

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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

*Petitioners,*

vs.

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.*

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001 and 006

**MEMORANDUM OF LAW IN OPPOSITION TO  
THE PETITION AND IN SUPPORT OF MOTION TO DISMISS**

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

*Of Counsel:*

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

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

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### PRELIMINARY STATEMENT

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 (collectively, “Respondents”), respectfully submit this memorandum of law in opposition to the Petition and in support of their motion to dismiss pursuant to CPLR 3211(a)(7). Respondents adopt and expressly incorporate herein the arguments made by Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba in opposition to the Petition (NYSCEF Doc. No. 116).

Following extensive litigation, the Democratic-controlled New York State Legislature drew the 2024 Congressional Map and approved it on February 28, 2024. On the same day, Democratic Governor Kathy Hochul signed the map into law. As Petitioners readily concede, with the 2024 Map, the Legislature did not alter the configuration of CD-11, which covers Staten Island and portions of Brooklyn, and has remained relatively constant since 1980. This configuration has long satisfied applicable federal law, including section 2 of the federal Voting Rights Act of 1965 (52 USCA § 10301) (“federal VRA”) and the standard articulated in *Thornburg v Gingles* (478 U.S. 30 [1986]), as well as New York State Constitutional standards, including Article III, § 4(c) adopted in 2014. Simply stated, the 2024 map of CD-11 is, and has been for decades, geographically coherent and electorally stable, and its minority CVAP profile indisputably has been steady across the post-census cycles.

Recognizing that CD-11’s 2024 map is immune from challenge under federal law and Article III, § 4(c), Petitioners now argue that the “best approach” for interpreting Article III, § 4(c) is to ignore long-settled federal law to which Article III, § 4(c) is subject and instead apply the vote



dilution framework set forth in the New York State Voting Rights Act, the John R. Lewis Voting Rights Act of New York (Election Law § 17-206) (“NYVRA”). This argument is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law. By its express terms, the NYVRA applies only to local elections, not congressional elections, and was enacted eight years *after* the People adopted Article III, § 4(c). Petitioners make this argument, despite expressly admitting the NYVRA “does not, by its terms, directly regulate congressional redistricting”<sup>1</sup>

Based solely on this supposed “best approach,” Petitioners seek to invalidate CD-11’s 2024 Map in favor of their “Illustrative Map,” which jettisons twelve long-standing precincts in favor of heavily Democratic precincts located across five miles of open water in lower Manhattan.

On its face, Petitioners’ claim must be dismissed as a matter of law and without the necessity of a trial, because it violates the express terms of the NY Constitution, the NYVRA, and several canons of constitutional and statutory construction. As adopted by the People, Article III, § 4(c) is “[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements” (NY Const art. III, § 4(c) [“Article III, § 4(c)”] [emphasis added]). Thus, by its express terms, Article III, § 4(c) is subject *only* to the federal constitution and statutes (*i.e.*, the federal VRA and *Gingles*) and the New York Constitution. It is not subject to *any* state statutes, let alone the NYVRA.

Compounding this problem, Petitioners fail to offer any authority demonstrating that a constitutional provision is subject to a subsequently enacted statute, much less that a subsequently enacted statute can provide insight as to the People’s intent for a previously adopted constitutional

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<sup>1</sup> Petitioners’ Memorandum of Law in Support of Petition dated November 19, 2025 (NYSCEF No.63) (“Petitioners’ Mem.”) at 2.

provision. Indeed, since the language in Article III, § 4(c) is plain and unambiguous—a point Petitioners do not dispute—there is no need to resort to external aids for interpreting this constitutional enactment and certainly not to a statute enacted *eight years later*.

Petitioners' claim also fails under the maxim *expressio unius exclusion alterius* ("the expression of one is exclusion of others"), which creates an irrefutable inference that what was omitted or not included in a constitutional provision or statute was intended to be omitted or excluded. This applies to Article III, § 4(c) since the People expressly subjected that provision only to federal statutes, not state statutes. The maxim applies with equal force to Petitioners' thinly veiled attempt to drastically expand the reach of NYVRA outside its clearly delineated scope of local elections, which by its own express terms, applies only to local elections. If the Legislature had intended to apply NYVRA's "loosened requirements" to congressional districts such as CD-11, it would have done so. It did not and it is not the judiciary's place to provide the purely legislative remedy that Petitioners clearly seek.

Moreover, even if NYVRA's analytical framework could be applied to Article III, § 4(c) (it cannot), Petitioners' claim fails because the NYVRA is unconstitutional under both the federal and state constitutions. Since the statute unabashedly sorts voters based on race, it is subject to strict scrutiny, which is fatal to the NYVRA because it neither furthers a compelling state interest nor is it narrowly tailored. This too requires dismissal of Petitioners' claim as a matter of law and without a trial.

In any event, Petitioners' Illustrative Map cannot pass constitutional muster as it is nothing more than a hyper-partisan gerrymander designed to relocate large blocs of voters along indisputably partisan lines. It is less compact by every commonly used metric, severs established communities of interest and political subdivisions, and relies on a tenuous, ferry-only water

corridor to connect distant populations across the New York Harbor. It also needlessly abandons core retention—moving more than thirty percent of CD-11’s electorate and disproportionately reassigning Asian voters—thereby flipping partisan performance without any meaningful increase in Black and Latino voting strength.

Finally, the effect of Petitioners’ novel theory is legally untenable and unworkable in practice. Across New York, CD-11 “is not unique” in that every Republican held district in the State has a minority population.<sup>2</sup> Taken to its logical conclusion, Petitioners’ theory of the NY Constitution would require the State to redraw every Republican leaning district into a minority influence district likely to elect a Democrat.<sup>3</sup> This partisan result would undermine the intent of the people’s anti-gerrymandering amendments to the NY Constitution, not to mention put in sharp relief that the NYVRA’s unbounded reach plainly fails strict scrutiny and should be struck down as unconstitutional.

For these reasons, set forth in detail below, Respondents respectfully request that this Court dismiss this proceeding.

### **STATEMENT OF FACTS**

#### **I. This proceeding**

Petitioners challenge New York’s 2024 congressional districting plan, Senate Bill S8653A, alleging that the current configuration of Congressional District 11 (“CD-11”) on Staten Island and portions of Brooklyn unlawfully dilutes the voting strength of Black and Latino voters in violation

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<sup>2</sup> Affirmation of Nicholas J. Faso, dated December 8, 2025 (“Faso Aff.”), Ex. B (Expert Report of Dr. John Alford) at 15. All references to “Ex.” herein refer to exhibits to the Faso Aff.

