STATE OF NEW YORK
COURT OF APPEALS

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

Petitioners-Appellees,

-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-Appellants,

-and-

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

Intervenor-Respondents-Appellants.

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Court of Appeals Case No. APL-2026-00010

Appellate Division Case No. CV-26-00384

Supreme Court, New York County Index No. 164002/2025

MEMORANDUM OF LAW IN OPPOSITION TO APPELLANTS' AND INTERVENORS-APPELLANTS' MOTIONS TO STAY AND IN SUPPORT OF PETITIONERS'-APPELLEES' CROSS-MOTION TO VACATE CPLR § 5519 STAY PENDING APPEAL

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**Pro hac vice* application pending

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PRELIMINARY STATEMENT

After a four-day evidentiary hearing, which featured testimony from eight different expert witnesses, the New York County Supreme Court reached a conclusion thoroughly supported by the record: the current configuration of New York's Eleventh Congressional District ("CD-11") is unlawfully structured in a manner that dilutes the votes of Black and Hispanic voters. That finding was based on extensive evidence that voting in CD-11, which is anchored in Staten Island, is extraordinarily polarized along racial lines, such that the Black and Hispanic candidates of choice are typically defeated. Indeed, uncontroverted evidence showed that for city, state, and federal elections, the Black and Hispanic candidate of choice has not won a majority of voters in CD-11 even *once* since 2018, with White voters acting as a political bloc to consistently defeat those candidates. Further still, Supreme Court heard vast evidence under a "totality of the circumstances analysis" that Black and Hispanic voters in CD-11, and on Staten Island specifically, face severe obstacles to full political participation including, among other things, a sordid history of discrimination, which still impacts present-day reality; the use of discriminatory voting procedures; and severe disparities in education, income, health, employment and homeownership that limit their ability to participate in the political process.

Petitioners' evidence on this score came from well-respected experts whose testimony Supreme Court carefully considered, who Supreme Court asked questions of, and who Supreme Court deemed credible. And while the Respondents[1] and Intervenors[2] offered five experts in

[1] Throughout this memorandum, "Respondents" means Appellants-Respondents 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.

[2] Intervenors means Appellants-Intervenor-Respondents Representative Nicole Malliotakis, Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba.

response, their testimony was limited, irrelevant, or even walked back in open court. Most notably, their sole expert on the totality of the circumstances test—the defining test for vote dilution in the New York Constitution—was a partisan politician who had never testified as an expert before, and whose testimony consisted significantly of personal anecdotes about Staten Island, rather than rigorous historical or social science analysis. Faced with this trial record, Supreme Court's conclusion that "that Black and Latino votes are being diluted in the current CD-11" is not surprising. *See* Intervenor-Respondents' Mem. of Law in Support of Emergency Mot. for Interim Stay, Ex. A ("IRX-A") at 13.[3]

Notwithstanding the strength of Petitioners' evidence, the Court of Appeals has no reason to review the Supreme Court's order at this time. For the reasons set forth in Petitioners' January 27 and February 4 letter-briefs to this Court—incorporated by reference herein—the Court of Appeals lacks jurisdiction over this appeal for three independently sufficient reasons: (1) Appellants have improperly instituted simultaneous proceedings seeking the same relief in the Appellate Division and this Court; (2) the order below does not finally determine the action; and (3) as is apparent from the briefing, Appellants raise many arguments that have nothing to do with the validity of any state or federal statute. *See generally* N.Y. Const. art. VI, § 3(b)(2); CPLR § 5601(b)(2); *accord Parker v. Rogerson*, 35 N.Y.2d 751, 753 (1974). The Constitution carefully limits this Court's direct appellate jurisdiction over orders from Supreme Court, and this duplicative appeal falls far beyond that limited ambit many times over.

[3] For ease of reference, and given the volume of documents filed in Supreme Court, Petitioners' citations to documents filed in Supreme Court will reference the exhibits containing those documents that Intervenors and Respondents have already submitted to this Court attached to their respective memoranda of law in support of their motions for a discretionary stay. Citations to Intervenors' exhibits will be cited as "IRX-[Exhibit Letter]" and citations to Respondents' exhibits will be cited as "RX-[Exhibit Letter]."

Even if this Court finds jurisdiction, however, Supreme Court's fact-bound order cannot be easily set aside—particularly in a rushed, emergency posture. That is particularly so because the people of New York have, through their Constitution, adopted strong protections against racial vote dilution in the drawing of congressional districts. *See* N.Y. Const. art. III, § 4(c)(1). Supreme Court—tasked with construing the precise contours of these protections in the first instance—adopted a commonsense textualist approach that looked to whether vote dilution was occurring "based on the totality of the circumstances." *Id.* And the Court's application of that standard to the facts here is entitled to substantial deference—it is far from "obvious" that the trial court's "conclusions could not be reached under any fair interpretation of the evidence." *409-411 Sixth St., LLC v. Mogi*, 22 N.Y.3d 875, 876–77 (2013) (explaining the "decision of the fact-finding court should not be disturbed" unless this standard is met, "especially when the findings of fact rest in large measure on considerations relating to the credibility of witnesses" (citation omitted)). Respondents and Intervenors have little prospect of overturning Supreme Court's finding given this standard, which is reason enough to deny their motions.

Faced with such lopsided trial evidence, and an unfavorable legal standard, Respondents and Intervenors lob a host of outlandish legal theories at Supreme Court's conclusion. In their view, Supreme Court committed a due process violation by—in a case involving a matter of first impression—construing Section 4(c)(1) in a manner that did not rigidly follow one of the competing interpretations offered by the parties. That argument both misreads Supreme Court's order and misrepresents the evidence and arguments below. More fundamentally, it ignores "the distinct role of the courts to interpret the laws to give effect to legislative intent." *Regina Metro. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332, 348 (2020) (per curiam).

Supreme Court did not err in adopting a commonsense construction of Section 4(c)(1) and concluding that the evidence before it satisfied that standard.

The next legal objection the Intervenors (but notably not Respondents) lodge with Supreme Court's order is to say it erred by reading Section 4(c)(1) more broadly than the vote dilution protections in the federal VRA. Not so. Text, precedent, and subsequent legislative enactments make clear that Section 4(c)(1) sweeps more broadly than federal law, and it does not limit vote dilution claims to instances where an alternative majority-minority configuration—the so-called first *Gingles* precondition—can be established. Indeed, the Legislature itself has confirmed that the Constitution's guarantees "exceed the protections [of] the right to vote provided" for in federal law. N.Y. Elec. Law § 17-200. This Court should categorically reject Intervenors' effort to reduce New York's Constitution to mere surplusage that pointlessly mirrors federal law.

Finally, the equities strongly favor Petitioners. The Court of Appeals has made clear that it is unacceptable for "the people of this state" to be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521 (2022). Yet that is exactly what will occur if this Court grants the motions to stay and subjects Petitioners and other voters in CD-11 to midterm elections held under unconstitutional lines.

Indeed, in view of *Harkenrider*, this Court is duty-bound to lift any automatic stay that has gone into effect under CPLR § 5519(a). As Respondents and Intervenors agree, that provision does not stay Supreme Court's prohibitionary injunction, but may well stay the other half of the court's order—an instruction to the Independent Redistricting Commission ("IRC") to reconvene with due haste to propose a remedial map, which the Legislature can then accept or revise. Permitting that process to proceed is the only way to ensure proper relief for Petitioners. And while Respondents and Intervenors grouse about the so-called confusion caused by Supreme Court's ruling, the

solution to any such confusion is obvious: lift the automatic stay so that the IRC can proceed with its work to draw new maps in a timely fashion and permit orderly elections to occur.

Perhaps sensing that this is the most straightforward path to ensuring that New York has settled, lawful maps, the Respondents and Intervenors insist that it is not feasible to do so before primary elections in late June. That is false. In *Harkenrider*, New York redrew its *entire* congressional map during a midterm election year based on a trial court decision issued on March 31—two and a half months later than Supreme Court's decision here. *See Harkenrider v. Hochul*, 76 Misc. 3d 171 (N.Y. Sup. Ct., Steuben County 2022) (issued March 31, 2022). The decision at issue here not only comes far sooner, but also necessitates a significantly more modest revision to New York's congressional map, as the affirmation filed by Board of Elections Co-Executive Director Stavisky explains. *See* Stavisky Affirmation ¶ 8. Her affidavit further confirms that it is feasible for the IRC and Legislature to draw—or, if necessary, Supreme Court to grant—a remedial district. *See id.* ¶¶ 6–7. Nor, as Co-Executive Director Stavisky further explains, is February 24, 2026, the hard and fast deadline to begin ballot-access petitioning that Respondents and Intervenors suggest it is. *See id.* ¶ 10. Their self-serving timing concerns supply no good reason to deny Petitioners' relief. To the contrary, as Co-Executive Director Stavisky explains, a stay will serve only to *disrupt* the Board's preparations for the 2026 election. *See id.* ¶ 7 ("A stay in this matter literally ensures delay should the lower court remedy be upheld on appeal.").

In sum, the Court should deny Respondents' and Intervenors' motions for a stay, deny their request for immediate appeal to the Court of Appeals, and grant Petitioners' cross-motion to vacate any automatic stay under CPLR § 5519(a) so that the IRC can timely proceed with its work.

BACKGROUND

I. New Yorkers enact robust racial vote dilution protections into the Constitution.

In 2014, "the people of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process," *Harkenrider*, 38 N.Y.3d at 501, including changes that "guarantee[] the application of substantive criteria that protect minority voting rights," Assembly Mem. in Support, 2013 N.Y. Senate-Assembly Concurrent Res. S2107, A2086.

The Constitution's prohibition on vote dilution is contained in Article III, Section 4(c)(1). It provides that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). In addition, "[d]istricts 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." *Id.* These provisions apply specifically to New York's state assembly, senate, and congressional districts. *Id.* § 4(b). The 2014 redistricting amendments list the express prohibition on vote dilution along with other redistricting criteria, including equal population size, contiguity, compactness, maintaining competition and the "cores of existing districts," as well as a prohibition on partisan or incumbency-based gerrymandering. *See id.* § 4(c)(2)–(5).

By enshrining constitutional protections against minority vote dilution, New York voters seized upon the U.S. Supreme Court's recognition that states may go further than the requirements of the federal Voting Rights Act ("VRA") to protect minority voters. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality opinion); *see also* N.Y. Elec. Law § 17-200 ("[T]he protections for the right to vote provided by the constitution of the state of New York . . . substantially exceed the protections for the right to vote provided by the constitution of the United States . . . .").

II. The existing congressional map, including CD-11, is enacted under fraught circumstances.

The process that produced the 2024 Congressional Map was tumultuous, to say the least. In addition to making substantive changes to redistricting criteria, the constitutional amendments New Yorkers enacted in 2014 also created the IRC, which submits proposed redistricting plans to the Legislature for consideration, as well as detailed procedures by which the Legislature could approve, reject, or modify plans submitted by the IRC. *See* N.Y. Const. art. III, § 4(b).

In the first redistricting cycle following the enactment of the 2014 redistricting amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. *See id.*; *see also Harkenrider*, 38 N.Y.3d at 504–05. As a result, and following a legal challenge to the map eventually passed by the Legislature, the congressional map in place for the 2022 elections (the "2022 Congressional Map") was drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 38 N.Y.3d at 524. The special master admitted in his report that he did not actively avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided simply because "the largest minority groups . . . are almost always highly geographically concentrated." Rep. of the Special Master at 11, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben County May 21, 2022), NYSCEF Doc. No. 670.

Following additional litigation, the Court of Appeals ordered the IRC to redraw the 2022 Congressional Map to fix the procedural defects by requiring the IRC to submit a second congressional map to the Legislature. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 370 (2023). The IRC ultimately submitted a second map that made very few

substantive changes and no changes at all to the configuration of CD-11.[4] The Legislature rejected the IRC's map, *see* 2024 NY Senate Bill S8639, 2024 NY Assembly Bill A9304, and drew its own, but did not make any sweeping substantive changes.[5] The 2024 Congressional Map, which was passed by the Legislature on February 28, 2024, also did not alter the configuration of CD-11. *See* 2024 NY Senate Bill S8653A, 2024 NY Assembly Bill 9310A. Thus, although the enactment of the 2024 Congressional Map fixed the procedural defects identified in *Hoffman*, it did not remedy the unlawful racial vote dilution in CD-11.

III. Petitioners challenge vote dilution in CD-11 based upon the totality of the circumstances.

On October 27, 2025, Petitioners filed this lawsuit challenging the configuration of CD-11 under the 2024 Congressional Map for violating the Constitution's vote-dilution provisions.

A. The current configuration of Staten Island's congressional district does not account for the area's recent demographic changes.

Staten Island, the least populous of New York City's boroughs, does not contain enough people to comprise its own congressional district. IRX-S ¶ 36 (Cooper Report). CD-11 thus joins Staten Island with a portion of southwest Brooklyn—including Fort Hamilton, Dyker Heights, New Utrecht, Bath Beach, and part of Bensonhurst—to obtain the necessary population. IRX-S at 8, fig. 1 & Ex. F-1 (Cooper Report). This configuration, as Petitioners proved at trial, dilutes the voting strength of Staten Island's substantial Black and Hispanic population.

Prior to the 1980s, Staten Island was overwhelmingly White. IRX-Q ¶ 9–12 (Sugrue Report). The Island was home to a small population of Black citizens, but they were confined to the North Shore, particularly the Stapleton area and Sandy Ground. IRX-Q ¶ 9 (Sugrue Report).

[4] *New York Redistricting and You*, https://tinyurl.com/5twthvtr (last visited Feb. 4, 2026).

