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

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

Petitioners,

-against-

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

Respondents,

-and-

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

Intervenor-Respondents.

Appellate Division Case No.: 26-00384

NY County Index No.: 164002/2025

APPELLANTS-RESPONDENTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF MOTION FOR A DISCRETIONARY STAY AND LEAVE TO APPEAL, AND IN OPPOSITION TO CROSS-MOTION TO VACATE AUTOMATIC STAY

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PRELIMINARY STATEMENT

Appellants respectfully submit this reply memorandum of law in further support of their motion for a stay pending appeal and for leave to appeal, and in opposition to Petitioners' cross-motion seeking to lift the automatic stay pursuant to CPLR 5519(c). Appellants adopt and expressly incorporate herein the arguments made by the Intervenor-Respondents in their reply and opposition to the cross-motion.

As Appellants explained in their moving papers, Supreme Court's Order is so deeply and irremediably flawed that it cannot possibly be affirmed. Among the many independent reasons for reversal, its cart-before-the-horse approach of finding liability without proof of a viable, undiluted alternative is one of its most fundamentally egregious errors. Even the *amici* who proposed Supreme Court's adopted standard, Harvard Law School Professors Nicholas Stephanopoulos and Ruth Greenwood, and who "support the development of racial vote dilution claims under the New York Constitution," felt compelled to advise this Court that Supreme Court's Order is erroneous. As they explain, Supreme Court "*went astray*," "*made a serious mistake in its decision*," and "*failed to apply its own standard* before imposing liability."[1] This is because Supreme Court incorrectly "believed that vote

[1] NYSCEF Doc. No. 31, Amicus Brief of Ruth Greenwood and Nicholas Stephanopoulos, dated February 4, 2026 ("Harvard Profs' Amici Brief"), at 3, 12, 19 (emphasis added).

dilution liability could be proven solely based on racially polarized voting, historical and ongoing discrimination, and a lack of current representation for minority voters—without determining whether a coalition crossover district could actually be drawn."[2] Supreme Court's approach, they add, "*is at odds with both the concept of, and the case law on, vote dilution*" because "a group's representation can be deemed diluted only if a showing has been made that a reasonable alternative policy would improve the group's representation."[3] Appellants made this same point in their moving papers.[4] For this reason, Professors Greenwood and Stephanopoulos agree that "*Congressional District 11 should not be invalidated* unless and until a court concludes that this standard has been met."[5]

This error is so bungling that another set of *amici*—"national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims," including the New York Civil Liberties Union, the NAACP Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Asian American Legal Defense and Education Fund—also argue that Supreme Court's Order is fundamentally flawed.[6] These civil rights and racial justice Amici agree with

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[2] *Id.* at 3.
[3] *Id.* at 3 (emphasis added).
[4] Appellants' Mem. at 20-23.
[5] Harvard Profs' Amici Brief at 4 (emphasis added).
[6] NYSCEF Doc. No. 36, Amicus Brief of New York Civil Liberties Union, the NAACP Legal Defense and Education Fund, LatinoJustice PRLDEF, and the Asian American Legal Defense and Education Fund, dated February 4, 2026 ("Civil Rights and Racial Justice Groups' Amici Brief"), at 1.

Appellants and Professors Greenwood and Stephanopoulos that Supreme Court "*ignored an essential prerequisite to proving vote dilution: evidence that there is an effective remedy for the alleged dilution*."[7] They likewise explain that a crossover vote dilution claim "requires proof from a petitioner that it is possible to draw a reasonable crossover district that would enable the minority group to elect their candidates of choice."[8] "But Supreme Court skipped this necessary step in its liability analysis."[9]

Petitioners do not seriously contend with this fatal error in their sixty-page brief. Instead, in a footnote, they wave away the critiques of Professors Greenwood and Stephanopoulos as mere "scholarly concerns."[10] And they do not offer any argument or authority opposing Appellants' showing that they cannot establish a *prima facie* case without proof that an alternative, undiluted practice is reasonably available.

For these reasons, set forth in detail below, this Court should deny Petitioners' cross-motion and grant Appellants' motion seeking a stay of those portions of the Order not automatically stayed by CPLR 5519(a)(1).