<sup>3</sup> Indeed, Petitioners contend that the Legislature and the Governor were *required* to “construct[] CD-11 as a minority influence district” and that “failure to create such a district violates Article III, Section 4(c)(1) of the New York Constitution” (Petition [NYSCEF Doc. No. 1] ¶ 12).

of Article III, § 4(c)(1) of the New York Constitution.<sup>4</sup> They assert that voting in the district is racially polarized, that Black and Latino voters are politically cohesive but routinely unable to elect their preferred candidates, and that a remedial “minority influence” district pairing Staten Island with lower Manhattan would cure the alleged dilution while complying with traditional redistricting criteria.<sup>5</sup> Petitioners seek a declaration that the enacted plan is unconstitutional, a permanent injunction against its use, and an order directing the Legislature to adopt a new plan that joins Staten Island with lower Manhattan for CD-11.

The challenged plan was enacted after the Independent Redistricting Commission submitted a second congressional map in February 2024. The Legislature rejected that submission and enacted a revised map on February 28, 2024, which did not change the configuration of CD-11. Governor Kathy Hochul signed S8653A into law the same day. The petition acknowledges this history but contains no allegation that Black or Latino voters objected to the Democratic Legislature’s adoption of the plan.

Petitioners sue exclusively under Article III, § 4(c)(1) of the NY Constitution. They characterize this case as one of first impression on the substantive standards governing that provision. Although their sole claim arises under the NY Constitution, Petitioners ask the Court to apply standards drawn from the New York Voting Rights Act—even though, on its face, that statute does not apply to congressional redistricting. Petitioners themselves are forced to concede that the NYVRA “does not, by its terms, directly regulate congressional redistricting.”<sup>6</sup> Despite

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<sup>4</sup> *Id.* at ¶ 1.

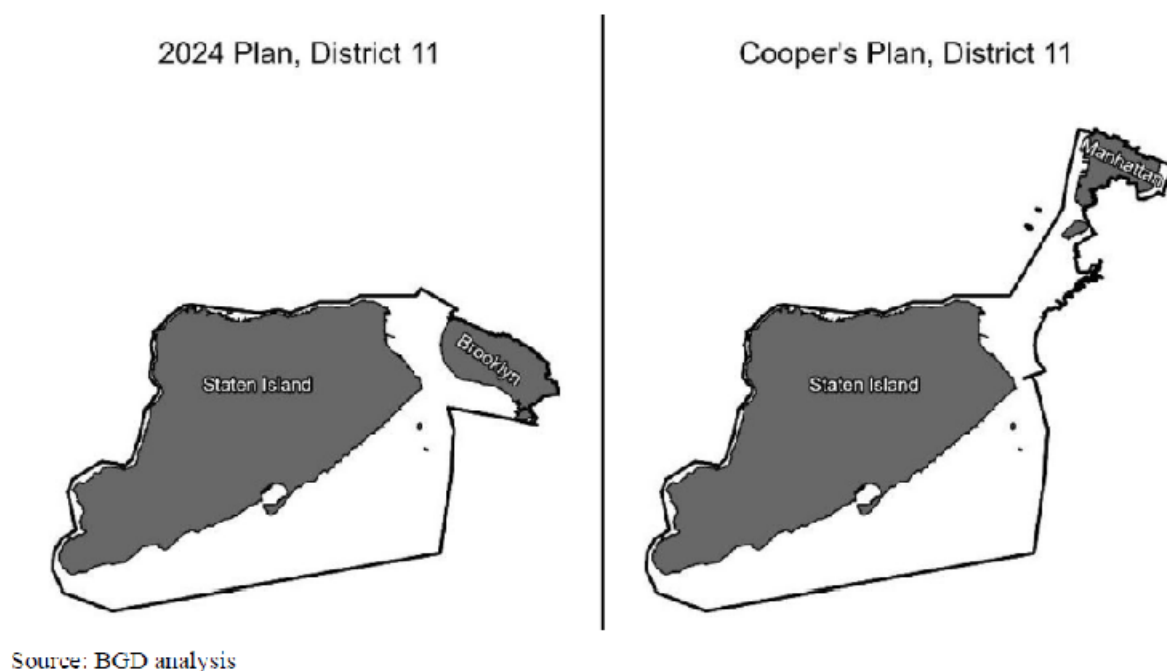
<sup>5</sup> *Id.* at ¶¶ 12-13.

<sup>6</sup> Petitioners’ Memorandum of Law, dated November 19 [*sic*], 2025 (NYSCEF Doc. No. 63) (“Petitioners’ Mem.”), at 2.

acknowledging this shaky ground, Petitioners insist that applying the NYVRA to the NY Constitution is “the best approach [] for this Court.”<sup>7</sup>

Petitioners then leap to an extreme remedy: they propose a district pairing Staten Island with lower Manhattan, resulting in a classic gerrymandered district that is not compact and severs communities of interest. The following image compares the existing CD-11 with Petitioners’ illustrative map:

*Figure V.C.1 Compactness of D11 from 2024 Plan to Cooper’s Illustrative Plan*



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## II. Respondents’ Experts

Respondents offer the expert opinions of Dr. John R. Alford, a tenured Full Professor of Political Science at Rice University, and Thomas Bryan, an accomplished demographer with extensive experience in redistricting matters.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> Ex. A (Expert Report of Thomas Bryan [“Bryan Report”]) at pg. 45, Figure V.C.1.