[5] *New York Redistricting and You*, https://tinyurl.com/3xc9wk8n (last visited Feb. 4, 2026).

Both neighborhoods carried deep historical significance for the Black community. Stapleton is "home to Stapleton AME Church, the borough's oldest Black Church," and Sandy Ground is "the oldest free Black settlement on the East Coast, founded by former enslaved people from Maryland in 1828 – the year after New York State abolished slavery." IRX-Q ¶ 9 (Sugrue Report).

Staten Island's demography began to meaningfully change in the 1980s. IRX-Q ¶ 12 (Sugrue Report). New transportation options between Staten Island and mainland New York City, including the opening of the Verrazzano-Narrows Bridge in 1964, helped facilitate waves of immigration to the borough through the late twentieth and early twenty-first centuries. Between 1980 and 2020, Staten Island's population ballooned by approximately 40%. IRX-Q ¶¶ 12–13 (Sugrue Report). During this period, the White population on Staten Island dropped from 85% to 56%, while the combined Black and Hispanic population increased from approximately 12% to nearly 30%. IRX-Q ¶¶ 12–13 (Sugrue Report). While the growth of the Black and Hispanic populations has been significant, it has been unevenly distributed across the Island. Most of Staten Island's Black and Hispanic residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton. *See* IRX-Q ¶ 16 (Sugrue Report).

Despite the significant demographic changes to the borough, Staten Island's congressional district has remained roughly the same—joining Staten Island with neighborhoods in southern Brooklyn—since the early 1980s. As a result, Staten Island's Black and Hispanic residents remain in a district where they consistently and systematically have less opportunity to influence elections and elect their representatives of choice. With the testimony and expert report of Dr. Maxwell Palmer, Petitioners proved that voting within CD-11 is heavily racially polarized, with Black and Hispanic citizens voting cohesively for the same candidate across 20 district-wide elections in the last six years, and White citizens voting just as cohesively to defeat the Black and Hispanic-

preferred candidate. IRX-T ¶¶ 15–19, figs. 1 & 2 (Palmer Report). Dr. Palmer's testimony likewise showed that the Black and Hispanic–preferred candidate is regularly defeated by the White majority's preferred candidate. Across the 20 elections Dr. Palmer reviewed, the Black and Hispanic–preferred candidate won only five. IRX-T ¶ 20, fig. 3 (Palmer Report). Each of those five elections, moreover, was in 2018 or earlier, and voting has become increasingly racially polarized since then. *Id.* Dr. Thomas Sugrue, meanwhile, offered extensive testimony concerning Staten Island's long and sordid history of entrenched discrimination against the borough's Black and Hispanic residents, including, among other things, a history of discrimination; the use of discriminatory voting procedures; and severe disparities in education, income, health, employment and homeownership that limit Black and Hispanic voters' ability to participate in the political process to this day.

B. A reasonably configured district that joins Staten Island with Lower Manhattan would afford Black and Hispanic Staten Islanders an equal opportunity to see their congressional candidates of choice elected.

Joining Staten Island with Brooklyn is not the only historical configuration of the Staten Island-based congressional district. In fact, for the entire first half of the twentieth century, Staten Island was joined with Lower Manhattan to form a congressional district. *See* IRX-P Tr. 262:6–15. Similarly, in 1972, following the 1970 Census, the New York Legislature enacted a congressional map that joined Staten Island with Lower Manhattan in what was CD-17 at the time. *See* IRX-S at 14, fig. 7 (Cooper Report). The district remained in this configuration until the contentious 1982 redistricting battle, following the state's loss of five House seats due to population changes.[6] With the two houses of the Legislature controlled by opposite parties, the

[6] *See* Maurice Carroll, *Plan by Democrats Effaces Old 'Silk Stocking' District*, N.Y. Times (Feb. 20, 1982), https://www.nytimes.com/1982/02/20/nyregion/plan-by-democrats-effaces-old-silk-stocking-district.html#:~:text=Political%20practicality%20says%20the%20Democrat.

parties compromised to redraw the Staten Island–based congressional district to include the Bay Ridge section of Brooklyn instead of the southern tip of Manhattan.[7] The move was transparently partisan, securing Republican advantage on Staten Island for decades to come and effectively unseating the popular Democratic Representative Leo Zeferetti in Brooklyn.[8] Joining Staten Island with Manhattan has a modern precedent, too. During the last redistricting cycle, the Legislature redrew Assembly District 61, which encompasses Staten Island's North Shore, to include the southernmost neighborhoods of Manhattan as well. *See* IRX-S at 13, fig. 6 (Cooper Report). Despite this obvious and known alternative, the Legislature failed to adopt a similar configuration for CD-11, which, as explained in detail below, would have afforded Staten Island's Black and Hispanic residents an equal opportunity to elect their candidates of choice.

Petitioners presented evidence that a congressional district that once again joins Staten Island with Lower Manhattan would remedy the unlawful dilution of Black and Hispanic voting strength. The Illustrative Map drawn by Mr. Bill Cooper, Petitioners' expert demographer, modified only CD-10 and CD-11 by joining Staten Island with much of Lower Manhattan and reuniting the Brooklyn neighborhoods of Bensonhurst, Bath Beach, and Dyker Heights with Sunset Park and Chinatown in CD-10. Dr. Palmer explained that, in the illustrative CD-11, voting is far less racially polarized, with roughly 40% of White voters supporting the Black and Hispanic-preferred candidate on average. IRX-T ¶¶ 21–25, fig. 4, & tbl. 2 (Palmer Report). And in the illustrative district, the Black and Hispanic-preferred candidate is *often* (but not always) successful. IRX-T ¶ 26, fig. 5 (Palmer Report). In other words, under the Illustrative Map, Black and Hispanic

[7] *Id.*

[8] *Id.*

voters would have the same opportunity as their White neighbors "to pull, haul, and trade to find common political ground" to succeed. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994).

Mr. Cooper testified that in drawing the Illustrative Map, he considered and carefully weighed all traditional redistricting criteria—including the Constitution's equal-population requirement, contiguity, compactness, core retention of previous districts, and respect for communities of interest. He testified that the Illustrative Map satisfied each of these criteria: it maintains equal population and respects preexisting neighborhood boundaries; it is contiguous via the Staten Island Ferry, which tens of thousands of New Yorkers use every single day to traverse the Upper New York Bay; it is reasonably compact along all traditional metrics; and it not only respects communities of interest, but *improves* upon the current plan by uniting Chinese American communities in Bensonhurst, Bath Beach, Sunset Park, and Chinatown that are presently split between CD-10 and CD-11. At the same time, Mr. Cooper's testimony made quite clear that his map represents just *one* way of many to remedy the unlawful vote dilution occurring in the existing CD-11. Presented with the opportunity to redraw the congressional map, the IRC and Legislature would have a range of options at their disposal to correct the defects plaguing the 2024 map.

C. Supreme Court properly held that Petitioners satisfied the elements of a vote-dilution claim under the New York Constitution and were entitled to immediate relief.

After four days of trial testimony from eight different experts, as well as significant post-trial briefing, Supreme Court agreed with Petitioners on both the law and the facts, and it ordered swift relief. On the law, it agreed with Petitioners that Article III, Section 4(c)(1) of the New York Constitution sweeps more broadly than the federal VRA, authorizing relief for minority vote dilution without proof that the minority group would necessarily form the *majority* population in another, remedial district. IRX-A at 5–6. To that end, Supreme Court agreed with Petitioners that the Constitution protects "crossover districts," that is, a district where the minority population is

sufficiently "large" and "influen[tial]" to elect their candidates of choice with the assistance of "crossover" voters from the majority racial group. *See* IRX-A at 13–14.

Once it cleared this threshold issue, Supreme Court appropriately adopted a totality-of-the-circumstances test that largely mirrors the applicable legal tests applied by courts in federal VRA and NYVRA cases, save that it also concluded that the majority-minority district requirement the U.S. Supreme Court has found in federal law was not consistent with the People's amendments to the New York Constitution. IRX-A at 7–8 (adopting *Gingles* totality-of-the-circumstances factors, with "the extent of racially polarized voting" as "fundamental" to the analysis); *see also* N.Y. Elec. Law § 17-206(2)(b)(ii) (establishing that vote dilution is proved through evidence of racially polarized voting and/or assessment of the totality of the circumstances).[9]

Within this framework, Supreme Court assessed and weighed the substantial expert testimony before it—including testimony from no less than *five* experts that Respondents and Intervenors offered to rebut Petitioners' evidence on the extent of racially polarized voting, testimony on the totality-of-the-circumstances factors, and Petitioners' Illustrative Map. Ultimately, Supreme Court credited Petitioners' experts, finding Petitioners met their burden to prove unlawful vote dilution because "racially polarized voting ha[d] clearly [been] demonstrated" in CD-11, as well as a "history of discrimination against minority voters in CD-11 [that] still impacts those communities today." IRX-A at 8–9. The Court also determined that Black and Hispanic voters in CD-11 comprise a "sufficient portion of the district's population," such that "redrawing . . . the congressional lines is a proper remedy." IRX-A at 13.

[9] The totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA. *See Gingles*, 478 U.S. at 36–37; N.Y. Elec. Law § 17-206(3).

Finally, Supreme Court ordered swift relief that respected its own role in the state's constitutional structure. The Court properly declared the current map unconstitutional and enjoined its future use. But instead of instituting any further relief on its own, it honored the Constitution's command that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." *See* N.Y. Const. art. III, § 5. To that end, it ordered the IRC to reconvene and propose a new map to the Legislature, consistent with the procedures set out in Article III, Section 5. And in so doing, Supreme Court offered a standard for the IRC and Legislature to apply to assess whether a potential remedial district constitutes a crossover district. And recognizing that "time is of the essence" with the 2026 election on the horizon, it ordered the IRC to propose a new map by February 6, 2026.

LEGAL STANDARD

Respondents and Intervenors seek a "discretionary" stay of Supreme Court's prohibitionary injunction under CPLR § 5519(c). *Da Silva v. Musso*, 76 N.Y.2d 436, 443 n.4 (1990). Such relief is never granted as of right, as "there is no entitlement to a stay." *Id.* "Any relevant factor may be considered by the court in exercising its discretion." Siegel, N.Y. Prac. § 535 (6th ed. 2024). In addition to considering the "apparent merit or lack of merit of an appeal," 8 N.Y. Prac., Civil Appellate Practice § 9:4 (3d ed. 2025), courts are also "duty-bound to consider the relative hardships that would result from granting" a stay, *Musso*, 76 N.Y.2d at 443 n.4. Civil Appellate Practice § 9:4 (3d ed. 2025), courts are also "duty-bound to consider the relative hardships that would result from granting" a stay, *Musso*, 76 N.Y.2d at 443, n.4.

Petitioners, in turn, respectfully ask the Court to lift any automatic stay issued under CPLR § 5519(a), including as to the Supreme Court's remedial order to the IRC. CPLR § 5519(c) permits this Court to "vacate, limit or modify" an automatic stay. It is well accepted that an automatic stay's "[u]ndue hardship" on a petitioner "justif[ies] appellate vacatur." *McLaughlin v. Hernandez*,

4 Misc. 3d 964, 969 (Sup. Ct., N.Y. County 2004) (citation omitted); *see also DeLury v. City of New York*, 48 A.D.2d 405, 405 (1st Dep't 1975) (per curiam) (concluding a court may vacate an automatic stay upon a showing of "a reasonable probability of ultimate success in the action, as well as the prospect of irreparable harm"). Vacatur of an automatic stay is especially appropriate where "the public interest and welfare require" it. *Freeman v. Lamb*, 33 A.D.2d 974, 975 (4th Dep't 1970).

ARGUMENT

I. Petitioners are likely to succeed on appeal.

A. Respondents' and Intervenors' linchpin due process arguments are contrived and misrepresent Supreme Court's order.

Perhaps recognizing that this fact-heavy dispute is ill-suited for emergency review, Respondents and Intervenors strain to creatively conjure up legal errors in Supreme Court's order. They each ground their motions on the notion that Supreme Court violated due process by construing Article III, Section 4 differently than the parties proposed below. *See* Resp. Br., Arg. § I.A; Int. Br., Arg. § I.A. But that argument mischaracterizes Supreme Court's order, which stemmed from the arguments and evidence put forth during a four-day evidentiary hearing. It is also wrong as a matter of basic due process law. There is nothing remarkable about a court exercising its own judgment to construe the meaning of a constitutional or statutory provision—that is the hallmark role of the judiciary. Once these sensationalized due process arguments are set aside, little remains to the requests for a stay beyond a bare ask that this Court substitute its view of the facts for the trial court's findings, which resulted from a comprehensive record and multi-day hearing during which both Supreme Court and counsel for the Parties had the opportunity to question and test each side's evidence.

1. Supreme Court's order is rooted in the evidence and argument presented below.

All parties agree this case presents a matter of first impression about the scope and meaning of Article III, Section 4(c)(1) of the New York Constitution. *E.g.*, IRX-P Tr. 18:13–21 (Intervenors' counsel agreeing this is a "matter of first impression"). Supreme Court acknowledged this "issue of first impression," IRX-A at 13, and proceeded to construe the provision in two parts—*first*, how a Petitioner *establishes* that vote dilution is occurring, *id.* at 4–13; and then, *second*, how the Constitution requires such vote dilution to be *remedied*, *see id.* at 13–17.