[7] Civil Rights and Racial Justice Groups' Amici Brief at 2 (emphasis added).
[8] *Id.* at 3.
[9] *Id.* at 3.
[10] Petitioners' Mem. at 21 n 11.

ARGUMENT

I. Appellants are likely to prevail on the merits

As demonstrated in Appellants' memorandum of law in support of their motion for a stay, Petitioners are not likely to succeed on the merits.

A. Supreme Court very clearly violated due process in adopting an entirely new, unbriefed standard

Petitioners do not dispute that Supreme Court rejected the only legal standard they advanced—the New York Voting Rights Act ("NYVRA"). Instead of then dismissing this proceeding, and without notice or supplemental briefing, Supreme Court concocted an entirely new, explicitly race-based standard for which no party had advocated and that Appellants were denied any opportunity to litigate. This radical departure from the party presentation principle constitutes reversible error.

Petitioners exclusively argued throughout this proceeding that the NYVRA's standards should govern Article III, § 4(c)(1) vote dilution claims. Petitioners structured their entire case—their pleadings, proof, expert testimony, and requested remedy—around the NYVRA's relaxed analytical framework. In turn, Appellants and Intervenors tailored their motions to dismiss, constitutional arguments, expert submissions, and trial strategies to that theory.

Supreme Court expressly rejected Petitioners' proposed standard. It found that applying the NYVRA's framework to Article III, § 4(c)(1) "is impermissible" because the NYVRA "was passed years after the redistricting amendments were

ratified" and the constitutional text specifically subjects redistricting to "the federal constitution and statutes" with "no mention of state statutes" (Order at 5). Supreme Court further agreed with Appellants that the exclusion of state legislation from Article III, § 4(c)(1)'s text was intentional.

At that point, having rejected the only standard Petitioners advanced and briefed, due process and the party presentation principle required dismissal. Instead, without any notice to the parties and without requesting supplemental briefing, Supreme Court fabricated from whole cloth an entirely new, explicitly race-based three-pronged standard for Article III, § 4(c)(1) claims. This novel standard requires: (1) that "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election"; (2) that "these candidates must usually be victorious in the general election"; and (3) that "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates" (Order at 15).

This "radical transformation" of the case went "well beyond the pale" (*United States v Sineneng-Smith*, 590 US 371, 380 [2020]). Appellants submitted expert reports on the NYVRA standards that Petitioners put in their petition and Appellants submitted detailed briefing on how the court should interpret Article III, § 4(c)(1). Appellants had no notice—let alone an opportunity to be heard—regarding the novel three-pronged crossover district standard Supreme Court ultimately adopted.

Petitioners attempt to deflect this fundamental due process error by arguing that courts have "an independent duty to construe the meaning of a constitution or statute, regardless of party argument."[11] While it is true, of course, that "the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law," (*Kamen v Kemper Fin. Services, Inc.*, 500 US 90, 99 [1991]), Petitioners' reliance on this proposition conflates a court's authority to interpret governing law with its obligation to decide cases based on the claims and defenses the parties actually present. Petitioners cite no authority for the proposition that due process permits a court to fabricate a new standard after trial and impose liability based on that standard, particularly in the absence of any trial evidence satisfying that standard.

Tellingly, Petitioners effectively concede that they failed to offer proof that satisfies Supreme Court's standard focused on primary elections. Petitioners' evidence addressed only general elections. Dr. Palmer, Petitioners' principal expert, analyzed twenty general elections from 2017 to 2024—but did not analyze any primary elections.[12] Mr. Cooper, Petitioners' map-drawer, did not analyze any election results.[13] There is no record evidence on whether minority voters could

[11] Petitioners' Mem. at 22.
[12] Faso Aff. Exs. H, I.
[13] Faso Aff. Ex. C, Tr. 363:33-364:6.

select their candidates of choice in primaries or whether minority voters would be decisive in primary outcomes. Appellants had no reason to address these issues because Petitioners never raised them and never offered evidence concerning them. Thus, Supreme Court's surprise adoption of a standard that turns on primary-election decisiveness is the antithesis of due process.