Dr. Alford’s expert report confirms that both the existing CD-11 and Petitioners’ illustrative CD-11 contain relatively small Black and Latino citizen voting-age populations (“CVAP”)—below 10% Black and slightly over 15% Latino in each—and that the combined Black and Latino share remains under one-quarter in both versions.<sup>9</sup> The marginal two-point increase for the combined Black-and-Latino share in Petitioners’ illustrative district is smaller than the increase in the White share; thus, any purported “minority influence” gains are not driven by an increase in minority CVAP.<sup>10</sup> Instead, the proposed district’s performance shifts because it swaps Republican-leaning Anglo and Asian precincts for Democratic-leaning areas, thereby changing partisan balance rather than minority voting power.<sup>11</sup>

Professor Alford further explains that the current plan has been graded “A” for partisan fairness and geographic features by the Princeton Gerrymandering Project.<sup>12</sup> It yields a New York City–area delegation where the substantial majority of districts elect candidates preferred by minority voters.<sup>13</sup> In this setting, CD-11 itself is geographically compact with a combined Black and Hispanic CVAP below 25% and currently represented by a Hispanic Republican.<sup>14</sup> Petitioners’ alternative is less compact, would still feature a combined Black and Hispanic CVAP below 25%, and would lean Democratic solely because White voting patterns differ between the current and proposed configurations.<sup>15</sup> In short, Petitioners’ plan rebalances partisan composition while maintaining a materially similar minority share, further underscoring its partisan design.

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<sup>9</sup> Ex. B (Expert Report of Dr. John Alford [“Alford Report”]) at 7.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> *Id.* at 14-15.

<sup>13</sup> *Id.* at 14.

<sup>14</sup> *Id.* at 15.

<sup>15</sup> *Id.*

Mr. Bryan’s demographic and redistricting report demonstrates that Petitioners’ illustrative district for CD-11 is inferior to the enacted plan on multiple traditional criteria: compactness, respect for political geography, communities of interest, and differential core retention.<sup>16</sup> Mr. Bryan shows that the enacted CD-11 is a nearly perfectly compact district anchored by Staten Island with direct connection into Brooklyn via the Verrazzano Bridge, whereas the illustrative district extends five miles by water to lower Manhattan, connecting distinct populations only by ferry. On multiple empirical measures (including Reock, Polsby-Popper, Convex-Hull, and Schwartzberg), Petitioners’ proposed district is less compact and fails an “eyeball” assessment relative to the enacted map.<sup>17</sup>

Mr. Bryan also documents that the illustrative district fractures political and neighborhood geographies to a significantly greater degree. Using current precinct files, he concludes that neither the 2021 nor the 2024 enacted plans split any current voting precincts, while Petitioners’ illustrative plan splits twelve precincts, without any showing that such splits were required to achieve population equality.<sup>18</sup> Both the enacted 2024 plan and the illustrative plan split two Neighborhood Tabulation Areas, but the illustrative district’s added precinct splits demonstrate its inferior adherence to political geography.<sup>19</sup>

Critically, the illustrative plan achieves its purported “minority influence” not by enhancing Black or Latino representation, but by substantially reconfiguring—and reducing—the Asian community’s representation in CD-11 while modestly increasing the White, non-Hispanic share. Under the enacted plan, Asians are the largest minority group in both CD-10 and CD-11, with

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<sup>16</sup> Ex. A (Bryan Report) at ¶¶ 196-205.

<sup>17</sup> *Id.* ¶¶ 160-163.

<sup>18</sup> *Id.* ¶¶ 157-159.

<sup>19</sup> *Id.* ¶¶ 160-163.

roughly equal population presence.<sup>20</sup> Under Petitioners' proposal, the Asian population is significantly increased in CD-10 and significantly decreased in CD-11, amounting to a gutting of the largest single minority CVAP in CD-11. Mr. Bryan's analysis shows that the illustrative plan moves 31.5% of CD-11 CVAP overall, but a disproportionate 57.1% of Asian CVAP, compared to only 12.9% of Any-Part-Black CVAP, highlighting the targeted redistribution of the Asian community.<sup>21</sup> In net, the illustrative district significantly increases White, non-Hispanic CVAP in CD-11, only fractionally increases Any-Part-Black and Hispanic CVAP, and sharply lowers Asian representation. This reconfiguration undercuts Petitioners' claimed minority-influence rationale and aligns more with partisan objectives.

Election performance further confirms the partisan thrust of Petitioners' remedial map. Under the enacted plan, CD-11, with a combined Black and Hispanic CVAP near 23%, elected a Republican in 2020, 2022, and 2024. By contrast, Mr. Bryan's analysis shows that Petitioners' illustrative plan would make CD-11 a "dead heat" while maintaining materially similar combined Black-and-Latino CVAP.<sup>22</sup> This shift arises because the proposal moves heavily Democratic precincts into CD-11 and moves Republican-leaning precincts out, not because it meaningfully changes Black or Latino voting strength. Mr. Bryan concludes it is "difficult to arrive at any other conclusion than [that] Cooper's draw benefits Democrats because of an increase in White, non-Hispanic Democrats – and not because of the fractional changes to the two smaller minority populations in and around the district."<sup>23</sup>

### **III. Democrats' prior efforts to gerrymander CD-11**

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<sup>20</sup> *Id.* ¶ 56.

<sup>21</sup> *Id.* ¶ 56.

<sup>22</sup> *Id.* ¶¶ 194, 201.

<sup>23</sup> *Id.* ¶ 63



Significantly, this case appears to be part of a continuing partisan project to gerrymander Staten Island’s seat. Democratic map-drawers have repeatedly targeted the Staten Island-based seat for partisan gain. In 2022, Democratic leaders in Albany introduced a proposed congressional map that the New York Times described as “an aggressive reconfiguration of the state’s congressional districts led by Democratic lawmakers, creating clearer opportunities to flip several House seats . . . as Democrats strain to maintain their congressional majority in a difficult political environment.”<sup>24</sup> That plan would have swept the district away from more conservative South Brooklyn neighborhoods and into “wealthy liberal” enclaves like Park Slope and Sunset Park—an alignment widely criticized as partisan and culturally incoherent.<sup>25</sup> The Times also reported how Democrats’ pursuit of a safer path to flip CD-11 directly drove other contortions on the map, including the infamous “Jerrymander[ed]” configuration of adjacent NY-10.<sup>26</sup> As described, the interborough routing of NY-10 was “pushed sharply north and rerouted” specifically “to meander its way” around a redesigned CD-11 that extended from Staten Island into Bay Ridge, Sunset Park, and Park Slope, with the goal of advantaging “whichever Democrat runs against Representative Nicole Malliotakis.”<sup>27</sup>

That recent history aligns with Petitioners’ current ask to detach CD-11 from Brooklyn communities linked by bridge and instead annex Lower Manhattan across five miles of open water. Predictably, this contortion flips the district’s partisan performance without materially changing the Black and Latino voting population.