As to the first issue, the court adopted a commonsense textualist approach focused on the Constitution's use of the term "totality of the circumstances." N.Y. Const. art. III, § 4(c)(l); *see also* IRX-A at 4–5. Drawing from federal case law, the court applied the "Senate Factors" from the federal VRA analysis, which among other things asks whether there is racially polarized voting in the relevant jurisdiction and set out a list of objective factors relevant to a racial vote dilution claim.[10] *See* IRX-A at 7 (citing *Thornburg v. Gingles*, 478 U.S. 30, 44–45 (1986)). This is the *exact* evidence Petitioners introduced to establish their vote dilution injury: (1) a racially polarized voting analysis from Dr. Palmer (IRX-T; RX-I); and (2) a totality of the circumstances analysis from Dr. Sugrue that examined the topics covered by the Senate Factors, including the history of discrimination in the relevant area, racial appeals in elections, minority electoral success, and socioeconomic factors (IRX-Q; RX-G).

[10] The Senate Factors include "the history of voting-related discrimination"; "the extent to which voting . . . is racially polarized"; "the extent to which . . . voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group" are used; "the exclusion of members of the minority group from candidate slating processes"; "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"; "the use of overt or subtle racial appeals in political campaigns"; and "the extent to which members of the minority group have been elected to public office in the jurisdiction." *Gingles*, 478 U.S. at 44–45.

To be sure, Petitioners principally argued that the court should have looked to the NYVRA's framework—which likewise expressly conditions relief on evidence of "racially polarized" voting and the "totality of the circumstances," N.Y. Elec. Law § 17-206(b)(2)(b)(i)—rather than federal law. For purposes of these standards, that is a distinction without a difference—evidenced by Supreme Court's reliance upon the exact evidence put forward by Petitioners to establish unconstitutional vote dilution. Further still, Respondents and Intervenors are simply wrong in asserting that Petitioners hitched their wagon to the NYVRA alone as a possible framework. Petitioners noted in their opening memorandum that they would "readily satisfy" "any possible standard" because they established "racially polarized voting" as well as "strong totality of the circumstances evidence"—long-established standards common to both state and federal law. *See* IRX-I at 19 n.5. Indeed, Petitioners' post-trial memorandum further emphasized that "[t]he totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA," such that New York courts often rely upon federal VRA cases to resolve NYVRA claims. *See* Aff. of Christopher Dodge, Ex. 1, Petitioners' Post-Trial Mem. ("PX-1") at 24 & n.11; *see also, e.g.*, *Serratto v. Town of Mount Pleasant*, 86 Misc. 3d 1167, 1174 (N.Y. Sup. Ct., Westchester County 2025) (analyzing NYVRA totality factors with reference to federal VRA caselaw). And Supreme Court's ultimate conclusion—that "a totality of the circumstances analysis" shows unlawful vote dilution under Article III, Section 4, IRX-A at 12—relied on Petitioners' largely unrebutted evidence and arguments. *See infra* § I.C.2. Thus, even if the Supreme Court charted a slightly different analytical course, it ultimately reached a substantially similar framework to the one proposed by Petitioners and relied upon Petitioners' evidence to find that CD-11 unlawfully dilutes the votes of Black and Hispanic voters.

As to the second portion of the its analysis, Supreme Court explained that—having found vote dilution in CD-11 as currently constituted—it had to "determine . . . the proper remedy for unlawful vote dilution." IRX-A at 13. The court first explained that the New York Constitution sweeps more broadly than the federal VRA, in that it does not require minority groups "to constitute a majority in a single-member district" to remedy vote dilution. *Id.* (quoting *Gingles*, 478 U.S. at 51). That correct conclusion, *see infra* § I.B, is also precisely what Petitioners argued below. *E.g.*, IRX-I at 32–33; PX-1 at 46–47. The court next explained the New York Constitution does impose some limits on vote dilution claims: "minority voters must comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes." IRX-A at 13. That, too, is *precisely* what Petitioners showed through their racially polarized voting evidence, which established that Black and Hispanic voters—who comprise roughly 30% of the population on Staten Island—engage in bloc voting. *See* IRX-T; RX-I; *see infra* § II.C.1. And they further presented evidence as to one possible remedial district in which Black and Hispanic voters could elect their candidates of choice—while forming a critical part of the political coalition necessary to elect such candidates. *See* IRX-S; RX-K; *infra* § II.C.3. In other words, Petitioners put forward evidence that Black and Hispanic voters "comprise a sufficiently large portion of the population" in the relevant area "to influence electoral outcomes." IRX-A at 13.

Because Petitioners did not demand a majority-minority district to remedy their vote dilution injury, Supreme Court concluded Petitioners were asserting a so-called "crossover claim." IRX-A at 14. A crossover district is one in which minority group voters can elect their preferred candidate with the aid of "crossover voters"—members of the majority racial group who also vote for the minority-preferred candidate. *See Bartlett*, 556 U.S. at 23 (rejecting such districts as

mandatory under the federal VRA, but explaining states are free to exceed federal law in this regard); *see also Cooper v. Harris*, 581 U.S. 285, 303 (2017). Respondents and Intervenors take umbrage with this, insisting that Petitioners never asserted a crossover claim. *E.g.*, Int. Br. at 25. That allegation is befuddling—Petitioners asserted a crossover claim directly on the face of their Petition. *See* IRX-G ¶¶ 8, 46.

It is true that, at times, Petitioners have discussed Black and Hispanic voters' ability to "influence" elections. But that is because, in a properly constituted crossover district, minority voters possess sufficiently substantial electoral *influence* to *elect* their candidates of choice. *See* IRX-A at 15 (describing a crossover district as one that "increase[s] the influence of minority voters, such that they are decisive in the selection of candidates"). Each and every one of Petitioners' filings in this case is quite clear that that the remedy they seek is a crossover district in which Black and Hispanic voters have the opportunity to *elect* candidates of their choice. *See, e.g.*, IRX-G ¶ 8 (alleging that Article III, Section 4(c)(1) covers crossover district claims); *id.* ¶ 95 ("This Court should order the Legislature to draw a new, lawful CD-11 that pairs Staten Island with Lower Manhattan in order to afford Black and Latino voters the same opportunity as other members of the electorate to . . . *elect* their candidate of choice." (emphasis added)); IRX-I at 8 (stating Petitioners sought a crossover district); *id.* at 16–17 (explaining Petitioners' evidence was directed towards showing availability of crossover district); *id.* at 35 (characterizing the Illustrative Map as a crossover district); *see also* PX-1 at 2 (noting Petitioners seek a district where Black and Hispanic voters could join with White crossover voters to influence elections); *id.* at 10–11 (arguing Section 4(c)(1) permits crossover districts); *id.* at 62 (characterizing the Illustrative Map as a "crossover district[]").

That clear fact that was not lost on Supreme Court (IRX-A at 14 ("Nowhere in their papers do Petitioners assert that a majority-minority district can or should be drawn here; as such, the Court sees this as a crossover claim."). Nor was it lost on others who read Petitioners' briefing. *See* IRX-N at 19 (amici observing that the obvious "thrust" of the Petition was to obtain a crossover district). The notion that Respondents and Intervenors were not fairly apprised of Petitioners' request for a remedy that appears on the face of the Petition, that Petitioners discussed throughout their extensive merits briefing, and that Petitioners serially referenced during their *opening argument* at the hearing (IRX-P Tr. 9:16–22, 11:25–12:8, 12:25–13:21), is pure smoke and mirrors. That counsel may now second-guess strategic choices to tailor their arguments based on their *own* conception of an "influence district," instead of the relief sought on the face of Petitioners' papers, plainly presents no due process concern.

Finally, the court rounded out its analysis by offering guidance to the IRC on how to craft a remedial crossover district. *See* IRX-A at 15–16. Specifically, it advised that, in evaluating a remedial district, the IRC should consider (1) whether minority voters can select their candidates of choice in a primary election; (2) whether those candidates are then usually victorious in a general election; and (3) whether a new district can "increase the influence of minority voters" such that they are "decisive in selection of candidates." IRX-A at 15. The court's discussion at this stage of its opinion focused on the scope of its required *remedy*—it was plainly not describing an element of proving the existence of unlawful vote dilution. Indeed, the court explained that the *IRC and Legislature*—politically accountable branches tasked with redistricting under the Constitution—bore the responsibility of implementing these requirements after a "Court find[s] a congressional map invalid." IRX-A at 16. Thus, the court offered this explanation to narrow the scope of any remedial district in a way that ensures minority voters acquire increased political voice in a newly

drawn congressional district—consistent with the Constitution's command that racial and linguistic minority groups "not have less opportunity to participate in the political process." N.Y. Const. art. III, § 4(c)(1).

Respondents and Intervenors complain that Petitioners never introduced evidence on the first prong of this rubric, but that argument fundamentally misunderstands the Supreme Court's order. The court never held that it was Petitioners' burden to prove minority primary-election control as an element of a constitutional vote-dilution claim. Indeed, it merely explained that a district "should count" for remedial purposes if it achieves this outcome—an obvious instruction to the IRC. IRX-A at 15. The only thing the Supreme Court required Petitioners to establish as to remedy is "that minority voters make up a sufficient portion of the district's population," such that they are "able to influence electoral outcomes." *Id.* at 13. And, as explained, Petitioners satisfied this requirement through a combination of racially polarized voting analysis and the proffering of an alternative map illustrating how minority voters could play an influential role in determining the outcomes of elections in any new district. And while Respondents and Intervenors criticized Petitioners' Illustrative Map throughout the evidentiary hearing, Petitioners made clear from the start that this map was not a "take it or leave it option." IRX-P Tr. 371:7–10. Further still, while Respondents and Intervenors made the strategic choice to narrowly focus their criticisms on the Illustrative Map alone, they never meaningfully disputed the obvious fact that the IRC and Legislature have numerous lawful options for redrawing CD-11 in manner that remedies vote dilution and complies with other ordinary redistricting criteria.[11]

[11] In their proposed brief, filed on February 4, 2026, Proposed Amici Ruth Greenwood and Nicholas Stephanopoulos make the same error, assuming that the crossover district standards Supreme Court announced are anything more than guardrails for the IRC and the Legislature to consider when crafting the remedial district. To reiterate, in granting relief, Supreme Court necessarily determined that Petitioners' Illustrative Map established that it was feasible that Black

At bottom, Respondents and Intervenors' due process complaints require this Court to adopt a funhouse mirror view of Supreme Court's order, which straightforwardly sets out how to prove and remedy vote dilution. And Respondents and Intervenors' choice to frontload these due process complaints in their requests for a stay simply highlight their reticence to engage with the trial record. Instead, they would have this Court close its eyes to overwhelming evidence of racial polarization and convincing totality of the circumstances analysis based on a clear misreading of Supreme Court's order. This Court should reject that gambit.

2. Courts have an independent duty to construe the meaning of a constitution or statute, regardless of party argument.

Respondents and Intervenors' due process argument has another problem—what they sensationally label a "Violation of the Due Process Clause," Int. Br. at 22, is decidedly not one as a matter of law. In their view, Supreme Court committed a due process violation by adopting what they call "a new, entirely unbriefed standard" for what constitutes vote dilution under Article III, Section 4. Resp. Br. at 26. As explained, that is factually wrong, because Petitioners proposed the *exact* categories of evidence relied upon by Supreme Court as governing a vote dilution claim. *See* PX-1 at 15 (identifying racially polarized voting, totality factors analysis, and usual defeat of

and Hispanic voters "comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes." IRX-A at 13. For that reason, amici are wrong in their idle speculation that there might be "no plausible remedy [that] could improve the representation of minority voters in Congressional District 11." Amici Br. at 13. Supreme Court correctly identified that the voluminous record in this case belies the notion that the proven dilution of Black and Hispanic voters in CD-11 is irreparable. Amici's scholarly concerns are also divorced the procedural posture of this case, where ongoing proceedings under Supreme Court's jurisdiction afford the IRC the opportunity to craft just such a district that "improve[s] the representation of minority voters in Congressional District 11." Amici Br. at 13. In the implausible—indeed, effectively impossible scenario—where IRC is somehow unable to do so, Supreme Court will still possess jurisdiction to make proper amendments to its Order. Thus, as explained *infra* § III, the most sensible path forward is therefore to lift the automatic stay to permit the IRC to fulfill its lawful role of crafting just such a district, rendering amici's concerns just what they are—academic.

minority-preferred candidates as relevant evidence). But this theory also ignores that courts are "not limited to the particular legal theories advanced by the parties, but rather retain[] the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991); *see also Hankins v. Lyght*, 441 F.3d 96, 104 (2d Cir. 2006) ("We are required to interpret federal statutes as they are written . . . and we are not bound by parties' [positions]."); *cf. Am. Timber & Trading Co. v. First Nat'l Bank of Or.*, 690 F.2d 781, 786 (9th Cir. 1982) ("A party need not plead specific legal theories in the complaint, so long as the other side receives notice as to what is at issue in the case."). Since the founding, courts have *always* exercised independent judgment "when interpreting the laws." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (citing *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 176 (1803)); *see also id.* at 394 (explaining "courts must exercise independent judgment in determining the meaning of statutory provisions"). Any other approach would improperly "relieve [courts] of [their] responsibility to interpret the law correctly." *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 41 n.2 (2015) (Thomas, J., concurring) (explaining party argument does not cabin a court's interpretation of law).