Recognizing this major problem, Petitioners are left with few options to defend Supreme Court's decision. This forces Petitioners to take the unbelievable position that Supreme Court's standard is merely "*guidance* to the IRC on how to craft a remedial crossover district."[14] As detailed in the following section, this is utterly nonsensical, violates settled state and federal precedents requiring proof of an available remedy, and, tellingly, the *amici* who proposed the standard sharply disagree with Petitioners' position.

B. Petitioners failed to establish a *prima facie* case of vote dilution

It is well-settled that, in vote dilution cases, the inquiries into liability and remedy are inseparable (*Thornburg v Gingles*, 478 US 30, 51 n 17 [1986]; *Nipper v Smith*, 39 F3d 1494, 1530-31 [11th Cir 1994] ["The inquiries into remedy and liability, therefore, cannot be separated . . . ."]). A plaintiff must, therefore, demonstrate the existence of a workable remedy to establish a *prima facie* case (*Nipper*, 39 F3d at 1530). Without such a showing, the challenged voting practice

[14] Petitioners' Mem. at 20 (emphasis added).

cannot be deemed responsible for the alleged dilution (*Gingles*, 478 US at 51 n 17; *Nipper*, 39 F3d at 1530-1531).

Supreme Court's decision upends this entire framework and has drawn sharp criticism from election law experts and civil rights groups alike. For example, Amici Professors Greenwood and Stephanopoulos, as well as the New York Civil Liberties Union, NAACP and allied organizations, agree that this was a serious legal error. And it's not even close. Neither Petitioners nor Supreme Court has identified any vote dilution case where liability was established without first establishing the existence of a reasonable alternative.

Petitioners strain to defend this mess. They argue that all they "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," citing *Clarke v Town of Newburgh* (237 AD3d 14, 39 [2d Dept 2025]) (Petitioners' Mem. at 43). But this entirely misses the point. "[T]he very concept of vote dilution implies—and, indeed, necessitates—the existence of an undiluted practice against which the fact of dilution may be measured," and a plaintiff establishes this element through an illustrative, "reasonable alternative voting practice to serve as the benchmark undiluted practice" (*Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] [internal citation omitted] *affd sub nom.*, 601 Fed Appx 255 [5th Cir 2015]). As *Clarke* explains, plaintiffs are required

to "show that . . . there is *an alternative practice* that would allow the minority group to 'have equitable access to fully participate in the electoral process'" (*Clarke*, 237 AD3d at 39, quoting Elec. Law § 17-206 [5] [a] [emphasis added]; *see also Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167, 1172 [Sup Ct 2025] [finding there is no NYVRA violation unless petitioners can show a viable alternative map]). Under Supreme Court's standard, that "alternative practice" requires minority voters to be "decisive" in primary races, which is something Petitioners' map indisputably did not show (Order at 15). Instead, they proffered a map that purported to remedy vote dilution by joining minority voters with politically aligned white voters—a standard that Supreme Court did not adopt and, in fact, expressly rejected.

Significantly, and notwithstanding their present attempts to downplay the necessity of a viable alternative map, at every step of this litigation until now, Petitioners recognized that an illustrative map is necessary to prove their case. Before trial, Petitioners expressly argued that their "Illustrative Map is submitted for the sole purpose of showing that the racial vote dilution in CD-11 *can be remedied*."[15] Likewise, in their opening statement at trial, Petitioners admitted that they offered the Illustrative Map to "show[] that it is entirely possible *to remedy* the racial vote dilution in Congressional District 11."[16] Again, in their briefing on

[15] Petitioners' Reply Mem. in Support of Petition at 16 (NYSCEF Doc. No. 154) (emphasis added).
[16] Faso Aff. Ex. B, Tr. 9:2-6 (emphasis added)

available remedies, Petitioners quoted *Clarke* to argue they "offered the Illustrative Map for the limited purpose of showing that 'vote' dilution has occurred and that there is an alternative map that would allow Black and Latino voters to have equitable access to fully participate in the electoral process."[17] Petitioners further argued that they "met their constitutional burden because the Illustrative Map *would* remedy the unconstitutional dilution of Black and Latino voting strength in CD-11."[18] And, in their post-trial submission, under the heading "Relevant legal principles," Petitioners argued that they "established that it is feasible to enact an 'alternative map' that 'would allow the minority group to 'have equitable access to fully participate in the electoral process.'"[19] Petitioners further admitted that presenting an alternative map is their "burden" and argued that they satisfied that burden by "show[ing] that such an alternative map *could* be drawn in a way that remedies the challenged racial vote dilution . . . and that adheres to the other traditional redistricting criteria prescribed by New York law."[20]