### **STANDARD**

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<sup>24</sup> Ex. C, Katie Glueck, *Park Slope and Staten Island: An Unlikely Political Marriage*, THE NEW YORK TIMES, February 21, 2022.

<sup>25</sup> *Id.*

<sup>26</sup> Ex. D, Nicholas Frandos, *How N.Y. Democrats Came Up With Gerrymandered Districts on Their New Map*, The New York Times, January 31, 2022.

<sup>27</sup> *Id.*

In a special proceeding such as this, “[t]here shall be a petition, which shall comply with the requirements of a complaint in an action” (CPLR 402). To survive a motion to dismiss under CPLR 3211(a)(7), the complaint must plead enough facts to state a claim to relief that is plausible on its face (*A.M.P. v Benjamin*, 201 AD3d 50 [3d Dept 2021]). While the Court must accept the facts alleged as true and accord Petitioners every favorable inference, “bare legal conclusions and factual claims which are flatly contradicted by the evidence are not presumed to be true on such a motion” (*Palazzolo v Herrick, Feinstein, LLP.*, 298 AD2d 372, 372 [2d Dept 2002] [collecting cases]; *Struggs v Wells Fargo Bank, N.A.*, 87 Misc 3d 1226(A) [Sup Ct Richmond County 2025]). “Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017]).

### **ARGUMENT**

#### **I. The 2024 Map is entitled to a strong presumption of constitutionality**

As a statutory enactment, the 2024 plan “enjoys a strong presumption of constitutionality. To rebut that presumption, the party attempting to strike down a statute as facially unconstitutional bears the heavy burden of proving beyond a reasonable doubt that the statute is in conflict with the Constitution” (*People v Viviani*, 36 NY3d 564, 576 [2021] [internal citations and punctuation omitted]). Courts “strike them down only as a last unavoidable result” (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted], quoting *Matter of Van Berkel v Power*, 16 NY2d 37, 40 [1965]). In addition, the party challenging a statute “bear[s] the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment” (*id.* [internal citation and punctuation omitted]).

Petitioners cannot satisfy this burden because they allege only that the 2024 map for CD-11 violates one of the “principles” under Article III, § 4(c), namely, § 4(c)(1), which states that “districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement” of minority voting rights. Petitioners fail to address *any* of the other principles set forth in § 4(c)(2)-(6). On this basis alone, Petitioners cannot meet their “heavy burden” and the Petition must be dismissed (*see, e.g., Cohen v Cuomo*, 35 Misc 3d 478, 484 [Sup Ct, New York County 2012], *affd*, 19 NY3d 196 [2012 [dismissing challenge to redistricting plan because the petitioners failed to rebut presumption of constitutionality]]).<sup>28</sup>

Moreover, the presumption of constitutionality is not the only burden Petitioners must overcome. All acts of official duty, including the creation of a redistricting plan, are presumed to be in accordance with law and officials are presumed to have not done “anything contrary to [their] official duty, or omit anything which [their] official duty requires to be done” (*People v Dominique*, 90 NY2d 880, 881 [1997]; *see also Matter of Steinberg*, 137 AD2d 110, 114 [1st Dept 1988]). This presumption of regularity can only be overcome by “substantial evidence” rebutting the presumption, which Petitioners have failed to present here (*Dominique*, 90 NY2d at 881)).

In sum, as detailed below, this proceeding should be dismissed, as a matter of law and without a trial, because Petitioners wholly fail to prove beyond a reasonable doubt that the 2024 plan is unconstitutional.

## **II. As a matter of law, the NYVRA standard does not apply to Article III, § 4(c)**

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<sup>28</sup> In fact, Petitioners’ Illustrative Map (Cooper Aff. Fig. 1 & F-1) indisputably violates several of the Article III, § 4(c) principles, including that “[e]ach district shall be as compact in form as practicable” (§ 4 [c] [4]) and “maintenance of cores of existing districts, existing political subdivisions, . . . and of communities of interest” (§ 4[c][5]).

The federal VRA applies to CD-11 and every other voting district in the United States (*Bartlett v Strickland*, 556 US 1, 18 [2009] [“Heightening these concerns even further is the fact that § 2 (of the federal VRA) applies nationwide to *every jurisdiction* that must draw lines for election districts required by state or local law”] [emphasis added]; *Harkenrider v Hochul*, 38 NY3d 494, 519, n 13 [2022] [noting that the requirements in Article III, § 4 “supplement the long-standing constitutional constraints on redistricting embodied in the State Constitution requiring, to the extent practical, that districts ‘contain as nearly as may be an equal number of inhabitants,’ ‘consist of contiguous territory,’ and be ‘as compact in form as practical’ and those required by federal law—such as conformity with the ‘one person, one vote’ principle and with the federal Voting Rights Act”] [internal citations omitted]). This means that congressional, assembly, and senate elections are governed by the federal vote dilution protections under the federal constitution and federal VRA as interpreted by the Supreme Court in *Thornburg v Gingles* (478 US 30 [1986]) and its progeny.<sup>29</sup>

Under *Gingles*, a plaintiff asserting a vote dilution claim must demonstrate that a voting district “thwarts a distinctive minority vote at least plausibly on account of race” (*Allen v Milligan*, 599 US 1, 19 [2023] [internal quotation marks omitted]). To satisfy this *prima facie* standard, the plaintiff must show three preconditions: (1) “[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district;” (2) “the minority group must be politically cohesive;” and (3) the “majority group must vote sufficiently as a bloc to enable it

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<sup>29</sup> While the Supreme Court observed that “States that wish to draw crossover districts are free to do so” it cautioned that they may only do so “where no other prohibition exists” (*Bartlett v Strickland*, 556 US 1, 24 [2009]). The Supreme Court also rejected the contention that failure to create a crossover district “violates” Constitution, holding “only that there is no support for the claim that § 2 can require the creation of crossover districts in the first instance” (*id.*).

to usually defeat the minority group’s preferred candidate” (*Wis. Legislature v Wis. Elections Comm’n*, 595 US 398, 402 [2022]).

The plaintiff’s burden does not end with satisfying these preconditions. Next, the court must consider the “totality of circumstances” to determine whether the political process is equally open to minority voters” (*Gingles*, 478 US at 45).