That is no less true for New York courts than for federal ones. *E.g.*, *Rogoff v. Anderson*, 34 A.D.2d 154, 157, (1st Dep't 1970) ("The power to construe a law is generally vested in the courts."), *aff'd*, 28 N.Y.2d 880 (1971); *O'Reilly v. City of New York*, 205 A.D. 888, 892 (2d Dep't 1923) ("This court must interpret the law as it finds it."), *aff'd*, 236 N.Y. 614, (1923); *accord Regina Metro. Co.*, 35 N.Y.3d at 348. Thus, New York courts "are not bound by the parties' formulation of the issues," *Wiley v. Altman*, 52 N.Y.2d 410, 414 n.6 (1981), and party argument alone "[can]not intrude upon the judicial function of correctly identifying and applying the law to the facts." *Knavel v. W. Seneca Cent. Sch. Dist.*, 149 A.D.3d 1614, 1616 (4th Dep't 2017)

(explaining New York courts are not bound by "the parties with respect to a legal principle"); *see also People v. Berrios*, 28 N.Y.2d 361, 366, (1971) (similar); *Dashnaw v. Shiflett*, 10 Misc. 3d 1051(A), 2005 N.Y. Slip. Op. 51874(U), at *2 (City Ct. of Plattsburgh 2005) ("In determining a matter of law, this Court is bound by the New York Court of Appeals, not by arguments of counsel or parties."); *819 Realty Grp. LLC v. Beast Fitness Evolved LLC*, 65 Misc. 3d 1204(A), 2019 N.Y. Slip. Op. 51496(U) (N.Y. Civ. Ct. 2019) (similar). Accordingly, Supreme Court's choice to decline use of the NYVRA as the formal framework—while adopting a substantially similar framework from federal VRA precedent—fell squarely within its authority when construing Article III, Section 4. Branding that exercise of ordinary judicial responsibility a due process violation is both legally wrong and histrionic.

The cases that Respondents and Intervenors rely upon are inapposite. Each of them involves an exceptional instance where a court introduced an entirely distinct *claim or defense* into a case—not merely an alternative construction of law. In *United States v. Sineneng-Smith*, for example, a criminal defendant argued that her conduct fell outside the scope of the criminal statute she was charged under. *See* 590 U.S. 371, 377 (2020). She appealed her conviction to the Ninth Circuit, which then appointed several *amici* to address whether the statute Sineneng-Smith was charged under violated the First Amendment as overbroad or the Fifth Amendment as unconstitutionally vague—constitutional defenses she had never raised. *See id.* at 378–79. The Supreme Court recognized that "a court is not hidebound by the precise arguments of counsel," *id.* at 380, but because the defendant herself had never so much as "hint[ed]" at the constitutional defenses introduced by the court, it concluded that the "radical transformation" of the case went "well beyond the pale," *id.* Similarly, in *Clark v. Sweeney*—an unpublished per curiam order—the Fourth Circuit improperly reached beyond the appellant's ineffective assistance of claim to

"devise[] a new one," entirely different in form. *See* No. 25-52, 2025 WL 3260170, at *2 (U.S. Nov. 24, 2025) (per curiam).[12]

Petitioners here plainly raised a claim under Article III, Section 4—indeed, that was their sole claim in the Petition. *See* IRX-G at ¶¶ 1, 102. Petitioners and Supreme Court thus identified the relevant "governing law," *Kamen*, 500 U.S. at 99, and nothing about the court's analysis of that law resulted in "radical transformation of th[e] case," *Sineneng-Smith*, 590 U.S. at 380.

B. Intervenors wrongly claim the New York Constitution offers vote dilution protections that are merely duplicative of federal law.

Intervenors' next tack is to say Supreme Court erred by construing the Constitution's vote dilution provision to be more expansive than the federal VRA. Int. Br. at 29–35.[13] Specifically, they criticize the court's conclusion that New York law does not require proving the feasibility of a majority-minority district—the so-called first *Gingles* precondition—but only "that minority voters make up a sufficient portion of the district's population," such that they are "able to influence electoral outcomes." IRX-A at 13. Intervenors' theory—which would render Article III, Section 4 a pointless duplicate to the federal VRA—should be rejected out of hand. *See, e.g.*, N.Y. Laws § 144 ("Statutes will not be construed as to render them ineffective"); *cf*. *People v. Galindo*, 38 N.Y.3d 199, 205–06 (2022) (declining to read a provision in a manner that would "hold it a legal nullity").

Start with the text of the competing provisions. Section 2 of the federal VRA prohibits states from adopting any "voting qualification or prerequisite to voting or standard, practice, or

[12] And in *Misicki v. Caradonna*, the Court of Appeals declined to consider an argument on appeal made under a state regulation the appellant had never cited before—an ordinary case of forfeiture. *See* 12 N.Y.3d 511, 518 (2009) (explaining appellant had never previously cited 12 N.Y. CRR 23–1.10[b] as a source of law in lower courts).

[13] Respondents note in their background section that they raised this argument below, *see* Resp. Br. at 6–7, but do not appear to re-raise it anywhere in their motion.

procedure," that "results in a denial or abridgement of the right of any citizen of the United States to vote" due to race. 52 U.S.C. § 10301(a). It further explains that such a violation can be shown by, among other things, a "totality of [the] circumstances" analysis establishing that the political process is "not equally open to participation by members of *a class of citizens*" protected by the federal VRA. *Id.* § 10301(b) (emphasis added). As the Sixth Circuit has observed, this language "speaks of a 'class' in the singular," which makes clear that the text of Section 2 does not permit lawsuits seeking coalition districts where two or more minority groups combine to constitute the majority in a reasonably configured remedial district. *Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (en banc). The court reasoned that if Congress had "intended to sanction [such coalition] suits, the statute would" instead refer to "the *classes* of citizens protected." *Id.* at 1386–87 (emphasis added).

Article III, Section 4, by contrast, *does* use plural language; it states that districts "shall be drawn so that, based on the totality of the circumstances, racial or minority language *groups*" do not have less political opportunity. N.Y. Const. art. III, § 4(c)(1) (emphasis added). This use of the plural—which was illustrative in the context of *Kent County*—strongly suggests an "inten[tion] to sanction" districts where more than one group of voters may form a coalition to vote to elect candidates of their choice. 76 F.3d at 1386–87. New York's decision, therefore, to meaningfully vary from the federal VRA's narrower scope by allowing coalition districts, compels likewise departing from the correspondingly narrower first *Gingles* precondition that comes with it. Indeed, the Court of Appeals has explained that "[i]f the language of the State Constitution differs from

that of its Federal counterpart, then the court may conclude that there is a basis for a different interpretation of it." *People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 302 (1986). That is the case here.[14]

Turn next to precedent. New York courts have already recognized the broader protection that the New York Constitution provides. In *Harkenrider v. Hochul*, for example, Supreme Court found that "according to many experts," Article III's "prohibition against discriminating against minority voting groups . . . expanded the[] protection" against vote dilution as compared to the federal VRA. 76 Misc. 3d at 176, *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022). In the wake of *Harkenrider*, the special master appointed to draw new districts in that case assumed Section 4(c)(1) extends to districts in which the minority population does not constitute a majority. *Cf. Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 31471(U), at *28 & n.22 (Sup. Ct., Steuben County 2022) (special master adopting a coalition district to "follow[] the injunction[] of the State Constitution . . . to not draw districts that would result in the denial or abridgement of racial or language minority voting rights"). To the extent federal courts have opined on the issue, it has been merely to confirm that "States that wish to draw crossover districts are free to do so where no other prohibition exists." *Bartlett*, 556 U.S. at 24. That is precisely what New York has done.

Further evidence of Section 4(c)(1)'s breadth can be found in the NYVRA, which the Legislature enacted in 2022. That law, which applies to local electoral districts, indisputably permits the use of crossover districts and does not require proving the feasibility of a majority-minority district. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14, 25 (2d Dep't 2025) (holding

[14] The State Respondents below—including the Governor, Attorney General, and leaders of New York's legislature—agree that "the relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law." IRX-J at 3. Reading Article III, Section 4(c)(1) in line with the federal VRA would render Section 4(c)(1) "a redundancy and the will of New York voters in voting for them would be read out of the State Constitution." *Id.*

that the NYVRA "does not require the first *Gingles* precondition"), *aff'd*, No. 84, 2025 N.Y. Slip Op. 06359 (N.Y. 2025). Given their similar purpose and goals, there is simply no good reason for concluding the NYVRA permits crossover districts but Section 4(c)(1) does not. To the contrary, the Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to "[s]tate statutory or common law defining the scope of the individual right in question." *People v. Harris*, 77 N.Y.2d 434, 438 (1991). That supports reading the NYVRA and Section 4(c)(1) in parallel—not in direct tension with one another.

That fact is reinforced by the NYVRA's introductory text, which declares that the "public policy of the State of New York" is "[e]nsur[ing] that eligible voters who are members of racial, color, and language-minority groups shall have an equal opportunity to participate in the [State's] political processes . . . and especially to exercise the elective franchise." N.Y. Elec. Law § 17-200. This policy "recogni[zes] . . . the *constitutional guarantees* . . . against the denial or abridgement of the voting rights of members of a race, color, or language-minority group." *Id.* (emphasis added). And it further explains these constitutional guarantees "exceed the protections [of] the right to vote provided" for in federal law. *Id.* Thus, the NYVRA's own declared purpose is to extend the "constitutional guarantees" in provisions like Section 4(c)(1) to local elections, reinforcing that the two should be read harmoniously. The Legislature's own apparent understanding of Section 4(c), as reflected in the NYVRA's statement of purpose, buttresses Petitioners' view. *See Lallave v. Martinez*, 635 F. Supp. 3d 173, 188 (E.D.N.Y. 2022) ("[A] later act can be regarded as a legislative interpretation of an earlier act in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting, and is therefore entitled to great weight in resolving any ambiguities and doubts." (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972)).

Finally, the fact that Article III, Section 4(c) notes that state redistricting criteria remain "[s]ubject to the requirements of the federal constitution and statutes," does not mean that state constitutional racial vote dilution claims must identically mirror Section 2 of the VRA. That language simply recognizes that the federal constitution and federal law set "a floor" for the minimum protections states must afford voters, *see People v. Stultz*, 2 N.Y.3d 277, 284 n.12 (2004), but it does not prescribe the substantive standards under which racial vote dilution claims must be established. Article III, Section 4(c) recognizes the federal floor, but nothing in its plain language binds or restricts the Constitution's reach to federal redistricting standards. Nor do the standards that New York imposes conflict with federal standards; they simply provide greater protections—as the U.S. Supreme Court has recognized they may. *Bartlett*, 556 U.S. at 24–25.

Despite the foregoing, Intervenors insist Section 4(c)(1) must be read as a mere carbon copy of the federal VRA, notwithstanding its distinct text, history, and purpose. But their chief tactic is simply scaremongering. Pointing to *Bartlett*, they contend that permitting crossover districts under Section 4(c)(1) would raise federal constitutional problems. Int. Br. at 34–35. But *Bartlett* itself confirmed that states are free to chart a different course, as New York has. 556 U.S. at 24–25. Accordingly, Supreme Court's proper recognition that Section 4(c)(i) is not duplicative of the federal VRA offers no basis to grant Respondents and Intervenors their stay request.

C. Supreme Court correctly determined—after a four-day evidentiary hearing—that Petitioners established unconstitutional vote dilution based on a totality of the circumstances.

Cleared of the threshold legal disputes discussed above, Supreme Court appropriately construed the totality of the circumstances inquiry the New York Constitution prescribes. The court's approach relied on the nonexclusive factors identified in *Gingles*, requiring Petitioners to show that a "history of discrimination against minority voters" in the target area continues into the present to disenfranchise voters and deprive them of an equal opportunity to elect candidates of

choice. IRX-A at 7–9. Of these factors, "the extent of racially polarized voting" is "[f]undamental" to any claim of vote dilution. *Id.* at 8. This standard reflects Petitioners' proposal, and both parties presented significant expert testimony on both the extent of racially polarized voting and the remaining totality factors.

The existence of vote dilution is an intensely factual inquiry that, in this case, turned on Supreme Court's assessment of the live testimony and lengthy reports of *eight* expert witnesses. Supreme Court had the opportunity to weigh the experts' reports and testimony, as well as to assess their credibility on the stand, and draw conclusions therefrom. Where there were disputes about the evidence, Supreme Court credited the testimony of Petitioners' experts, ultimately concluding that there was strong evidence of racially polarized voting in CD-11, and that the totality of the circumstances factors otherwise demonstrated that Black and Hispanic Staten Islanders lack an equal opportunity to elect their candidates of choice. For the reasons below, these findings "fair[ly] interpret[]" the evidence and are entitled to deference. *Bradley v. St. Clare's Hosp.*, 232 A.D.2d 814, 814 (3d Dep't 1996) ("[W]e accord great weight to [Supreme Court's] resolution of credibility issues as well as its assessment of the weight of the evidence and will not disturb its resolution of these issues when supported by a fair interpretation of the evidence.").

1. Supreme Court properly credited strong evidence of racially polarized voting in which the Black and Hispanic–preferred candidate in CD-11 is usually defeated.

Supreme Court rightly found that Petitioners "clearly demonstrated" that voting in CD-11 is heavily racially polarized. IRX-A at 8. Petitioners' expert Dr. Palmer examined voting patterns in CD-11 using official election data and Census data, and employing a statistical technique called ecological inference, he found that White voters have consistently voted as a bloc to defeat the Black and Hispanic–preferred candidate. *See* IRX-T ¶¶ 5–6, 9–11 (Palmer Report); IRX-P Tr. 157:11–18 (Palmer). Dr. Palmer's analysis of CD-11 demonstrates that Black and Hispanic Staten

Islanders have remained "extremely cohesive" over nearly a decade of elections. IRX-T ¶ 15 (Palmer Report). In the two most recent congressional elections—2022 and 2024—Black voters had "a clear preferred candidate," and Hispanic voters shared that choice. *Id.* ¶ 15 (Palmer Report); *see* IRX-P Tr. 163:13–164:3 (Palmer). Across these elections, the Black and Hispanic–preferred candidate (Democrat Max Rose in 2022 and Democrat Andrea Morse in 2024) averaged 89.55% of the Black vote and 88.4% of the Hispanic vote. IRX-T ¶ 15, fig. 1; *id.* at 10, tbl. 1 (Palmer Report). White voters in CD-11, however, voted as a bloc to defeat the Black and Hispanic–preferred candidate in both elections. *Id.*¶ 15, fig. 1, *id.* at 10, tbl. 1 (Palmer Report).