Thus, Petitioners have already conceded that it was their burden to prove the existence of viable alternative as part of their *prima facie* case. Since it is undisputed that the map they offered does not establish an alternative that complies with

[17] Petitioners' Remedy Mem. at 4 (brackets in original) (NYSCEF Doc No. 203).
[18] Petitioners' Remedy Mem. at 4 (emphasis in original).
[19] Petitioners' Post-Trial Mem. at 44 (NYSCEF Doc. No. 208).
[20] Petitioners' Post-Trial Mem. at 44 (emphasis added).

Supreme Court's standard, Petitioners failed to meet their burden as a matter of law.[21]

Petitioners attempt to sidestep this fatal defect by characterizing Supreme Court's standard as merely a set of "guardrails for the IRC and the Legislature to consider."[22] This characterization cannot be squared with the plain language of Supreme Court's Order, which directs "that the Independent Redistricting Commission *shall* reconvene to complete a new Congressional Map *in compliance with* this Order"(Order at 18 [emphasis added]). "Compliance with this Order" can only be understood to mean that the IRC must draw a map that remedies the alleged vote dilution according to Supreme Court's three-pronged standard.

For the same reasons, Supreme Court erred by imposing liability without finding that the Illustrative Map, or some other map, meets its own test. Despite adopting a standard that turns on whether a lawful crossover district can be drawn, Supreme Court declared the current plan unconstitutional without making that required finding.

[21] Petitioners respond that the Illustrative Map is "just one way" to grant relief and that "the IRC and Legislature would have a range of options at their disposal to correct the defects plaguing the 2024 map" (Petitioners' Mem. at 12). But this misses the point. The question is not whether some district can be drawn, but whether a district satisfying Supreme Court's standard can be drawn. Petitioners bore the burden of proving that is possible (*see Nipper*, 39 F3d at 1530–31). They cannot shift that burden to the IRC.

[22] Petitioners' Mem. at 21 n 11.

This error is not merely a "scholarly concern[]."[23] The rule that plaintiffs must prove a viable alternative at the liability stage serves critical purposes. As the Amici explain, "a viable remedy confirms the congressional map is the actual cause of the racial dilution, ensures the voter dilution can be adequately redressed in a manner that comports with state and federal laws, and prevents partisan manipulation."[24] This is why voter dilution claims require proof a viable alternative before liability may be established (*see e.g.*, *Gingles*, 478 US at 51 n 17; *Rodriguez v Harris County, Tex.*, 964 F Supp 2d 686, 725 [SD Tex 2013] *affd sub nom.*, 601 Fed Appx 255 [5th Cir 2015]; *Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167, 1173 [Sup Ct 2025] [finding the NYVRA only "allows the court to implement an appropriate remedy" after the petitioners have established a viable alternative]).

C. Supreme Court's Order violates the Equal Protection Clause

Petitioners cannot demonstrate a likelihood of success on the merits because Supreme Court's remedy is an unconstitutional racial classification that triggers strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment.

According to Petitioners, this argument is "premature" because this Court "must wait to see what the remedial district actually looks like before rushing to

[23] Petitioners' Mem. at 21 n 11.
[24] Civil Rights and Racial Justice Groups' Amici Brief at 1-2.

declare it unlawful."[25] But this is nonsensical. By its express terms, the Order makes race the predominant consideration for at least three independent reasons.

First, Supreme Court's own words establish that race is not merely a consideration but the determinative criterion governing any remedial map. The Order expressly contemplates "adding Black and Latino voters from elsewhere" (Order at 13). This language does not reflect neutral awareness of demographics—it establishes an explicit racial mandate. Supreme Court further directed that the remedy "must" include "a sufficiently large portion of the [minority] population of the district's voting population that they would be able to influence electoral outcomes" (Order at 13). Any map that fails to meet this racial requirement will, by definition, fail to comply with the Order. Race is therefore not one factor among many—it is the *sine qua non* of compliance.