Here, Petitioners do not contend that the express terms of Article III, § 4(c) are inconsistent with the federal VRA or that they require a less exacting standard than *Gingles*.<sup>30</sup> Yet, Petitioners urge that the “best approach is for this Court” to ignore the *Gingles* standard to which Article III, § 4(c) is expressly subject and instead incorporate the vote dilution framework set forth in the subsequently enacted NYVRA, which by its express terms applies only to local elections.<sup>31</sup>

Petitioners do so because they cannot prove that, under the *Gingles* standard, the 2024 map of CD-11 unlawfully dilutes minority vote.<sup>32</sup> Indeed, Petitioners cannot satisfy *Gingle*’s first precondition because it is undisputed that the population of Black and Latino voters in CD-11 is not sufficiently large and compact to constitute a majority in any reasonably configured district.<sup>33</sup> Petitioners shamelessly acknowledge that they rely on the NYVRA because it “loosens two of [the *Gingles* standard’s] requirements by requiring petitioners to show *either* racially polarized voting

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<sup>30</sup> For example, Petitioners argue that the NYVRA “sweeps more broadly than federal law” but fail to compare Article III, § 4(c) to the federal VRA or the *Gingles* standard, much less argue that Article III, § 4(c) “sweeps more broadly than federal law” or otherwise provides a different standard (Petitioners’ Mem. at 7-8).

<sup>31</sup> *Id.* at 2.

<sup>32</sup> Petitioners neither alleged nor demonstrated that their “Illustrative Map”, which joins Staten Island with lower Manhattan, satisfies the *Gingles* standard. As discussed in detail, *infra*, Point III, Petitioners cannot meet this burden.

<sup>33</sup> See Petitioners’ Mem. at 16 (arguing that the NYVRA “loosens” the first *Gingles* precondition); Report of William Cooper (NYSCEF Doc. No. 62) ¶ 50.

or the totality of the circumstances factors, and by allowing them to show that vote dilution could be cured through a crossover or ‘influence’ district.”<sup>34</sup>

Petitioners’ attempt to ignore the plain and unambiguous language of Article III, § 4(c) and engraft a standard contained in a subsequently enacted statute fails, as a matter of law, because it violates long-settled principles of constitutional and statutory construction. Accordingly, Petitioners’ claim should be dismissed as a matter of law and without a trial.

**A. By its express terms, Article III, § 4(c) must be interpreted in accordance with federal law, not New York statutes, including the NYVRA**

“When language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the People” (*King v Cuomo*, 81 NY2d 247, 253 [1993] [cleaned up]). “Effect must be given to the intent as indicated by the language employed. Especially should this be so in the interpretation of a written Constitution, *an instrument framed deliberately and with care, and adopted by the people as the organic law of the State*” (*Settle v Van Evrea*, 49 NY 280, 281 [1872] [emphasis added]). Here, Article III, § 4(c) expressly directs that it be applied “[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements” (emphasis added). Thus, on its face, the provision is governed by federal law and the NY Constitution—not by New York statutes—and it says nothing of the NYVRA.<sup>35</sup>

The words “subject to” are unambiguous and, as “used in their ordinary sense, mean subordinate to, subservient to or limited by” (*Peters v Smolian*, 49 Misc 3d 408, 423 [Sup Ct, Suffolk County 2015], *affd* 154 AD3d 980 [2d Dept 2017]; *see also Auburn & S. Electric R. Co. v*

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<sup>34</sup> Petitioners’ Mem. at 16 (emphasis in original).

<sup>35</sup> Nor could it have referenced the NYVRA, much less could the framers or the people have contemplated that it would be subject to the NYVRA’s standards, since the NYVRA was enacted eight years later.

*Hoadley*, 119 Misc 94, 97 [Sup Ct 1922], *affd* 206 AD 653 [4th Dept 1923] [“the term means ‘charged with,’ or ‘subservient to’”]; *Raw Silk Trading Co. v Katz*, 201 AD 713, 716 [1st Dept 1922] [“The words ‘subject to’ have a well-defined meaning by legal interpretation.”]).

The Court of Appeals construes “words of ordinary import with their usual and commonly understood meaning, and in that connection ha[s] regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase” (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016] [internal citations and punctuation omitted]). Merriam-Webster defines the phrasal verb “subject to” as “affected by or possibly affected by (something)” (Merriam-Webster Online Dictionary, subject to [<https://www.merriam-webster.com/dictionary/subject%20to>])).

This plain meaning is controlling. New York law gives full effect to unambiguous constitutional text and does not permit interpretive gloss that expands or alters the people’s chosen language. As the Court of Appeals has emphasized, “[c]ourts do not have the leeway to construe their way around a self-evident constitutional provision” (*Matter of King*, 81 NY2d at 253; *see also Harkenrider*, 38 NY3d at 509 [“[O]ur starting point must be the text”]). Rather, “[i]n construing the language of the Constitution as in construing the language of a statute, [the Court of Appeals] look[s] for the intention of the People and give to the language used its ordinary meaning” (*Harkenrider*, 38 NY3d at 509 [internal citation and punctuation omitted]). This principle forecloses Petitioners’ request to read into Article III, § 4(c) the standards of the subsequently enacted NYVRA.

The text of Article III, § 4(c) draws two deliberate lines. *First*, it subjects redistricting to federal constraints—“the requirements of the federal constitution and statutes”—thereby incorporating federal equal protection and Voting Rights Act obligations, as it must (*see Schneider*

*v Rockefeller*, 31 NY2d 420, 427 [1972] [“The Federal constitutional requirement of substantial equality of population among legislative districts is pre-eminent and our State constitutional requirements must be harmonized with the Federal standard.”]). There can be no dispute that federal law constrains redistricting. As the Court of Appeals observed in *Harkenrider*, the NY Constitution not only embodies “longstanding constitutional constraints on redistricting” but also “those required by federal law — such as conformity with the ‘one person, one vote’ principle . . . and with the federal Voting Rights Act” (*Harkenrider*, 38 NY3d at 519 n 13 [internal citations and punctuation omitted]).