Broadening the lens beyond congressional elections, Dr. Palmer's analysis revealed high levels of racial polarization in CD-11 across *all* state and federal elections he studied over nearly a decade, from 2017 to 2024. In all 20 elections he examined, Black voters supported their preferred candidates with 90.5% of the vote on average. *Id.* ¶ 17 (Palmer Report). Hispanic voters "supported their preferred candidates with 87.7% of the vote." *Id.* ¶ 18 (Palmer Report). White voters, meanwhile, voted just as cohesively against the Black and Hispanic–preferred candidate with an average of 73.7% of the vote. *Id.* ¶ 19 (Palmer Report). In other words, they supported Black and Hispanic–preferred candidates with only 26.3% of the vote. *Id.* ¶ 19 (Palmer Report).

The effect of this bloc voting is unmistakable: of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times. *Id.* ¶ 20 (Palmer Report); IRX-P Tr. 168:8–10 (Palmer). And the few minority-preferred candidates that won prevailed by very narrow margins. *See* IRX-T at 12, tbl. 3 (Palmer Report). These victories are also quite dated. Of the city, state, and district-wide elections that Dr. Palmer analyzed, no Black and Hispanic–preferred

candidate has prevailed within CD-11 since 2018, and voting within the district has become increasingly racially polarized since. *Id.* ¶ 20, fig. 3 (Palmer Report).[15]

Unable to refute Dr. Palmer's conclusions on their own terms, Intervenors offered the testimony of Dr. Voss to undermine the credibility of Dr. Palmer's analysis, suggesting that his methods—long regarded as the "gold standard" in redistricting cases, *Ala. State Conf. of NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1275 n.27 (M.D. Ala. 2020)—were unreliable. But when pressed, Dr. Voss ultimately walked back key conclusions from his report, IRX-P Tr. 667:6–668:2 (Voss), conceded his own analysis produced anomalous results, *id.* at 665:1–8 (Voss), and ultimately conceded that his own analysis likewise showed polarized voting across racial groups, *id.* at 647:5–16 (Voss). Supreme Court—rightly—credited Dr. Palmer's testimony and rejected Dr. Voss's. *See* IRX-A at 8–9 (concluding that Dr. Palmer's testimony "clearly demonstrated" racially polarized voting). And those factual findings are entitled to significant deference in this Court. *See, e.g.*, *Bradley v. St. Clare's Hosp.*, 648 N.Y.S.2d 803, 814 (App. Div. 3d Dep't 1996) ("[W]e accord great weight to [the Supreme Court's] resolution of credibility issues as well as its assessment of the weight of the evidence and will not disturb its resolution of these issues when supported by a fair interpretation of the evidence.").

[15] Dr. Palmer was cross-examined on his decision not to include the 2018 and 2020 U.S. House races in his analysis, *see* IRX-P Tr. 197:11–199:13 (Palmer), a point Intervenors raise again here, Int. Br. at 11. Dr. Palmer explained that he made this choice because those elections were conducted "under different [district] boundaries." *Id.* at 197:14–15 (Palmer). Even accounting for those elections, however, the Black and Hispanic candidate of choice prevailed within CD-11 in only six of 22 elections. *Id.* at 237:16–25 (Palmer). And it is still the case that no Black and Hispanic–preferred candidate has prevailed within the district since 2018. *See id.*; *see also* IRX-T ¶ 20, fig. 3 (Palmer Report).

2. Ample evidence supports a finding that remaining totality factors demonstrate that Black and Hispanic Staten Islanders lack equal electoral opportunities.

After examining all of the evidence adduced in the parties' briefs, expert reports, and at trial, Supreme Court also came to the reasonable conclusion—indeed the only conclusion that the record evidence supports—that under the "totality of the circumstances," the "district lines for CD-11 'result in the denial or abridgement of racial or language minority voting rights.'" IRX-A at 12 (quoting N.Y. Const. art. III, § 4(c)(1)).[16] The court referred to the particular totality of the circumstances factors that engendered its conclusion and the record evidence that supports them, *see* IRX-A at 9–12, ultimately determining that the majority of the factors—including the history of discrimination; evidence of racially polarized voting; the use of discriminatory voting procedures; that Blacks and Hispanics bear the effects of discrimination in factors such as education and employment that limit their ability to participate politically; the use of racial appeals; and the limited success of Black and Hispanic political candidates—all weighed in favor of a finding of racial vote dilution in CD-11.

[16] In order to examine the totality of the circumstances, Supreme Court looked to the Senate Factors. IRX-A at 7–8. Those factors are nearly identical to the totality of the circumstances under the NYVRA. Both the Senate Factors and the racial vote dilution inquiry under the NYVRA ask courts to consider: the "history of discrimination" in the political subdivision; the extent of racially polarized voting; the history of discriminatory voting practices; the extent to which minority group members bear the effects of discrimination in education, employment, health and other socioeconomic factors, which limit their ability to participate effectively in the political process; the use of racial appeals in elections; and the extent to which minority group members have been elected to public office in the jurisdiction. *See Gingles*, 478 U.S. at 44–45; N.Y. Elec. Law § 17-206(3). In both analyses, to prove racial vote dilution, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Gingles*, 478 U.S. at 45 (citation omitted); *see also* N.Y. Elec. Law § 17-206(3) ("Nothing . . . shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that . . . a violation has occurred."). Indeed, all of the factors that the court relied upon for its conclusion are common to both the federal VRA and the NYVRA.

First, Supreme Court concluded that there is a "history of discrimination against minority voters in CD-11 [which] still impacts those communities today." IRX-A at 9. The court cited the history of government sponsored redlining, of private real estate industry practices that excluded Blacks and Hispanics from White neighborhoods, and of Black and Hispanic segregation in public housing in Staten Island. *Id.* at 9–10 (citing IRX-Q (Sugrue Report)). This conclusion was proper because Dr. Sugrue presented abundant and entirely undisputed evidence of each of the practices mentioned. For example, Dr. Sugrue traced the history of redlining and discriminatory housing practices on Staten Island, *see* IRX-Q at 16–38, including identifying particular neighborhoods in Staten Island that were redlined, *see* IRX-P Tr. 61:5–23 (Sugrue); IRX-Q at 19–22, as well as a "wide body of scholarship by historians, sociologists, public health experts and other social scientists, demonstrating that areas that [were] redlined are more likely today to have various negative socioeconomic indicators, problematic environmental outcomes and problematic health outcomes." IRX-P Tr. 61:24–62:7 (Sugrue); IRX-Q at 21–22. Intervenors' totality of the circumstances expert, Mr. Borelli, confirmed at trial that nothing in his report "challenges this body of scholarship," IRX-P Tr. 796:25–797:6 (Borelli), or the history of discrimination that Dr. Sugrue identified, IRX-P Tr. 788:17–18 (Borelli).

Supreme Court found that as a result of this discriminatory history, on Staten Island today, "de facto segregation remains the norm, with moderate segregation rates between Hispanic and White residents and significant segregation between Black and White residents." IRX-A at 10. This racial residential segregation has "largely confined Black people to neighborhoods north of the Staten Island Expressway with low property values." *Id.* at 9. This finding was well supported;

that Staten Island remains racially residentially segregated was demonstrated empirically at trial and was also undisputed.[17]

The court next concluded that Staten Island's prior use of literacy tests have "had a particularly negative impact on Black and Latino New Yorkers." IRX-A at 10. This is evidence of an additional Senate Factor—a history of the use of discriminatory voting practices, *see Gingles*, 478 U.S. at 45—and evidence of this practice was also undisputed. *See* IRX-Q ¶¶ 88–89 (Sugrue Report); IRX-R at 31–32 (Borelli Report) (conceding that "New York required a literacy test in 1921" and noting that "by 1970 the literary test re-emerged as an obstacle to voting").

The court also found that the "long-term effects of" Staten Island's discriminatory history has resulted in significant gaps in the lives of Black and Hispanic populations of Staten Island and the White population to this day, impacting "'housing, education, [and] socioeconomic status' 'all of which are known to have a negative impact on political participation and the ability to influence elections.'" IRX-A at 10. And the court cited the relevant Senate Factor to which this finding related. *Id.* at 11 (finding that Petitioners presented evidence that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" to a noteworthy extent (quoting *Gingles*, 478 U.S at 44–45.)); *see also id.* at 10 (identifying evidence of disparities in education, per capita income, poverty rates, and homeownership). This conclusion was also amply supported, and the evidence that there remain significant disparities between Blacks and Hispanics as

[17] Using the dissimilarity index, "the most commonly used measure of racial segregation," IRX-Q at 14–15, Dr. Sugrue calculated the measure of racial residential segregation for Hispanics and Whites, which was 42, indicating moderate racial residential segregation, and calculated the dissimilarity value for Blacks and Whites to be 75, indicating that the groups are highly racially segregated. *Id.* at 14–15; IRX-P Tr. 58:22–59:5 (Sugrue). He also demonstrated that the majority of Blacks and Hispanics live North of the Staten Island expressway, or what many minority Staten Islanders refer to as the "Mason-Dixon line." *Id.* Tr. 55:9–20 (Sugrue); IRX-Q at 13.

compared to Whites in education, income, employment, and housing, with Blacks and Hispanics significantly disadvantaged, was also undisputed.[18]

Moreover, for each of these factors, Dr. Sugrue identified a "wide body of scholarship" that linked lower levels of education, income, employment, and homeownership with decreased levels of political participation, *see* IRX-P Tr. 62:2–7; 66:4–12; 69:7–13 (Sugrue)—evidence which Mr. Borelli failed to rebut. *See* IRX-P Tr. 67:20–68:7 (Sugrue). Based on these substantial disparities, there are significantly lower voter turnout rates for Blacks and Hispanics as compared to Whites. *See* IRX-T at 9, fig. 6 (Palmer Report) (demonstrating voter turnout disparities of 13% and 17% for Hispanics and Blacks respectively as compared to Whites in 2024, and a 20% disparity for both Hispanics and Blacks as compared to whites in 2022). Where, as here, Petitioners establish both socioeconomic disparities and lower minority voter participation, "plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation." S. Rep. No. 97-417, at 29 n.114 (1982); *see also Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1294 (11th Cir. 2020) (holding same).

The court also examined the extent to which minority candidates have been elected to political office in Staten Island and concluded that it was "low." IRX-A at 11; *see Gingles*, 478

[18] As to education, both Dr. Sugrue and Mr. Borelli demonstrated that Black and Hispanic Staten Islanders are much more likely to have less than a high school diploma as compared to White Staten Islanders, and Whites are much more likely to have graduated from college. IRX-Q at 39, fig. 7 (Sugrue Report); IRX-R at 38 (Borelli Report). As to housing, Dr. Sugrue presented unrebutted evidence of vast homeownership disparities: Whereas 76.8% of White Staten Islanders own their homes, only 43.7% of Hispanics only 35.8% of Black Staten Islanders do. IRX-Q ¶ 79, fig. 9 (Sugrue Report). Mr. Borelli offered nothing to dispute this evidence. IRX-P Tr. 808:13–25 (Borelli). And both Mr. Borelli and Dr. Sugrue's data presented significant income disparities between Blacks and Hispanics compared to Whites. *See, e.g.*, IRX-R at 44 (showing Blacks and Hispanics have incomes of less than two-thirds than that of Whites). Dr. Sugrue also presented undisputed evidence of higher levels of unemployment for Blacks and Hispanics as compared to Whites. IRX-Q at 39, fig. 8.

U.S. at 45 (examining "the extent to which members of the minority group have been elected to public office in the jurisdiction"). Again, the evidence on this factor was uniformly supportive of this conclusion. In his report, and at trial, Dr. Sugrue explained—and Mr. Borelli did not dispute—that although Black people have lived on Staten Island for more than 200 years, the first Black candidate to obtain electoral success was Debi Rose, elected to the City Council in 2009. Since then, only three Black candidates have been elected to *any* office on Staten Island. IRX-P Tr. 70:17–71:12 (Sugrue); RX-G ¶¶ 48–49 (Sugrue Rebuttal). And only one Hispanic person has been elected to any office on Staten Island in its history. Staten Islanders have never elected a Black member of Congress, Hispanic City Councilperson, or Hispanic judge. RX-G ¶¶ 48–52 (Sugrue Rebuttal). Courts routinely conclude that this factor weighs in Petitioners' favor even where there is greater representation of minority elected officials in the jurisdiction. *See Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1284 (concluding that Senate Factor 7 "weigh[ed] heavily in favor" of plaintiffs where, among other things, only 12 Black officials had ever served in Georgia's congressional delegation), *appeal pending*, No. 23-13914 (11th Cir. argued Jan. 23, 2025).

