Office of the New York State Attorney General

Letitia James Attorney General

MOTION SEQUENCE 001

December 8, 2025

By NYSCEF
Hon. Jeffrey H. Pearlman
Supreme Court of the State of New York
New York County
New York, NY 10007

Re: *Williams v. Board of Elections of the State of New York, et al.*,
Index No. 164002/2025

Dear Justice Pearlman:

This Office represents Respondents Kathy Hochul, in her official capacity as Governor of the State 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 the State of New York (collectively, "State Respondents") in the above-referenced proceeding (the "Proceeding"). State Respondents respectfully submit this letter as their response to the Petition ("Petition," NYSCEF No. 1). Petitioners Michael Williams, Jose Ramirez Garofalo, Aixa Torres, and Melissa Carty ("Petitioners") bring a claim of vote dilution pursuant to the New York State Constitution, asserting that "Black and Latino Staten Islanders have less opportunity than other members of the electorate to elect a representative of their choice and influence elections in New York's 11th Congressional District ('CD-11')." Pet. ¶ 1. As discussed below, the State Respondents take no position on the specific claims raised by Petitioners but submit this letter brief to set forth the State Respondents' position with respect to various legal principles at issue in this case.

At the outset, the Proceeding involves congressional apportionment, which is governed by, *inter alia*, the State Constitution, and in particular Article III, § 4(c)(1) ("Section 4(c)(1)"). Enacted in 2014, Section 4(c)(1) provides:

> (c) Subject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements, the following principles shall be used in the creation of state senate and state assembly districts and congressional districts:

> (1) When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

1. Congressional Reapportionment is Governed by the New York Constitution[1]

Petitioners argue (*see, inter alia*, Petition at ¶¶ 48-50 and Petitioners' Supporting Memorandum of Law ("Pet. Mem."), NYSCEF No. 63 at 14-19) that the provisions of Section 4(c)(1) should be read to effectively *incorporate* the separate and distinct provisions of the New York Voting Rights Act, N.Y. Elec. Law §§ 17-200, *et seq.* (the "NYVRA"), and, more specifically, the express vote-dilution provisions of the NYVRA, *id.* § 17-206(2). By their own terms, however, the NYVRA's vote-dilution provisions apply only to "boards of elections" and "political subdivisions" of the State, *id.* §§ 17-204(4), 17-206, and **not** to the State itself, meaning that the State's apportionments of State Assembly, Senate, and Congressional districts are outside the scope of the statute. *See Town of Greenburgh v. State of N.Y.*, Index No. 76400/2024, slip op. at 13-15 (Sup. Ct. Westchester County July 25, 2025) (dismissing NYVRA vote-dilution claim against the State for failure to state a claim); 13 NYCRR § 501.3(e). Notably, the NYVRA was enacted in 2022 with its application clearly limited to political subdivisions, whereas Section 4(c)(1)'s standards for Congressional and State Legislative districts had already been part of constitutional amendments regarding redistricting adopted in 2014. *See* N.Y. Const., Art. III, § 4(b) (applying the redistricting amendments specifically to New York's State Assembly, Senate, and Congressional districts). Thus, the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or State Legislative Districts.

2. Petitioners' Vote-Dilution Claims Are Governed by the State Constitution

Section 4(c)(1) expressly provides that "[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." The full scope and standards set forth in current Section 4(c)(1), as ratified by the voters in 2014, has not been previously litigated. Accordingly, the specific substantive standard applicable under Section (4)(c)(1) remains an open question. State Respondents do not take a position here as to the particular standard under which a given petitioner can establish a claim of vote dilution under the State Constitution.[2]

[1] Although the federal Constitution and certain federal statutes apply to Congressional reapportionment, Petitioners assert no claims under federal law.

[2] The legislative history of the constitutional amendment that added Section 4(c)(1) is silent on the substantive standard(s) that may be used to demonstrate a violation of the State Constitution with regard to the criteria governing apportionment of Congressional and State Legislative

State Respondents, however, urge the Court, when considering what standard to apply, to take into account the fact that New York amended its constitution in 2014, including Section 4(c)(1), to stand apart from federal protections and to "guarantee[] the application of substantive criteria that protect minority voting rights." *See* Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086. Thus, State Respondents respectfully submit that the State Constitution *may* require the adoption of districts to provide a racial minority greater influence over elections under certain circumstances.

3. The Federal Voting Rights Act is Not Controlling Here

State Respondents anticipate that Intervenors-Respondents Representative Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (together, "Intervenors") will argue that Petitioners cannot establish a vote-dilution claim under Section 2 of the federal Voting Rights Act, codified at 42 U.S.C. § 1973 (the "Federal VRA"), pursuant to the test set forth in *Thornburg v. Gingles*, 478 U.S. 30 (1986), because Black and Latino voters are not sufficiently numerous in Staten Island and lower Manhattan to comprise a majority of a redrawn CD-11. *See Bartlett v. Strickland,* 556 U.S. 1, 13-15 (2009).