*Second*, at the state level, Article III, § 4(c) is subject to “state constitutional requirements,” not the requirements of state “statutes,” such as the subsequently enacted NYVRA. The juxtaposition is dispositive. Where the framers and the voters intended to incorporate statutes, they said so—at the federal level only. Where they intended state constraints, they specified “constitutional” requirements, but omitted statutes. Reading Article III, § 4(c) to import state statutory standards would rewrite the clause, collapse the voters’ textually distinct references to “federal . . . statutes” and “state constitutional requirements,” and violate the canon that a constitutional provision must be given effect rather than rendered surplusage (*Hoffman v New York State Independent Redistricting Comm.*, 41 NY3d 341, 359 [2023] [“Indeed, our well-settled doctrine requires us to give effect to each component of the [constitutional] provision or statute to avoid a construction that treats a word or phrase as superfluous”] [citations and internal quotations omitted]).

Redistricting jurisprudence confirms that Article III, § 4(c)’s “subject to” clause means what it says: federal law controls where it applies, and state constitutional requirements govern beyond that. In *Wolpoff v Cuomo*, the Court of Appeals upheld deviations from state redistricting



requirements where necessary to comply with federal equal-population and federal Voting Rights Act mandates—underscoring that the federal Constitution and federal VRA provide the operative external constraints contemplated by Article III, § 4(c) (80 NY2d 70, 77-78 [1992]) [“The issue before us on these appeals is not whether the Senate redistricting plan technically violates the express language of the State Constitution. No one disputes that such a technical violation has occurred, and in *Matter of Orans*, we recognized that such violations were inevitable if the Legislature was to comply with Federal constitutional requirements.”]; see also *Harkenrider*, 38 NY3d at 519 n 13 [noting that the NY Constitution is constrained by “the federal Voting Rights Act”)].

**B. As a subsequently enacted statute, the NYVRA cannot, as a matter of law, modify Article III, § 4 of the Constitution**

New York law also bars the Legislature from altering or enlarging constitutional standards by statute. “The Constitution is the supreme law of the state” (*Browne v City of New York*, 213 AD 206, 211 [1st Dept 1925], *affd* 241 NY 96 [1925]). As such, the Constitution:

is higher in authority than any law, direction, or order made by any body or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made. In any case of conflict, the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity”

(*id.*, quoting Cooley, Constitutional Limitations [7th Ed., pg. 76]).

The Legislature is without power to amend the Constitution absent ratification by the people (NY Const art. XIX, § 1; *Browne*, 213 AD at 222 [“It has been decided many times that the provisions of a Constitution which regulate its amendment are not directory but mandatory, and that a strict observance of every substantial requirement is essential to the validity of the proposed amendment.”]).

Petitioners' demand that this Court engraft the NYVRA into Article III, § 4(c) clearly violates these principles. In effect, they ask this Court to make a substantive change to the Constitution's framework that may be made only by constitutional amendment. Petitioners' theory would invert that hierarchy by allowing a 2022 statute to supply controlling standards for a 2014 constitutional amendment that carefully delineates the bodies of law to which it is subject.

In support of their strained theory, Petitioners rely solely on *People v Harris* (77 NY2d 434 [1991]) for the proposition that “[t]he 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’”<sup>36</sup> (*id.* at 438). Petitioners' quotation of *Harris*, however, omitted the Court of Appeals' key limitation; namely, that courts may look to “*any preexisting*” state statutory or common law in assessing the scope of the right (*id.* [emphasis added]). This is significant because Petitioners cite no authority for the novel proposition that courts may use a *subsequently* enacted statute to discern the intent of the People as embodied in a previously adopted constitutional provision, nor could they (*see generally Nassau Ins. Co. v Guarascio*, 82 AD2d 505, 515 [2d Dept 1981] [noting that subsequent amendments generally cannot be considered as indicating the intention of the Legislature in adopting earlier statutes]).<sup>37</sup>

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<sup>36</sup> Petitioners' Mem. at 15.

<sup>37</sup> Petitioners also did not offer any authority for the proposition that, because a statute and constitutional provision are supposedly similar in scope, the subsequently enacted statute's specific analytical framework must be applied to the earlier adopted constitutional provision (Petitioners' Mem. at 16-17). Nor is there any basis to use the NYRVA as an interpretive guide, since Petitioners do not dispute that Article III, § 4(c) is plain and unambiguous. Thus, the Court may discern the People's intent without resort to extrinsic aids, including subsequently enacted statutes (*Statutes § 76; Roth v Michelson*, 55 NY2d 278, 283 [1982] “[A] primary principle of statutory interpretation is that legislative intent, when unobscured by ambiguity or inconsistency, is to be determined by taking the legislative language literally”).

As a state statute, the NYVRA cannot override the NY Constitution's plain text. Regardless of its independent scope or remedies in local and municipal elections, the NYVRA cannot define, modify, or expand the constitutional standards under Article III, § 4(c). Petitioners' request to apply NYVRA's standards to interpret the NY Constitution disregards the provision's plain language, collapses its deliberate federal-versus-state structure, and contravenes bedrock principles of New York constitutional law. This Court should reject that request and apply Article III, § 4(c) as written: subject to the requirements of the federal Constitution and federal statutes, including the federal VRA.

**C. Under the maxim *expressio unius est exclusion alterius* there is an irrefutable inference that the Legislature intended to omit congressional elections from the NYVRA**

The interpretive maxim *expressio unius est exclusion alterius* means “the expression of one is the exclusion of others” (Statutes § 240; *see also Matter of 1605 Book Ctr., Inc. v Tax Appeals Trib. of State of N.Y.*, 83 NY2d 240, 245-46 [1994]). Under this canon of construction, “where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded” (*People v Page*, 35 NY3d 199, 206-07 [2020]). Courts apply this maxim where, as is the case with Article III, § 4(c) and the NYVRA, the words of the constitution or statute “are free from ambiguity and express plainly, clearly and distinctively the legislative intent” so that “the intent of the Legislature [may] be discerned from the language of the statute . . . without resort to extrinsic materials such as legislative history or memoranda” (*Matter of Rochester Community Sav. Bank v Bd. of Assessors of City of Rochester*, 248 AD2d 949, 950 [4th Dept 1998], *lv. denied*, 92 NY2d 811 [1998]; *Silver v Pataki*, 3 AD3d 101, 107 [1st Dept 2003] [applying maxim to Article VII, § 4 of the New York State Constitution]).

Article III, § 4(c) states that it is “[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements” (emphasis added). The provision conspicuously omits any reference to state statutes. Thus, “an irrefutable inference must be drawn that” the Legislature and the People intentionally excluded state statutes from the requirements to which Article III, § 4(c) are subject ([Statutes § 240](#); *see generally County of Niagara v Daines*, 96 AD3d 1433, 1435 [4th Dept 2012] [rejecting State’s proposed interpretation of Social Services Law § 365]).