Finally, Supreme Court found that "both overt and subtle racial appeals are common in campaigns in CD-11." IRX-A at 11; *see also Gingles*, 478 U.S. at 45 (examining "the use of overt or subtle racial appeals in political campaigns"). When "candidates [make] race an issue on the campaign trail . . . the possibility of inequality in electoral opportunities increases." *Soto Palmer v. Hobbs*, 686 F. Supp. 3d 1213, 1230 (W.D. Wash. 2023), *cert. denied*, 144 S. Ct. 873 (2024). The court's decision provided three specific examples of such appeals, IRX-A at 11–12, more than enough on which to base its conclusion. Evidence of additional racial appeals were offered in Petitioners' expert reports and at trial. *See* IRX-Q at 45–52; RX-G at 14–16. Indeed, Intervenors'

own expert cited articles in his report that detailed multiple racial appeals in advertisements supportive of Representative Malliotakis in her 2020 congressional campaign. *See* IRX-R at 48 (Borelli); RX-G ¶¶ 39–42 (Sugrue Rebuttal). Dr. Sugrue explained that the advertisements incorporated common tropes in racial appeals, by linking a predominately Black, Staten Island community group—the Young Leaders of Staten Island—with "[n]egative stereotypical imagery . . . includ[ing] depictions of African Americans as criminals," RX-G ¶ 42 (Sugrue Rebuttal), even though there was "nothing riotous, criminal, or threatening" about the peaceful marches that the Young Leaders led. IRX-P Tr. 80:3–6 (Sugrue).

In sum, there was no clear error in Supreme Court's conclusion that, based almost entirely on upon unrebutted evidence from Petitioners, the totality of the circumstances—including through use of the Senate Factors—show that Black and Hispanic voting strength is being diluted in CD-11.

Intervenors attempt to cast doubt on the court's conclusion by pointing to evidence the court purportedly failed to consider, but all their claims are either factually incorrect or not relevant to the totality analysis. Even if they were true or relevant, they would fall far short of demonstrating a likelihood of success on the merits. For example, Intervenors repeatedly claim that "there [was] no evidence to support [the court's] assertion" that "de facto segregation remains the norm" on Staten Island, Int. Br. at 27; *see also id.* at 20 (purporting to find it "remakabl[e]" that the Supreme Court "credited Dr. Sugrue's 'testimony' that 'de facto segregation remains the norm'" in Staten Island). These claims are as puzzling as they are demonstrably false. Intervenors' own expert confirmed that Blacks and Whites are *highly segregated*, and Whites and Hispanics are *moderately segregated* on Staten Island. *See* IRX-P Tr. 797:10–98:18 (Borelli). More importantly, present day racial residential segregation was just one part of Petitioners' much larger demonstration of the

history and persistence of racial discrimination on Staten Island. *See e.g.*, IRX-Q at 5–52; RX-G at 2–26. As discussed, this comprehensive evidence went almost wholly unrebutted at the evidentiary hearing below.

Intervenors also claim the court erred in failing to discuss that Staten Island has allegedly made "significant progress" "in addressing racial discrimination," "has strived to end hate and discrimination," Int. Br. at 27, and that there are allegedly more hate crimes committed against Blacks in Manhattan than Staten Island, Int. Br. at 12. But, of course, that Staten Island has purportedly made progress or has "strived to end hate and discrimination" does nothing to establish any totality factor and, even if true, does not counter the extensive evidence of historic and current discrimination on Staten Island. And Intervenors' attempt to compare hate crime statistics between Manhattan and Staten Island misunderstands the relevant inquiry under the totality of the circumstances analysis. Courts look to the history of the particular jurisdiction at issue to determine whether the totality factors are satisfied; evidence from other jurisdictions is "irrelevant in assessing the totality of the circumstances in [the disputed] district." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment) (analyzing totality of the circumstances under Section 2 of the VRA).[19] As to hate crimes in particular, the evidence at trial demonstrated 32 arrests from 29 incidents of hate crimes against Black people on Staten Island in the last six years alone. As Mr. Borelli recognized at trial, even a single "hate crime is . . . appalling," IRX-P Tr. 785:9–14.

[19] This misunderstanding of the nature of the appropriate inquiry under the totality of the circumstances factors plagued much of the evidence Intervenors presented at trial, which attempted to compare Staten Island with other cities, states, or parts of the country to argue that the discrimination, disparities in socioeconomic conditions, hate crimes, and racial appeals that Dr. Sugrue identified in Staten Island was apparently less bad than the discrimination, disparities, hate crimes or racial appeals elsewhere. *See, e.g.*, IRX-R at 5, 26, 27, 37, 41, 42, 51, 61. But that evidence was useless in the appropriate inquiry, which is an "intensely local appraisal" of Staten Island. *Gingles*, 478 U.S. at 78–79.

Finally, Intervenors attempt to make hay about the fact that the court did not mention Mr. Borelli in its decision. *See* Int. Br. at 20. But there is nothing improper about that, especially considering that for each of the totality of the circumstances factors on which the court based its decision, the evidence was largely or entirely unrebutted. Indeed, the implication of Supreme Court's order is clear—it credited Dr. Sugrue's testimony and did not find Mr. Borelli's limited and flawed criticisms to be persuasive.

In addition, there was ample reason in the record for the court to credit Dr. Sugrue over Mr. Borelli. Dr. Sugrue is an award-winning, tenured historian at New York University, whose scholarship has focused on discrimination, urban history, and civil rights for more than thirty years. IRX-Q ¶¶ 1–4 & app. 1. Dr. Sugrue has performed the totality of the circumstances analysis multiple times in racial vote dilution cases, every court has found him qualified, and several have relied on his testimony and analysis. IRX-P Tr. 41:24–42:18 (Sugrue); *see also United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 593–95 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606–07 (N.D. Ohio 2008). Dr. Sugrue's reports followed historical research methodology, and he cited and relied on academic literature relevant to the totality of the circumstances factors that he addressed in his report. IRX-P Tr. 49:1–15 (Sugrue); IRX-Q at 1–52; RX-G at 1–26.

By contrast, Mr. Borelli is a partisan politician with no prior experience in racial vote dilution or civil rights cases, as an expert witness or otherwise. IRX-P Tr. 778:24–779:17 (Borelli). Prior to his engagement in this case, Mr. Borelli had never performed an analysis of the totality of the circumstances factors under the New York Constitution, the NYVRA, or Section 2 of the federal VRA, IRX-P Tr. 779:7–14 (Borelli); indeed, he had never served as an expert in any court case. And Mr. Borelli's testimony was replete with the sort of personal anecdotes common to lay

witnesses, not experts. *See, e.g.*, IRX-P Tr. 756:10–22 (Borelli) (discussing selling his "grandmother's house to a Pakistani family who moved in a couple of years ago"). His report was "riddled with errors," "ignore[d] extensive evidence of past and ongoing discrimination in housing and policing," and his opinions were "often not founded upon carefully adduced evidence, reliable data, or accurate reportage." RX-G at ¶ 64.

Respondents do not challenge the court's totality analysis, and Intervenors' critiques of small portions of the evidentiary record fall far short of meeting their burden of demonstrating a likelihood of success on the merits of their challenge. Contrary to their claims, the court came to the only reasonable conclusion that the largely unrebutted evidence supported, which is that the majority of the Senate Factors demonstrate that under the totality of the circumstances the "district lines for CD-11 'result in the denial or abridgement of racial or language minority voting rights.'" IRX-A at 12 (quoting N.Y. Const. art. III, § 4(c)(1)).

3. Petitioners' Illustrative Map demonstrated that vote dilution in CD-11 can be remedied.

Finally, expert demographer Bill Cooper presented a version of CD-11 combining Staten Island and Lower Manhattan, which showed that it is possible to draw CD-11 in a way that allows Black and Hispanic voters in the district to influence the outcome of elections, where racially polarized voting is substantially mitigated, and the Black and Hispanic–preferred candidate often succeeds. *See* IRX-S § IV & Ex. H-1 (Cooper Report). In so doing, Mr. Cooper did not expressly consider race or seek to achieve any racial target. IRX-P Tr. 337:21–338:1 (Cooper). Instead, while appropriately balancing all traditional districting criteria, Mr. Cooper produced a highly competitive district where an increased Black and Hispanic population is sufficiently large to "influence electoral outcomes" in favor of their candidates of choice. *See* IRX-A at 13. That is all

that the law required of Petitioners to demonstrate a new congressional map is the necessary and appropriate remedy.

No party disputed that the Illustrative Map would create a highly competitive district, where if Black and Hispanic voters continue to vote as a bloc for a shared candidate of choice, their preferred candidate will *usually* succeed. Respondents' own expert, Mr. Thomas Bryan, opined that that under the Illustrative Map, CD-11 would "become[] a dead heat" district, RX-1 ¶ 194 (Bryan Report); *see also id.* ¶ 201 (Bryan Report), meaning that candidates from different parties—backed by different coalitions of voters—could win in any given election.

Dr. Palmer's and Mr. Cooper's testimony demonstrated that the Illustrative Map represents a district where "members of the majority help a large enough minority to elect its candidate of choice." IRX-A at 14 (quoting *Bartlett*, 556 U.S. at 13). Dr. Palmer explained that the Illustrative Map would lead to less racially polarized voting, where an average of 41.8 percent of White voters would support the Black and Hispanic candidate of choice—a stark contrast to the present, highly polarized map. IRX-T ¶ 25 (Palmer Report). And under the Illustrative Map, the Black and Hispanic candidate of choice would succeed in many—but not all—elections, resulting in a competitive district where different coalitions of voters have a shot at winning. *See id.* ¶ 26, fig. 5, tbl. 3 (Palmer Report). Even so, with less than half of the White voters in the illustrative district supporting the Black and Hispanic–preferred candidate—an improvement on the intense polarization under the current CD-11, but a far cry from a full pendulum swing—different political coalitions would need "to pull, haul, and trade to find common political ground" to succeed. *Johnson*, 512 U.S. at 1020. And as Dr. Palmer's testimony shows, Black and Hispanic voters must continue voting cohesively to succeed in the district, ensuring these voters are the decisive factor

influencing any electoral victory for their candidate of choice. *See* IRX-A at 13; IRX-T ¶¶ 21–26, figs. 4 & 5 (Palmer Report).

As Mr. Cooper's testimony showed, the Illustrative Map likewise complied with other traditional redistricting criteria, further proving that a remedial district in this case is both possible and required.[20] The Illustrative Map ensures that CD-10 and CD-11 would maintain equal populations, IRX-S ¶ 26 (Cooper Report); it is contiguous via the Staten Island Ferry, on which tens of thousands of New Yorkers traverse Upper New York Bay on a daily basis, *id.* ¶¶ 22, 37; it is reasonably compact according to traditional metrics, particularly as compared to other districts in New York, *id.* ¶¶ 52–58; it respects preexisting boundaries and subdivisions by maintaining the same number of borough splits as the existing map and respecting neighborhood boundaries, *id.* ¶ 61; and it respects existing communities of interest—even improving upon the existing plan by uniting Chinese-American communities of interest across Brooklyn in CD-10 with Sunset Park and Chinatown, consistent with members of this community's advocacy before the IRC, *id.* ¶ 59; IRX-P Tr. 291:1–292:8.

To be sure, Respondents' and Intervenors' experts quibbled with how the Illustrative Map measured against these criteria, disputing whether it is the *best* configuration of the district or whether it improves upon the current plan. But all that Petitioners had to show was that another permissible configuration *could* be drawn that would remedy the vote dilution the Supreme Court decisively concluded Petitioners had already proven. *See Clarke*, 237 A.D.3d at 39 (explaining that NYVRA plaintiffs must establish that it is feasible to enact an "alternative" map that "would

[20] In New York, these criteria include equal population, *see* N.Y. Const. art. III, § 4(c)(2); contiguity, *see id.* art. III, § 4(c)(3); compactness, *see id.* art. III, § 4(c)(4); not discouraging competition or favoring one party over another, *see id.* art. III, § 4(c)(5); and consideration of communities of interest and political subdivisions, *see id.*

allow the minority group to 'have equitable access to fully participate in the electoral process'" (quoting N.Y. Elec. Law § 17-206(5)(a))). The Illustrative Map accomplishes just that. And as explained in the section below, Supreme Court's order properly leaves to the Legislature the question of what configuration of CD-11 *best* remedies vote dilution while respecting traditional redistricting criteria.

D. Supreme Court's remedial order properly entrusts the IRC and the Legislature with drawing an appropriate new district and does not violate federal law.

The Constitution requires that when a court invalidates a redistricting plan "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." N.Y. Const. art. III, § 5. It also provides that "at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." *Id.* art. III, § 5-b(a). In recognition of these constitutional provisions—and respecting the Legislature's role in drafting congressional district plans—Supreme Court ordered the IRC to prepare a new congressional districting map for submission to the Legislature. IRX-A at 18. If this Court lifts the automatic stay, the IRC and the Legislature will be able to fully fulfil their constitutional duties and enact a map that does not dilute the voting strength of Black and Hispanic voters.

Respondents and Intervenors make two arguments as to the court's remedy; first, that it violates the Elections Clause of the U.S. Constitution; and second, that the order amounts to an unconstitutional racial gerrymander. Neither claim succeeds.

1. Supreme Court's remedy does not violate the Elections Clause.

Nothing in Supreme Court's order below violates the Elections Clause of the U.S. Constitution. That clause provides that each state Legislature shall "prescribe[]" "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," but reserves to

Congress the right "at any time by Law [to] make or alter such Regulations, except as to the Places of chusing Senators." U.S. Const. art. I, § 4, cl. 1. State legislatures act under the authority granted to them in the Elections Clause when they enact congressional districting plans.