Second, Supreme Court's three-pronged standard for crossover districts is facially race-based. Under that standard: (1) "minority voters (including from two or more ethnic groups)" must be "able to select their candidates of choice in the primary election"; (2) "these candidates must usually be victorious in the general election"; and (3) "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates" (Order at 15). Each prong turns entirely on the racial composition of the electorate. The

[25] Petitioners' Mem. at 47.

standard mandates that district lines be drawn to ensure that certain racial groups achieve a specified level of electoral influence. These explicit racial classifications trigger strict scrutiny under established precedent (*Shaw v Hunt*, 517 US 899, 907 [1996] ["[S]trict scrutiny applies when race is the 'predominant' consideration in drawing the district lines"] [internal citation omitted]).

And, third, Supreme Court expressly directed the IRC to achieve racial outcomes. Any map-drawer attempting to comply with the Order must consult racial data, determine how many "Black and Latino voters from elsewhere" to add, and configure district lines to ensure that minority voters are "decisive" in primary elections and that minority-preferred candidates "usually" win general elections. There is no way to comply with this mandate without using race as the predominant—indeed, the sole—criterion for line-drawing. And, tellingly, Supreme Court's Order *did not* discuss whether such a district must be drawn in compliance with traditional redistricting principles *nor* did it direct IRC to comply with these requirements. That is the very definition of racial predominance (*see Miller v Johnson*, 515 US 900, 917 [1995]).

Petitioners invoke *Allen v Milligan* (599 US 1 [2023]) and related precedent for the proposition that map-drawers need not be "entirely 'blind' to race" when remedying vote dilution.[26] But this argument conflates awareness of race with

[26] Petitioners' Mem. at 48-50.

predominance of race (*Allen*, 599 US at 33 ["The line that we have long drawn is between consciousness and predominance [of race]."]). The question is not whether a map-drawer may consider race at all. It is whether race has become the "criterion that . . . could not be compromised," such that "race-neutral considerations came into play only after the race-based decision had been made" (*Bethune-Hill v Virginia State Bd. of Elections*, 580 US 178, 189 [2017] [internal citation and punctuation omitted]).

Here, Supreme Court's order leaves no room for doubt. Supreme Court has not merely permitted race-consciousness—it has commanded a specific racial outcome. Any map that does not "add[] Black and Latino voters from elsewhere" and ensure that minority voters are "decisive" in primaries will fail to comply (Order at 13, 15). Thus, race is not one consideration among many, but the only consideration that matters for purposes of compliance with the Order. That racial predominance triggers strict scrutiny (*Cooper v Harris*, 581 US 285, 300-01, 137 S Ct 1455, 1469, 197 L Ed 2d 837 [2017] ["Faced with this body of evidence—showing an announced racial target that subordinated other districting criteria and produced boundaries amplifying divisions between blacks and whites—the District Court did not clearly err in finding that race predominated in drawing District 1. Indeed, as all three judges recognized, the court could hardly have concluded anything but."]).

Petitioners also argue that compliance with traditional redistricting criteria can "defeat a claim that a district has been gerrymandered on racial lines."[27] But that principle applies where race is one factor among several in a holistic redistricting process, not where a court has issued a racial mandate that controls the entire enterprise (*Bethune-Hill*, 580 US at 189–90). Indeed, "[r]ace may predominate even when a reapportionment plan respects traditional principles" if "race was the criterion that . . . could not be compromised" (*id.* at 189 [internal citation omitted]).

That is precisely the situation here. No matter how compact or respectful of communities of interest a proposed map might be, it will fail to comply with Supreme Court's Order unless it achieves the court's racial mandate.

For this reason, Petitioners' contention that this Court must presume that the IRC and Legislature will not allow race to predominate is misplaced.[28] That presumption applies when assessing a legislature's own redistricting decisions. It does not insulate a court's explicit racial mandate from constitutional scrutiny. And the Supreme Court has not given the IRC or the Legislature any leeway to avoid subordinating race-neutral districting criteria to race. It has told the IRC exactly what racial outcome it must achieve. In the event the IRC complies with the Order, there will be no ambiguity about legislative intent because the court's intent is stated on

[27] Petitioners' Mem. at 49.
[28] Petitioners' Mem. at 50-51.

the face of its Order. Simply put, the presumption of good faith cannot shield a judicially compelled racial classification from strict scrutiny.