Similarly, to the extent Petitioners manufacture a challenge to the CD-11 map under the NYVRA, the maxim also bars expansion of the plain and unambiguous language of that statute. By its express terms, the “loosened requirements” for a voter dilution claim under the NYVRA, are limited to a “board of elections or political subdivision” ([Election Law § 17-206 \[2\] \[a\]](#)). Had the Legislature intended to extend the “loosened requirements” to congressional, assembly, or senate elections, it would have expressly done so in the statute (*Matter of Marian T.*, 36 NY3d 44, 51 [2020] [“Had the Legislature intended to limit judicial discretion in that manner, it would have said so in the statute”]; *Pearson v Pearson*, 81 AD2d 291, 294 [2d Dept 1981] [rejecting proposed construction of Domestic Relations Law § 170(5) and noting that “had the Legislature intended any such result, it would have so stated in the statute”]; *see generally Statutes § 74* [“A court cannot by implication supply in a statute a provision which it is reasonable to suppose the Legislature intended intentionally to omit; and the failure of the Legislature to include a matter within the scope of an act may be construed as an indication that its exclusion was intended”]).

Since the Legislature did not, there is an irrefutable inference that the Legislature intended to omit or exclude congressional, assembly, and senate elections from the NYVRA and its analytical framework (*Golden v Koch*, 49 NY2d 690 [1980] [holding that restrictions on the New

York City Mayor’s power to vote on budget modifications “is limited only in the specific instances delineated” in the New York City Charter]).

Petitioners’ contention that there is a risk of inconsistent application of voter dilution standards because the “more robust protections” in the NYVRA apply only to municipal and local elections<sup>38</sup> confirms that this is a purely legislative matter. This is an issue created by the Legislature which the courts cannot address, let alone remedy—only the Legislature may do so. (*Davis v State*, 54 AD2d 126, 129 [3d Dept 1976] “[I]f the legislature had intended the statute to include the matter in question, it would have been easy for them to have said so and to have expressly included it”) [quoting Statutes § 74]; see also *Rodriguez v Pataki*, 308 F Supp 2d 346, 352 [SDNY 2004] [“New York’s . . . redistricting laws are well within the purview and political prerogative of the State Legislature], *affd* 543 US 997 [2004]]. If the Legislature wishes to extend the NYVRA to congressional, assembly, and senate elections it must first persuade the People to amend the NY Constitution and it also must amend the NYVRA. Until then, voter dilution claims under Article III, § 4(c) are subject to the federal VRA and the *Gingles* standard.<sup>39</sup>

**D. The NYVRA cannot supply the standard because Article III, § 4 is “subject to” the federal constitution, and the NYVRA is unconstitutional**

Even if the NY Constitution authorized this Court to look to state statutes for the standard under Article III, § 4(c), the NYVRA would not qualify because it is unconstitutional under both the federal and state constitutions, to which Article III, § 4(c) is expressly subject.

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<sup>38</sup> Petitioners’ Mem. at 2, 18.

<sup>39</sup> Even if the Legislature amended the NYVRA to extend its analytical framework to congressional, assembly and State senate elections, Petitioners’ Illustrative Map still would fail under Article III, § 4(c) since it unquestionably violates § 4(c)(3) (“[e]ach district shall be as compact in form as practicable”) and § 4(c)(5) (requiring consideration of “the maintenance of cores of existing districts, of preexisting political subdivisions, . . . and of communities of interest”).

Laws, such as the NYVRA, that “sort voters on the basis of race are by their very nature odious” (*Wisconsin Legislature v Wisconsin Elections Commn.*, 595 US 398, 401 [2022] [internal citation and punctuation omitted]). The Equal Protection Clause of the Fourteenth Amendment expressly prohibits the States from making any law that “den[ies] to any person within its jurisdiction the equal protection of the laws” (US Const amend. XIV, § 1).<sup>40</sup> “Any exception to the Constitution’s demand for equal protection must survive a daunting two-step examination known . . . as ‘strict scrutiny’” (*Students for Fair Admissions, Inc. v President and Fellows of Harvard Coll.*, 600 US 181, 206 [2023] [citations omitted]). Satisfying strict scrutiny requires that the racial classification furthers “compelling governmental interests” and, if so, “whether the government’s use of race is ‘narrowly tailored’—meaning ‘necessary’—to achieve that interest” (*id.* at 207).

The NYVRA necessarily triggers strict scrutiny because, on its face, it classifies voters by race (*see Election Law § 17-204 [5]* [defining “Protected class” as people “who are members of a race, color, or language-minority group”]; § 17-206 [2] [a] [providing that a political subdivision may not “use any method of election having the effect of impairing the ability of members of a protected class to elect candidates of their choice or influence the outcome of elections”], [c] [iv] [permitting the “combin[ing] of members of “more than one protected class”]; *see also Students for Fair Admissions, Inc.*, 600 US at 206). These inherently racial inquiries—whether voting is “racially polarized” and whether certain racial populations are able to “elect candidates of their choice”—mean that compliance with the NYVRA requires a political subdivision to sort its voters by race and “distribute[] burdens or benefits on the basis of individual racial classifications”

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<sup>40</sup> The NY Constitution also includes an Equal Protection Clause. The Equal Protection Clauses under the NY Constitution and the US Constitution are coextensive and interpreted under the same framework (*Myers v Schneiderman*, 30 NY3d 1, 13 [2017] [“Our State’s equal protection guarantees are coextensive with the rights protected under the Federal Equal Protection Clause”]).

(*Parents Involved in Community Schools v Seattle School Dist. No. 1*, 551 US 701, 720 [2007]).

Even worse, those benefits and burdens—the ability or inability to elect one’s candidate of choice—impact voting, a right “of the most fundamental significance under our constitutional structure” (*Illinois State Bd. of Elections v Socialist Workers Party*, 440 US 173, 184 [1979]).