While Petitioners' claims might fail if the Federal VRA were the only applicable standard for vote-dilution claims, State Respondents respectfully submit 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. *See e.g. Harkenrider v. Hochul*, 2022 N.Y. Slip Op. 31471(U), 2022 WL 1951609, at *17 & n. 22 (Sup. Ct., Steuben County May 20, 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"). If the 2014 amendments to the State Constitution were strictly construed in line with the Federal VRA then they would be a redundancy and the will of New York voters in voting for them would be read out of the State Constitution. *See* McKinney's Cons. Laws of NY, Book 1, Statutes § 144 ("Statutes will not be construed as to render them

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Districts. *See* Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086. Furthermore, at the time the current Congressional District maps, including CD-11, were enacted, State Respondents did not have the evidence now submitted by Petitioners' experts, nor have they had an adequate opportunity to assess fully how they – let alone all the members of the State Senate and State Assembly – would have responded had such evidence been provided prior to the time of enactment. The legislative history – limited only to the debate transcripts from both houses' passage of the current Congressional District maps – speaks only to the Legislature's attempt to revise maps submitted by New York's Independent Redistricting Commission ("IRC") to better balance the criteria laid out in the State Constitution, within the confines of the (essentially) equal population requirement for Congressional Districts. *See generally* Tr. of Assembly debate on A9310-A, dated February 28, 2024; Tr. of Senate debate on S8653-A, dated February 28, 2024. Accordingly, State Respondents take no position as to whether Petitioners' evidence makes out a violation of Section (4)(c)(1), based on whatever standard applies, nor whether the current configuration of CD-11 is constitutional and whether it should be redrawn.

ineffective"); *cf. People v. Galindo,* 38 N.Y.3d 199, 205–206 (2022) (a statute should not be read in a way that "hold[s] it a legal nullity"); *Harkenrider v. Hochul*, 38 N.Y.3d 494, 509 (2022) ("In construing the language of the Constitution as in construing the language of a statute, ... [we] look for the intention of the People and give to the language used its ordinary meaning")

Furthermore, there are textual distinctions between Section 4(c)(1) and the Federal VRA that counsel further caution before applying precisely the same standard as would apply under the federal statutory provision. *See People v. P.J. Video, Inc.*, 68 N.Y.2d 296, 302 (1986) ("If 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.").

When considering so-called "crossover" districts under the Federal VRA, federal courts have examined the specific language of section 2 of the VRA. That language refers to a "'class' in the singular," that class's "members," and (again in the singular) "any citizen's" right to vote. *See Nixon v. Kent County*, 76 F.3d 1381, 1386 (6th Cir. 1996) (*en banc*). The *Nixon* court explained that such singular language suggested that section 2 did not require crossover districts. *Id.* at 1387. The *Nixon* Court then went on to describe language Congress would have used had it intended such a result: "the statute would read 'participation by members of *the classes* of citizens protected by subsection (a)'" and to whether "*their* members have less opportunity . . . ." *Id.* at 1386-87.[3] Section 4(c)(1) uses such plural language, undermining any claim that it should be construed to precisely mirror federal standards. *Compare* Section 4(c)(1) (referring to ensuring that "racial or minority language *groups* do not have less opportunity to participate in the political process than other *members* of the electorate and to elect representatives of *their* choice") *with* 52 U.S.C. § 10301(b) (referring to "*a class* of citizens" and "*its* members").[4]

It is well-established, moreover, that States are free to adopt greater voting rights protections than provided by federal law. *See, e.g.*, *Shelby County v. Holder*, 570 U.S. 529, 543 (2013) ("States have broad powers to determine the conditions under which the right of suffrage may be exercised.") (quotation marks omitted); *cf*. N.Y. Elec. Law § 17-200 (recognizing that "the 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"). Indeed, the plurality in *Bartlett* made clear that States could decide to use "crossover" or

[3] Whether section 2 of the Federal VRA permits aggregation of minority groups remains an open question, and the references here to *Nixon* are meant only to highlight the textual distinctions between Section 4(c)(1) and Section 2 of the Federal VRA. *See, e.g., Pope v. County of Albany*, 687 F.3d 565, 573 n.5 (2d Cir. 2012).

[4] Unlike section 2 of the Federal VRA, Section 4(c)(1) also does not focus on any particular individual or citizen in the singular. *Compare* Section 4(c)(1) (referring to "denial or abridgment of" "racial or language minority voting rights") *with* 52 U.S.C. § 10301(a) (referring to "the right of any citizen of the United States to vote").

"influence" districts should they so desire, even though such districts are not required by the Federal VRA.[5] *Bartlett,* 556 U.S. at. 23-24 (plurality opinion of Kennedy, J.).

State Respondents take no position as to whether, under the specific circumstances here, Petitioners have successfully set forth a vote-dilution claim or whether the Court is required to mandate the creation of an alternative influence district for CD-11. But they do respectfully assert that, upon a sufficient record, the Court may find grounds to do so under Section 4(c)(1), independently of the Federal VRA.