Petitioners also fail to establish that Supreme Court's remedy satisfies strict scrutiny. They assert that compliance with the NY Constitution is a compelling interest analogous to compliance with the federal Voting Rights Act.[29] But even if that were so, there must be a "strong basis in evidence" for concluding that race-based action is necessary (*Cooper v Harris*, 581 US 285, 292 [2017]; *see also Shaw v Hunt*, 517 US 899, 915 [1996]).

Here, Supreme Court imposed liability without finding that any compliant crossover district can be drawn, and Petitioners offered no evidence that minority voters would be "decisive" in primary elections under any proposed map. Without a determination that a lawful alternative district exists, there is no strong basis in evidence for race-based redistricting.

Moreover, Supreme Court's reliance on "generalized assertion[s] of past discrimination" is insufficient (*Shaw*, 517 US at 909). A state "must identify that discrimination, public or private, with some specificity before [it] may use race-conscious relief" (*id.* at 909 [internal citation and punctuation omitted]). While Petitioners offered evidence of historical discrimination in Staten Island, they offered no evidence, much less "strong evidence," linking that discrimination to the

[29] Petitioners' Mem. at 51.

specific district lines at issue or demonstrating that race-based redistricting is necessary to remedy it.

Even assuming a compelling interest exists, the trial court's remedy is not narrowly tailored. Narrow tailoring requires that the use of race not go "beyond what was reasonably necessary" (*Shaw v Reno*, 509 US 630, 655 [1993]; *see also Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 207 [2023] [narrow tailoring means that the use of race is "necessary" to achieve a compelling interest]).

Petitioners failed to submit any evidence showing that race-based redistricting is "necessary" to achieve any interest, and Supreme Court did not make any such finding. Moreover, Supreme Court's standard is untethered to any limiting principle. It demands that minority voters be "decisive" in primary elections and that minority-preferred candidates "usually" win general elections without regard to whether such a drastic remedy is necessary to cure any purported constitutional violation, (Order at 15) , and neither Petitioners nor Supreme Court examined whether a race-neutral alternative could address the alleged vote dilution (*see Alabama Legislative Black Caucus v. Alabama*, 575 US 254, 279 [2015] [holding that asking the "wrong question"—how to maintain minority percentages rather than what is necessary to preserve minority electoral opportunity—"may well have led to the wrong answer"

and rejecting the district court's "'compelling interest/narrow tailoring' conclusion"]).

II. There is no basis to vacate the automatic stay

Under CPLR 5519(a)(1), an appeal by "the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state" automatically stays enforcement of the order or judgment appealed from. This automatic stay "expresses a public policy designed to protect a 'political subdivision of the state,' and such a stay is not lightly to be vacated" (*DeLury v City of New York*, 48 AD2d 405 [1st Dept 1975]).

An automatic stay may be vacated only upon a showing of "[a] reasonable probability of ultimate success in the action, as well as the prospect of irreparable harm" (*id.*). Where, as here, the stay is triggered by an appeal by an "officer or agency of the state" under CPLR 5519(a)(1), the movant must also overcome the presumption that "the public interest and welfare require that the affairs of the . . . [government] be conducted in a normal and orderly manner" (*Freeman v Lamb*, 33 AD2d 974, 975 [4th Dept 1970]).

As set forth above, *supra* Point I, Petitioners cannot establish a reasonable probability of ultimate success. And as explained below, Petitioners cannot establish irreparable harm or that the equities weigh in favor of lifting the stay. For these reasons, Petitioners' cross-motion should be denied.

A. Petitioners' nineteen-month delay defeats any claim of irreparable harm

Supreme Court's Order is so badly flawed that the analysis should end here. But even if this Court were to determine somehow that Petitioners are likely to succeed on the merits, vacating the stay is not warranted because Petitioners' delay in bringing this proceeding negates their claim of irreparable harm.

