standard governs vote dilution claims under Article III, § 4(c)(1) of the NY Constitution—has never been decided by the Court of Appeals. Supreme Court rejected the NYVRA standard advocated by Petitioners but then crafted an entirely novel, explicitly race-based standard for “crossover districts” that no party had

briefed and that finds no support in any prior New York or federal precedent. Whether this novel standard properly governs claims under Article III, § 4(c)(1) is a question that can only be definitively resolved by the Court of Appeals. The statewide significance of this question cannot be overstated. Every redistricting cycle for the foreseeable future will require application of Article III, § 4(c)(1), and the standard governing such claims must be established by the Court of Appeals to ensure uniform application throughout the State.

This case also presents the question of whether Supreme Court’s remedy—which explicitly requires “adding Black and Latino voters from elsewhere” to create a “reconstituted district”—can satisfy strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment. The U.S. Supreme Court has consistently held that the Equal Protection Clause “prevents a State, in the absence of ‘sufficient justification,’ from ‘separating its citizens into different voting districts on the basis of race’” (*Cooper v Harris*, 581 US at 291). Supreme Court’s remedy is facially race-based, yet neither Petitioners nor Supreme Court identified a compelling state interest nor demonstrated that race-based redistricting is narrowly tailored to achieve that interest. How the Equal Protection Clause applies to remedies ordered under Article III, § 4(c)(1) has never been addressed by the Court of Appeals and has profound implications for the constitutional limits on redistricting in New York.

The urgency of the electoral calendar further underscores the need for immediate review. The 2026 election calendar formally commences on February 24, 2026—less than one month away—which is the first day candidates may circulate designating petitions pursuant to Election Law Section 6-134(4). Supreme Court’s injunction has placed the entire statewide congressional election apparatus in a state of suspended animation, with election administrators unable to perform the preparatory tasks that New York law requires them to complete before the petitioning

period. The Court of Appeals has recognized that election-related matters often require expedited resolution to prevent disruption to the electoral process (*see* Harkenrider, 38 NY3d at 521-22). Given the imminent commencement of the election season and the statewide impact of Supreme Court's order, immediate review by the Court of Appeals is essential.

For all these reasons, this Court should grant leave to appeal. The questions presented are novel, significant, and of statewide importance. No prior decision of the Court of Appeals has addressed the proper standard for vote dilution claims under Article III, § 4(c)(1) or the Equal Protection Clause implications of race-based redistricting remedies under the NY Constitution. Appellants respectfully request that this Court grant leave to appeal and certify the question of what legal standard governs vote dilution claims under Article III, § 4(c)(1) of the New York Constitution to the Court of Appeals.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court enter an order staying Supreme Court's Order in its entirety and granting such other and further relief as this Court deems equitable or appropriate.

Dated: January 28, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: /s/ Nicholas J. Faso
Nicholas J. Faso, Esq.
Christopher E. Buckey, Esq.
80 State Street, Suite 900
Albany, New York 12207
(518) 788-9416
nfaso@cullenllp.com
cbuckey@cullenllp.com

*Attorneys for Appellants Peter S. Kosinski,
Anthony J. Casale, and Raymond J. Riley,
III*