4. The Federal Equal Protection Clause Would Not Bar Relief Here

Assuming, *arguendo,* that the Court determines that Petitioners have successfully made out a vote-dilution claim with respect to CD-11 under the State Constitution *and* are entitled to the remedy of a redrawn district that provides greater influence to Black and Latino voters in the current CD-11, State Respondents assert that such a remedy is not categorically foreclosed by the federal Equal Protection Clause. Indeed, under well-established doctrine, so long as a map is drawn in a manner where race is not the predominant factor, *i.e*., where traditional redistricting principles such as compactness and contiguity are not subordinated to race, it is presumptively valid and not subject to heighted scrutiny under the Equal Protection Clause. *See Alexander v. South Carolina State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (noting that, for map to be subject to heightened scrutiny under Equal Protection Clause, "a plaintiff must prove that the State subordinated race-neutral districting criteria such as compactness, contiguity, and core preservation to racial considerations" (citation modified)); *see also Allen v. Milligan*, 599 U.S. 1, 30 (2023) ("[w]hen it comes to considering race in the context of districting, we have made clear that there is a difference 'between being aware of racial considerations and being motivated by them"' with "[t]he former [being] permissible . . . ."); *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 34 (2d Dep't 2025) (ruling that a municipality lacked capacity to bring facial equal protection challenge against statute providing for redistricting as potential remedy for vote dilution, and noting that redistricting maps may not subordinate traditional redistricting principles to racial considerations); *see also Bush v. Vera Inst. For Justice,* 517 U.S. 925, 958 (1996) (plurality op. of O'Connor, J.) ("Strict scrutiny does not apply merely because redistricting is performed with consciousness of race."). The Supreme Court's plurality in *Bartlett* likewise stressed that the "option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more." 556 U.S. at 23. Accordingly, it cannot be said that a district in compliance with the State Constitution's requirements in Section 4(c)(1) would necessarily even require a strict scrutiny analysis, much less violate the Equal Protection Clause.

[5] The Petition seeks to create what is often referred to as an "influence district." Pet. ¶ 52. In such a district, while "minority voters may not be able to elect a candidate of choice," they nevertheless "can play a substantial, if not decisive, role in the electoral process." *See Georgia v. Ashcroft,* 539 U.S. 461, 463–64 (2003); *see also Barnett v. City of Chicago,* 969 F. Supp. 1359, 1406–07 (N.D. Ill. 1997), *aff'd in part, vacated in part*, 141 F.3d 699 (7th Cir. 1998) (citing cases).

5. The Remedy of Specific Remand to the Legislature Is Improper

Certain aspects of the remedies sought by Petitioners are improper. Specifically, in their "Wherefore" clauses, at paragraph (B), Petitioners ask that the Court "[p]ursuant to Art. III, Section 5 of the New York Constitution, *order the Legislature* to adopt a valid congressional redistricting plan in which Staten Island is paired with voters in lower Manhattan to create a minority influence district in CD-11 that complies with traditional redistricting criteria." (emphasis added).

A judicial order to the Legislature, which as a body is not – nor could properly be – a party to this Proceeding, requiring it to convene and pass a specific law is impermissible as a matter of separation of powers. "The Court could compel the State to perform a legal duty, but not direct how it should perform that duty, since '[t]he activity that the courts must be careful to avoid is the fashioning of orders or judgments that go beyond any mandatory directives of existing statutes and regulations [and constitutional provisions] and intrude upon the policy-making and discretionary decisions that are reserved to the legislative and executive branches.'" *Campaign for Fiscal Equity v. State*, 20 A.D.3d 175, 186 (1st Dep't), *aff'd as modified* 8 N.Y.3d 14 (2006). The relief sought in paragraph (B) would violate the separation of powers doctrine by mandating over half of the members, independently elected, to each house of the Legislature to vote in support of (and the Governor to sign) specific legislation of the Petitioners' devising. While State Respondents do not dispute that the Court *could* potentially invalidate the current composition of CD-11 under the State Constitution, it cannot order the Legislature to pass (and the Governor to sign) specific legislation. Depending on the circumstances, the appropriate remedy could range from a remand directive to the Legislature, to the IRC, *see Hoffmann v. NYS Independ. Redistricting Comm'n*, 41 N.Y.3d 341 (2023), or to a judicially appointed special master. Likewise, Petitioners' overbroad request for a permanent injunction enjoining all Defendants and their agents and successors in office from giving any effect to the entirety of the State's existing Congressional map, Pet. at Wherefore Clause, Para. (C) (emphasis added), is improper. To the extent required, State Respondents respectfully request an opportunity to provide additional briefing at a remedy stage of this case, and reserve their right to do so, should the Court determine that the CD-11 map is unlawful or unconstitutional.

The undersigned certifies that no generative artificial intelligence program was used in the creation of this document.

State Respondents thank Your Honor for the Court's consideration of this matter.

Respectfully submitted,

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