Pointing to the U.S. Supreme Court's recent decision in *Moore v. Harper*, Intervenors wrongly insist that Supreme Court's order transgressed the Elections Clause by intruding up the Legislature's redistricting authority. *See* Int. Br. § I.D. But, as a threshold matter, Intervenors gloss over *Moore*'s primary conclusion; namely, that "State courts retain the authority to apply state constitutional restraints when legislatures act under the power conferred upon them by the Elections Clause." *Moore v. Harper*, 600 U.S. 1, 37 (2023). That is precisely what occurred here. Indeed, New York law contemplates that state courts will review state redistricting plans for state law violations. Article III, Section 5 empowers state courts "[i]n any judicial proceeding relating to redistricting of congressional or state legislative districts," to invalidate "any law establishing congressional or state legislative districts found to violate the provisions of this article." N.Y. Const. art. III, § 5. Supreme Court's order below properly exercised this review authority, and in doing so complied with *Moore*'s proscription that a "state legislature may not create congressional districts independently of requirements imposed by the state constitution with respect to the enactment of laws." *Moore*, 600 U.S. at 26 (internal quotation marks and citation omitted).

Nevertheless, Intervenors claim that by reading Section 4(c)(1) to allow for crossover districts to remedy racial vote dilution, the court "impermissibly distort[ed] state law" and "disrespect[ed]" the role of the state Legislature. Int. Br. at 47 (citation modified). As explained above, that argument is wrong on the merits. *See supra* § I.B (discussing Article III's text, the legislature's understanding of Article III, and caselaw analyzing Article III's scope, all of which interpret the constitutional provision to be broader than the federal VRA). But more fundamentally,

mere disagreement with a state court's interpretation of a state constitution does not amount to an Elections Clause violation, as *Moore* confirms. 600 U.S. at 26. And that is particularly true where, as here, state law expressly charges courts with such a task. *See* N.Y. Const. art. III, § 5. Intervenors' suggestion that Supreme Court's order "disrespected" the Legislature is particularly outlandish, given that Legislature itself confirmed in the NYVRA that New York's "constitutional guarantees" like Section 4(c) "substantially exceed the protections for the right to vote provided by the constitution of the United States." N.Y. Elec. Law § 17-200. Further still, the only legislators who are parties to this case—Senate Majority Leader and President *Pro Tempore* Stewart-Cousins and Assembly Speaker Heastie—share *Petitioners'* view of Section 4(c). *See* IRX-J at 3. Indeed, the only party here that risks disrespecting the Legislature are the Intervenors, who insist that New York enacted Section 4(c) to be nothing more than a pointless redundancy of existing federal law. In contrast, reading Section 4(c) as broader than the federal VRA, and to permit a crossover district remedy, as the decision below did, furthers the Legislature's own interpretation of Section 4(c).

Next, Intervenors erroneously claim that Supreme Court's "sua sponte" interpretation of Section 4(c) constitutes a "radical departure" from New York's principles of constitutional interpretation, and that the court should instead have "examine[d] the law of the State as it existed prior to the action of the state court." Int. Br. at 46–47. This confused argument makes little sense. First, all parties agree this case presents a matter of first impression, so it is far from clear what preexisting state law Intervenors expected the court below to draw upon. Moreover, Supreme Court *did* root its holding in existing state law, by concluding that Section 4(c)—like the NYVRA—eschews the majority-minority requirement Intervenors and Respondents seek to impose upon it. *See Clarke*, 237 A.D.3d at 25, 37–38 (recognizing that the "NYVRA . . . does not require the first *Gingles* precondition," and that the U.S. Supreme Court "has never said that

[*Gingles* factor 1] was required by the constitution, as opposed to resulting from a statutory interpretation of section 2"). It is also unclear what Intervenors mean by "sua sponte"—nothing about the court's decision to interpret Section 4(c) was of its own accord; Petitioners as well as Respondents and Intervenors asked the court to construe Article III in the first instance. Accordingly, there is nothing surprising about Supreme Court's articulation of a legal standard for Section 4(c). And contrary to Intervenors' claims, Supreme Court did not simply invent that standard whole cloth; rather, all of the elements of the crossover district that the court established came from decisions of the U.S. Supreme Court. *See* IRX-A at 13–15 (citing *LULAC v. Perry*, 548 U.S. 399 (2006)).

Nor does the court's remedy here "arrogate[] to [the court] the power vested in state legislatures to regulate federal elections." Int. Br. at 47. The court did not purport to draw new district lines on its own, nor did it simply adopt Petitioners' Illustrative Map. Rather, in recognition of the principal role the IRC and Legislature play in drawing New York's congressional maps, it ordered those bodies to enact a new congressional plan pursuant to the procedures in the Constitution. *See* IRX-A at 15–18.

In sum, Supreme Court properly construed and applied a duly-enacted provision of the New York Constitution—a task consistent with its duties. *See People ex rel. Adsit v. Allen*, 42 N.Y. 378 (1870) ("The constitution, as well as the statutes, is the law of this State, and it is the duty of courts to decide upon and construe the former, as well as the latter."); *see also Moore*, 600 U.S. at 34 ("State courts are the appropriate tribunals . . . for the decision of questions arising under their local law, whether statutory or otherwise." (alteration in original)). While Intervenors complain the court went too far in construing Section 4(c) to permit crossover districts, that hardly amounts to an Elections Clause violation, particularly given the U.S. Supreme Court's recognition

that state legislatures are free to provide for the creation of crossover districts "as a matter of legislative choice or discretion." *Bartlett*, 556 U.S. at 23. Here, Supreme Court merely recognized that the Legislature and New York voters accepted *Bartlett*'s invitation to do so. Intervenors' disagreement with the court's construction does not transform its holding into a violation of the Elections Clause.

2. Supreme Court did not order the IRC to propose or the Legislature to enact a racial gerrymander.

Intervenors next contend that Supreme Court effectively ordered the IRC—and ultimately the Legislature—to violate the Equal Protection Clause of the U.S. Constitution by compelling the creation of a racial gerrymander. That argument is both premature and fails on its own terms. To start, Respondents' and Intervenors' equal protection arguments put the cart before the horse—they must wait to see what the remedial district actually looks like before rushing to declare it unlawful. *See, e.g.*, *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sep. 02, 2023) (rejecting racial gerrymander defense because "there [is] no specific district under which this Court could evaluate whether racial gerrymandering occurred" and proponents could not show "that *any* remedial district" would "necessarily" be a racial gerrymander), *rev'd on other grounds*, 375 So. 3d 335 (Fla. Dist. Ct. App. 2023). Supreme Court was therefore right not to consider whether a yet-to-be-drawn district is a racial gerrymander. And because Respondents and Intervenors do not yet even have any map to challenge, their equal protection arguments stand little chance of success on appeal.

The argument also fails on the merits. Intervenors and Respondents argue that because the court's order below referred to race, whatever district the IRC and Legislature adopt will necessarily trigger strict scrutiny. *See* Resp. Br. at 34; Int. Br. at 41. This argument misunderstands remedies in racial vote dilution cases and flouts decades of precedent. The U.S. Supreme Court

"never has held that race-conscious state decisionmaking is impermissible in all circumstances." *Shaw v. Reno*, 509 U.S. 630, 642 (1993) (emphasis omitted). "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995); *see also Shaw*, 509 U.S. at 646. The U.S. Supreme Court has therefore rejected the "contention that mapmakers must be entirely 'blind' to race" when drawing districts to comply with the Voting Rights Act, *Allen v. Milligan*, 599 U.S. 1, 33 (2023) (plurality opinion), and reaffirmed "[t]he line that we have long drawn . . . between consciousness and predominance" of race, *id.*

Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Diaz v. Silver*, 978 F. Supp. 96, 116–17 (E.D.N.Y. 1997) (per curiam) (alteration in original), *aff'd*, 522 U.S. 801 (1997). And doing so requires looking at an actual district—not merely an abstraction. The racial-predominance inquiry is a "holistic analysis" that cannot turn purely on the fact that a district is drawn to remedy otherwise unlawful dilution of minority voting strength. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017) ("[T]he use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance.); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's districting decision." (citation modified)). And as the U.S. Supreme Court has held, a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Milligan*, 599 U.S. at 31 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting

criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices"). Here, Respondents and Intervenors simply have no idea whether or how the IRC's remedial will comply with traditional redistricting criteria because it does not exist yet.

Respondents wrongly claim that the court's reference to "adding Black and Latino voters from elsewhere" to a remedial district containing Staten Island "alone establishes that race is the predominant" and "determinative" factor in any map that the Legislature will eventually adopt. Resp. Br. at 34. At most, however, that establishes awareness of race, but map drawers will be aware of race in every remedial district created in response to a racial vote dilution claim. *See Allen*, 599 U.S. at 32–33. In *Allen v. Milligan*, the Court declined to adopt the "flaw[ed]" view that districts drawn to remedy vote dilution under Section 2 of the VRA necessarily trigger strict scrutiny because "they were designed to hit 'express racial targets,'" regardless of the mapmakers' treatment of other traditional, race-neutral redistricting criteria. *Id.* at 32–33 (alteration omitted). It recognized the fallacy in that approach: were the Court to credit such an approach, "racial predominance [would] plague[] *every single illustrative map ever adduced*" to show that racial vote dilution can be remedied. *Id.* at 33. But as the Court aptly pointed out, "[t]hat is the whole point of the enterprise." *Id.* That "express racial targets" in *Allen* were insufficient to trigger strict scrutiny there, makes clear that the court's reference to including an unspecified number of Black and Hispanic voters among the many additional voters that "must be joined" with Staten Islanders to constitute a properly sized and properly constituted congressional district, IRX-A at 12, also does not trigger strict scrutiny.

In addition, nowhere in the decision below did Supreme Court purport to instruct the Legislature to ignore other redistricting criteria. This matters because for strict scrutiny to apply,

a challenger "must prove that the State 'subordinated' race-neutral districting criteria such as compactness, contiguity, and core preservation to 'racial considerations.'" *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (citation omitted). To assume that the legislature will invariably do so—as Respondents' and Intervenors' arguments do—flips the operative presumption in racial gerrymandering claims on its head. The Supreme Court has made clear that "in assessing a legislature's work" in a racial gerrymandering claim, courts must "start with a presumption that the legislature acted in good faith." *Id.* at 6. Indeed, "courts must exercise extraordinary caution in adjudicating claims that a State has drawn district lines on the basis of race." *Id.* at 7 (internal quotation marks and citation omitted). Assuming the Legislature will do so before it has even attempted to draw a new map ignores these commands.

Nor does Supreme Court's conclusion that minority voters should have influence in the selection of candidates impermissibly "turn[] entirely on the racial composition of the electorate" and therefore purportedly require strict scrutiny. *See* Resp. Br. at 35. That requirement simply ensures that the remedial district will remedy the racial vote dilution by "increas[ing] the influence of minority voters," whose votes the court has already found to be diluted. IRX-A at 27. In this way, the remedy is no different than a remedial district created under the federal VRA. Under the VRA, the purpose of "the creation of [a] majority-[minority] district[]" is to "enhance the influence of [minority] voters" in that district. *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993). Nevertheless, "[s]trict scrutiny *does not apply* . . . to all cases of intentional creation of majority-minority districts." *Bush v. Vera*, 517 U.S. 952, 958 (1996) (plurality opinion) (emphasis added); *see also Clarke*, 237 A.D.3d at 22, 34 (For "decades [the Supreme] Court and the lower federal courts . . . have authorized race-based redistricting as a remedy" to racial vote dilution under the Federal Voting Rights Act, but "[n]o court has ever suggested . . . that strict scrutiny applies to section 2 .

. . .” (citation omitted) (quoting *Sanchez v. City of Modesto*, 145 Cal. App. 4th 660, 682 (2006))). So too here. That the standard for the creation of a crossover district ensures that minority voters will have influence in the remedial district does not automatically subject any district created under it to strict scrutiny.

Even if strict scrutiny were to apply, a properly drawn map that remedies the dilution of Black and Hispanic voters could meet that standard. Contrary to Respondents' and Intervenors' claims, *see* Resp. Br at 36–37, Int. Br. at 42–43, the IRC, and ultimately the Legislature, would have a compelling interest to consider race in redrawing the map in response to the Supreme Court's order. The U.S. Supreme Court has long "assumed that complying with the [federal] VRA is a compelling state interest," *Abbott v. Perez*, 585 U.S. 579, 587 (2018), and there is no reason to treat compliance with the New York Constitution's racial vote dilution prohibition any differently. Indeed, the state of New York also has a "compelling governmental interest[]" in "eliminat[ing] discrimination against . . . minorities." *N.Y. State Club Ass'n v. City of New York*, 69 N.Y.2d 211, 223 (1987), *aff'd*, 487 U.S. 1 (1988). And the U.S. Supreme Court has made clear that racial discrimination in voting is "an insidious and pervasive evil" that requires "stern[] and . . . elaborate measures" to fight it. *South Carolina v. Katzenbach*, 383 U.S. 301, 309 (1966).[21] Nothing in the U.S. Supreme Court's extensive body of law would justify finding that a state's interest in abiding by its *own constitution* is somehow less compelling than respecting federal statutory law. And Respondents and Intervenors cite none.

[21] For this reason, and contrary to Respondents' and Intervenors' claims, the substantial government interest underlying any remedial district would be to remedy the racial vote dilution identified by the court, and would not rely on "generalized assertion[s] of past discrimination." *See* Resp. Br. at 36; Int. Br. at 42–43.