Petitioners inexplicably waited nineteen months after the 2024 Congressional Map was enacted before filing this proceeding. Courts routinely hold that a plaintiff's delay in seeking relief undercuts the urgency of the alleged harm. Injunctive relief is "generally granted under the theory that there is an urgent need for speedy action to protect the plaintiffs' rights" (*Citibank, N.A. v Citytrust*, 756 F2d 273, 276 [2d Cir 1985]). "Delay in seeking enforcement of those rights, however, tends to indicate at least a reduced need for such drastic, speedy action" (*id.*). The Second Circuit has emphasized that a party's "failure to act sooner undercuts the sense of urgency that ordinarily accompanies a motion for preliminary relief and suggests that there is, in fact, no irreparable injury" (*id.* at 277 [internal citation and punctuation omitted]). Indeed, delay, "standing alone, . . . suggests that there is, in fact, no irreparable injury" (*Tough Traveler, Ltd. v Outbound Products*, 60 F3d 964, 968 [2d Cir 1995] [internal citation and punctuation omitted]).

Courts have found that even modest delays defeat claims of irreparable harm. Even where there is a presumption of irreparable harm, "delays of as little as ten

weeks [are] sufficient to defeat the presumption of irreparable harm" (*Weight Watchers Intern., Inc. v Luigino's, Inc.*, 423 F3d 137, 144 [2d Cir 2005]). In *Citibank*, the Second Circuit found that a mere ten-week delay—combined with knowledge of the defendant's conduct for nine months prior—negated the presumption of irreparable harm (756 F2d at 276). Thus, even if Petitioners were entitled to a presumption that their purported voting rights injury constitutes irreparable harm, their inexplicable and unexplained delay in bringing this proceeding negates any claim of irreparable harm.

B. The equities weigh in favor maintaining the status quo by keeping the automatic stay in place and allowing elections to proceed

Petitioners cross-motion to lift the automatic stay of the IRC directive rests on a fundamental misunderstanding of what the "status quo" means in this context and which course of action will actually avoid disruption to New York's 2026 elections. Petitioners argue that the solution is to lift the automatic stay of the IRC directive so that the IRC can craft a map pursuant to Supreme Court's new, untested, and dubious standard. But this argument ignores the reality that the IRC cannot produce a valid remedial map—either on the timeline required to meet the February 24, 2026 election start date or under the legally deficient standard Supreme Court announced. The only path that preserves the status quo, avoids guaranteed electoral disruption, and protects the rights of voters and candidates statewide is to (1) maintain the automatic stay of the IRC directive and (2) stay the prohibitory injunction so that

elections may proceed under the existing, legislatively enacted map pending appellate review.

Any other result guarantees widespread confusion and disruption. First, the IRC cannot produce a map that satisfies Supreme Court's standard because Petitioners themselves never offered—and Supreme Court never found—evidence that any map can satisfy the standard. Thus, the IRC is being asked to produce a map that satisfies a standard that has never been tested against any evidentiary record. This is a recipe for further litigation, further delay, and further chaos—not "orderly elections."[30]

Second, even if the IRC could produce a map, the timeline makes orderly implementation impossible. At this point, it is impossible for the IRC to complete a map in time for petitioning to begin on February 24, 2026, particularly since it's yet to be determined whether drawing such a map is even possible.

The "public policy underlying" the automatic stay is "to stabilize the effect of adverse determinations on governmental entities" (*Summerville v City of New York*, 97 NY2d 427, 434 [2002]). That purpose is served here by maintaining the automatic stay of the IRC directive and lifting the prohibitory injunction so that elections may proceed under the existing map. This is the only path that truly stabilizes New York's electoral system pending appellate review. It preserves the status quo and avoids the

[30] Petitioners' Mem. at 4.

chaos, confusion, and uncertainty Petitioners ask this Court to unleash across New York.

Since Petitioners created this crisis through their own nineteen-month delay, the equities cannot favor Petitioners.

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

For the reasons explained in Intervenors' reply memorandum of law, this Court should grant leave to appeal to the Court of Appeals.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court grant Appellants' motion for a stay pending appeal and for leave to appeal to the Court of Appeals, deny Petitioners' cross-motion, and grant such other and further relief as this Court deems equitable or appropriate.

Dated: February 6, 2026
Albany, New York

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I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word.

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Dated: February 6, 2026