Any remedial district the Legislature enacts is also likely to satisfy narrow tailoring. Respondents' and Intervenors' arguments to the contrary omit the U.S. Supreme Court's well-established standard for assessing narrow tailoring in vote-dilution cases. In the VRA context, the Supreme Court has held that "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott*, 585 U.S. at 587 (citation omitted). Put differently, "to meet the 'narrow tailoring' requirement," a state must show "that it had 'a strong basis in evidence' for concluding that the [operative racial vote dilution provision] required its action." *Cooper*, 581 U.S. at 292. As explained *supra* § I.C.2, the Legislature would have such a "strong basis in evidence" to draw a remedial map because of Supreme Court's conclusion (based on a substantial body of unrebutted evidence) that under the totality of the circumstances Black and Hispanic voting strength was being diluted in CD-11. This showing plainly supplies the requisite "good reasons" in support of a remedial map. *See Rose v. Sec'y, State of Ga.*, 87 F.4th 469, 477 (11th Cir. 2023) ("In the context of . . . single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-member districts to remove the plan's dilutive effect." (citing *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring)).

None of the cases cited by Respondents or Intervenors counsel otherwise. For example, this case is unlike *Cooper*, in which the Supreme Court considered whether North Carolina had "a good reason" to think it would be liable under the VRA if it failed to draw an additional majority-minority district. *See* 581 U.S. at 301. There, the Court held that the legislature lacked "good reasons" because there was "no evidence" of "effective white bloc-voting," which, like under New York law, is required to establish racial vote dilution. *See id.* at 302. Here, by contrast, there was

extensive evidence of racially polarized voting in CD-11, including that White voters consistently voted as a bloc to defeat Black and Hispanic-preferred candidates. *See supra* § I.C.1; *see* IRX-A at 8–9. And in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Supreme Court held that the Wisconsin Supreme Court misapplied strict scrutiny precedent where it approved an expressly race-based map while "believ[ing] that it had to conclude only that the VRA *might* support race-based districting—not that the statute required it." 595 U.S. 398, 403 (2022). Here, the record confirms that the current configuration of CD-11 violates the New York Constitution's prohibition on minority vote dilution and *must* be altered to remedy it. *See supra* § I.C.[22] Although the remedial map would not properly be subject to narrow tailoring, the evidence provided in support of Petitioners' claim would be enough to satisfy it for a properly drawn map.

II. Petitioners will suffer irreparable harm if this Court grants the motion to stay or leaves any automatic stay in place.

As the foregoing shows, it is *Petitioners*, not Respondents and Intervenors, who are at risk of irreparable harm if this Court grants the motion to stay. Petitioners' votes are being unlawfully diluted by the current configuration of CD-11, and that infringement upon their right to vote is quintessential irreparable harm. *See Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (explaining any impingement on the right to vote is "irreparable harm"); *Hoblock v. Albany Cnty. Bd. of Elections*, 422 F.3d 77, 97 (2d Cir. 2005) (similar). This is only reinforced by Supreme

[22] Nor does Respondents' citation to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), move the needle at all here either. Respondents cite *SFFA* for the proposition that the court's redistricting standard lacks any limiting principle, Resp. Br. at 37, but limiting principles abound, including the requirement that petitioners demonstrate racially polarized voting, that the totality of the circumstances demonstrate the minority group has less ability to participate in the political process, and that in a remedial district, minority voters are a decisive voting group. IRX-A at 12; *See also Coads v. Nassau County*, 86 Misc. 3d 627, 645 (N.Y. Sup. Ct., Nassau County 2024) ("[S]eeking to equate [racial vote dilution] to affirmative action programs which have been subject to strict scrutiny . . . is a false equivalence and a misguided approach.").

Court's factual findings and the evidence below, which highlighted how voting on Staten Island is highly polarized by race, *see* IRX-A at 8–9 (crediting Petitioners' evidence of racial polarization), and the difficulties that Black and Hispanic Staten Islanders face in participating in the political process, *see id.* at 9–13 (crediting Petitioners' "testimony" and "empirical data" establishing the ongoing "impacts" Black and Hispanic voters on Staten Island); *see also* IRX-T (Palmer Report); IRX-Q (Sugrue Report).

This irreparable harm is by no means cabined to Petitioners; tens of thousands of other voters on Staten Island are suffering from unlawful racial vote dilution as well. *See* IRX-A at 12–13; *see also Hunter v. Hamilton Cnty. Bd. of Elections*, 635 F.3d 219, 244 (6th Cir. 2011) (explaining public also has a strong interest in the preservation of voting rights). That factual finding weighs overwhelmingly in favor of ensuring Petitioners can obtain timely relief. As the Court of Appeals has held, it is simply not acceptable for "the people of this state" to be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider*, 38 N.Y.3d at 521; *cf. Clarke v. Town of Newburgh*, 84 Misc. 3d 475, 485 (N.Y. Sup. Ct., Orange County 2024) (recognizing the irreparable harm of conducting elections under unlawful district lines). Granting Respondents and Intervenors their requested stay would therefore inflict immediate and irreparable harm on Petitioners and other voters in CD-11, making it all but certain that upcoming elections will be conducted under an unlawful map.

Further compounding the prospect of irreparable harm to Petitioners is the automatic staying of Supreme Court's executory order to the IRC to draw a remedial map. *See* CPLR § 5519(a). Simply put, the prohibitory injunction Petitioners have obtained will be meaningless if a constitutional map cannot be drawn in due course—by either the IRC and/or Legislature—to replace the unlawful current configuration of CD-11. A remedy that never materializes is no

remedy at all. *Cf. Bhatnagar v. Surrendra Overseas Ltd.*, 52 F.3d 1220, 1227–28 (3d Cir. 1995) (explaining in some instances the "the prospect of judicial remedy becomes so temporally remote that it is no remedy at all"). Having proven the existence of unconstitutional vote dilution with overwhelming evidence—credited by Supreme Court—Petitioners are entitled to a map that in fact redresses their harm. *See Harkenrider*, 38 N.Y.3d at 521. Accordingly, as explained below, the automatic stay must be lifted so that the IRC can conduct the work ordered by Supreme Court; delay on this score is monumentally prejudicial to Petitioners, as it risks depriving them of any practical relief before the 2026 elections.

In contrast, Respondents and Intervenors present weak evidence of irreparable harm. Their arguments rely almost entirely on the alleged confusion caused by Supreme Court's order, and specifically the fact that the current map is enjoined but that—due to the automatic stay under § 5519(a)—the IRC is under no active order to draw new maps. *See* Resp. Br. at 39–41; Int. Br. at 49–50. But the solution to any such confusion is as simple as it is obvious: this Court can lift the automatic stay and permit the IRC to move forward in compliance with Supreme Court's order, such that voters, candidates, and the parties all have clear and settled district lines. *See infra* § III.

The only answer Respondents and Intervenors have to this clean and straightforward solution is to argue it is not practicable to draw a new map in time. That is obviously wrong. In *Harkenrider*, the Steuben County Supreme Court first declared New York's congressional maps unlawful in late March of a midterm election year—more than two months later than Supreme Court's order here—and a remedy was put into place for that election. *See Harkenrider v. Hochul*, 204 A.D.3d 1366 (4th Dep't 2022). While the remedy there required moving the date of New York's congressional primary elections, there is little prospect of similar disruption here given the much earlier date of the Supreme Court's order. *See, e.g.*, Stavisky Aff. ¶ 5(a) (observing the

materially later dates of decision in *Harkenrider*). Indeed, Co-Executive Director Stavisky's affirmation more broadly explains why relief here is feasible and how it is a stay that would prove very disruptive to the Board's preparations for the 2026 elections. *See generally* Stavisky Aff.

Finally, Intervenors passingly suggest they further face the prospect of irreparable harm because any district drawn by the IRC will be a racial gerrymander. *See* Int. Br. at 51. But as explained elsewhere, those concerns are entirely speculative and premature—no new district even exists at this juncture. Moreover, New York voters—through their adoption of the 2014 redistricting amendments—have designated the IRC and the Legislature as the proper authorities for drawing congressional districts. *See* N.Y. Const. art. III, § 5. Intervenors cannot establish irreparable harm by simply assuming those lawfully-charged bodies will carry out their duties in a harmful manner. *See Lesser v. State*, 27 A.D.2d 642, 642 (4th Dep't 1966) ("We cannot now speculate as to what the State may do or presume that the State will at some future time act unlawfully. If it does the claimant may seek an appropriate remedy at that time."); *see also Linde v. Arab Bank, PLC*, 706 F.3d 92, 117 (2d Cir. 2013) (rejecting theory of irreparable harm that relies upon speculation). And the IRC—and surely the Legislature—are entitled to a presumption that they will act lawfully and in good faith. *See Magnotta v. Gerlach*, 301 N.Y. 143, 149 (1950) ("The general presumption is that public officials, as well as boards, act honestly and in accordance with law."); *Entergy Nuclear Indian Point 2, LLC v. N.Y. State Dep't of Env't Conservation*, 23 A.D.3d 811, 813–14 (2005) (explaining that "[a]ctions []taken by an administrative entity are cloaked with a presumption of regularity" and thus are "presumed to be valid unless proven otherwise" (first alteration in original) (citations omitted)).

III. The Court should exercise its discretion to lift any automatic stay under § 5519 so that the IRC can implement a proper remedy and prepare for the 2026 elections.

In view of the foregoing, the Court should not only deny Respondents' and Intervenors' motions to stay—it should also lift any automatic stay currently preventing the IRC from completing its duty to draw a remedial map. This Court has discretion under CPLR § 5519(c) to "vacate, limit or modify" automatic stays. Vacatur is warranted where a moving party is likely to prevail on appeal, and the pendency of an automatic stay causes it "[u]ndue hardship." *McLaughlin*, 4 Misc. 3d at 969; *see also see also DeLury*, 48 A.D.2d at 405 (listing irreparable harm and likelihood of success as factors for lifting automatic stay). Vacatur is especially warranted where "the public interest and welfare require" it. *Freeman*, 33 A.D.2d at 975.

This case squarely fits the circumstances warranting vacatur. In addition to being likely to prevail on appeal, *supra* Arg. § I, Petitioners will be irreparably harmed should New York be left without a lawful map in time for the 2026 elections, *supra* Arg. § II. The most orderly way to prevent that irreparable harm is to ensure that the IRC's remedial process can be timely completed now.[23] Otherwise, Petitioners will be denied an effective remedy and again forced to vote under maps drawn in contravention of the State's constitution, an outcome Intervenors themselves seem to acknowledge. Int. Br. at 4 (suggesting relief will follow only "after the 2026 elections" should Petitioners prevail on appeal).

[23] In the event that the Legislature is unable to pass a remedial map with enough lead time before the 2026 election, judicial remedies may still be available—namely, appointing a special master to implement a new remedial map on its own. The Court of Appeals took that approach in *Harkenrider*, when it invalidated the 2021 congressional and state senate maps as both procedurally and substantively unconstitutional. 38 N.Y.3d at 517, 520. Since then, however the First Department has indicated that court-enacted maps are appropriate only where "time constraints created by the electoral calendar" make a legislative remedy impossible.

Respondents, by contrast, will suffer no irreparable harm should the Court vacate the automatic stay, because allowing the IRC to draw a remedial map in accordance with the trial court's order will still permit time to return to the "status quo" in the unlikely event Respondents and Intervenors prevail. *State v. Town of Haverstraw*, 219 A.D.2d 64, 65 (2d Dep't 1996). In other words, permitting the IRC to simply proceed with its work will not necessarily grant Petitioners a "benefit[] from the order . . . while the loser appeals." *Lopez v. N.Y.C. Hous. Auth.*, 178 Misc. 2d 719, 720 (N.Y. Civ. Ct. 1998). In contrast, if Supreme Court's order is later affirmed without undertaking the preparation necessary to enact a remedial map, the impending elections will face the exact kind of "chaos" Respondents and Intervenors warn of. Int. Br. at 49; Resp. Br. at 41. Moreover, holding up the IRC's work does nothing to advance the rationale underlying New York's automatic stay provision, which is to "stabilize the effect of adverse determinations on governmental entities." *Summerville v. City of New York*, 97 N.Y.2d 427, 434 (2002). Here, the only existing threat to the stability of New York's elections is the stay preventing the IRC from even beginning the process of remedying the State's unlawful congressional map.

This case also presents the precise conditions under which vacatur directly serves the "public interest." *Freeman*, 33 A.D.2d at 975. As an initial matter, the public interest and welfare certainly require New Yorkers to have *some* lawful congressional map in the middle of an election year. *Cf. Perry v. Perez*, 565 U.S. 388, 392 (2012) (per curiam) (noting the federal constitution makes drawing congressional lines "primarily the duty and responsibility of the State"). Second, Petitioners prevailed in their challenge to New York's congressional map under Article III, Section 4(c)(1)—which the public itself voted to adopt into the State's constitution. In outlawing the practice of racial vote dilution, the People declared it the interest of the public to root out electoral maps that result in less opportunity for minorities to participate in the electoral process. N.Y.

Const. art. III, § 4(c)(1). If the stay remains, the Board of Elections will be unable to even "prepare for the *contingency*" that, at the conclusion of this litigation, a new map will need to be implemented in time for the 2026 election. *See* RX-R (Aff. Raymond J. Riley, III) ¶ 26 (emphasis added); *see also* Stavisky Aff. ¶ 7 (explaining a stay is "not helpful" to finalizing New York's congressional map because it would "literally ensure[] delay should" Supreme Court's order be affirmed). Delaying such preparations thus generates a substantial risk that the Board will not be able to implement a remedial map in time for the 2026 election. The public interest clearly lies with vacating the automatic stay and allowing the 2026 elections to be conducted under a remedial, constitutional map starting immediately.

CONCLUSION

For the foregoing reasons, the Court should deny Intervenors' and Respondents' motion for a stay and vacate any existing automatic stay of Supreme Court's decision under CPLR § 5519(a).

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Respectfully submitted,

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**Pro hac vice* application pending