The NYVRA cannot survive strict scrutiny because it neither furthers a compelling state interest nor is it narrowly tailored. A compelling state interest requires more than a “generalized assertion of past discrimination”—there must be “identified discrimination” established by a “strong basis in evidence” (*Shaw v Hunt*, 517 US 899, 909 [1996] [internal citations and punctuation omitted]). On its face, however, the NYVRA does not purport to address that interest. It expressly disclaims any requirement to show intentional discrimination (*Election Law § 17-206 [2] [c]*), and instead imposes liability absent any “identified discrimination” upon the common occurrence of “racially polarized voting” (*id.* § 2 [b] [i]). And its generalized goals—avoiding disparate impact and increasing minority electoral success—are untethered to any contemporaneous, jurisdiction-specific record. In effect, the NYVRA requires no past or present racial discrimination, meaning it makes racial distinctions in the absence of any identifiable interest, much less a compelling one.

In keeping with this lack of guardrails, the NYVRA sweeps far beyond any demonstrated need. It lacks the safeguards necessary to make it “narrowly tailored” to achieving its interest (*Students for Fair Admissions, Inc.*, 600 US at 207). In fact, the NYVRA was quite obviously drafted to circumvent the *Gingles* framework. It expressly rejects the *Gingles* preconditions by, *inter alia*, prohibiting courts from considering compactness for the purposes of liability, “combin[ing]” members of different minority groups, and imposing liability based on the mere presence of “racially polarized voting” (*Election Law § 17-206 [2] [b], [c]*). This shows that

NYVRA's drafters not only failed to consider less restrictive alternatives but intentionally crafted the NYVRA to *avoid* constitutional constraints.

The consequences of the NYVRA and Petitioners' theory prove it is not narrowly tailored. Under Petitioners' liability theory, the NYVRA's practical effect is to convert *any* Republican-leaning district that contains even a modest number of protected class voters into a compelled "crossover" or "influence" district engineered to elect Democrats, irrespective of whether there is any contemporaneous, jurisdiction-specific evidence of vote suppression or dilution. Dr. Alford's analysis shows that the performance gains touted in the Petitioners' illustrative configurations do not stem from creating any genuine minority "ability to elect" district—indeed, the minority citizen share remains well below a majority—but from merely swapping White (and some Asian) Republicans for White Democrats to manufacture a Democratic-leaning seat, *i.e.*, a partisan, not racial, reconfiguration.<sup>41</sup> As Dr. Alford explains, with "no lower bound on the proportion of minority voters needed, any Republican leaning district with any minority population . . . is subject to the same legal liability," enabling lawsuits to force wholesale re-drawing of Republican-leaning seats into Democratic-leaning crossover districts across Long Island and the lower Hudson Valley by importing more Democratic voters from adjacent areas.<sup>42</sup> That one-way partisan ratchet—unmoored from compactness, neutral criteria, or the *Gingles* framework—confirms the statute is not narrowly tailored to remedy an identified, compelling interest, but instead functions as a device to achieve partisan gerrymanders under the pretext of race. Adopting Petitioners' interpretation would not only bless this blatant gerrymandering, but also "unnecessarily infuse race into virtually every redistricting, raising

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<sup>41</sup> Ex. B (Alford Report) at 13-14.

<sup>42</sup> *Id.* at 15.



serious constitutional questions” (*Bartlett*, 556 US at 21, quoting *League of United Latin Am. Citizens v Perry*, 548 US 399, 446 [2006]).

**III. Petitioners’ proposed map is a blatantly unconstitutional partisan gerrymander that violates traditional redistricting principles**

Petitioners’ proposed reconfiguration of CD-11 is a textbook partisan gerrymander prohibited by the NY Constitution that cannot be reconciled with core redistricting principles.

As the Court of Appeals explained, the 2014 Amendments “include certain substantive limitations on redistricting, including an express prohibition on partisan gerrymandering, commanding that ‘[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties’” (*Harkenrider*, 38 NY3d at 518, quoting NY Const, art III, § 4 [c] [5]). The Court also explained the amendments require that “redistricting, to the extent possible, maintain cores of existing districts, pre-existing political subdivisions — such as counties, cities, and towns — and communities of interest” (*id.* at 518 n 13), and, further, that these “requirements *supplement the longstanding constitutional constraints on redistricting* embodied in the State Constitution requiring, to the extent practical, that districts ‘contain as nearly as may be an equal number of inhabitants,’ ‘consist of contiguous territory,’ and be ‘as compact in form as practicable’” *id.* at 518 n 13, quoting NY Const, art III, § 4 [c] [2] – [4] [emphasis added]).

Petitioners ask this Court to ignore these constitutional requirements by importing the NYVRA’s analytic framework into Article III. This is wrong as a matter of law. Article III governs congressional maps and sets out binding, ordered criteria—equal population, contiguity, compactness, and preservation of cores, political subdivisions, and communities of interest—alongside the explicit ban on partisan purpose. Petitioners’ proposed map impermissibly discards

compactness, fractures precincts, and pursues partisan performance on the fatally flawed theory that the NYVRA's standards govern congressional redistricting. When properly considered under the Constitution's framework, Petitioners' proposal fails.

**A. Petitioners' proposal is a pretext for a partisan gerrymander**

Petitioners' map is not a neutral adjustment to better reflect demographic realities; it is a surgical political project that transforms the only Republican-held congressional district in New York City into, at best, a toss-up by relocating large blocs of voters along unmistakably partisan lines.

Bryan's analysis of Cooper's Illustrative Plan confirms this point. Under the 2024 map, CD-11 is geographically coherent and electorally stable, and its minority CVAP profile has been steady across the post-census cycles. Cooper's wholesale reconfiguration, by contrast, targets electoral performance through two coordinated moves: exporting a large set of Republican-performing precincts out of CD-11 and importing heavily Democratic precincts from Lower Manhattan across five miles of open water.<sup>43</sup> In 2024, the precincts Cooper removes voted approximately 80% Republican across federal contests, while the precincts he imports from CD-10 voted about 58% Democratic.<sup>44</sup> Bryan's precinct-level analysis shows that, under Cooper's plan, CD-11 shifts from a 64.1% Republican result in 2024 to an inorganically engineered "dead heat."<sup>45</sup> That is partisan line-drawing by any meaningful measure. Petitioners' suggestion that this "competitiveness" is a virtue ignores that Article III forbids drawing districts to encourage or discourage competition (NY Const. art. III, § [c] [5] ["Districts shall not be drawn to *discourage*

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<sup>43</sup> Ex. A (Bryan Report) ¶¶ 63, 192

<sup>44</sup> *Id.* ¶ 193.

<sup>45</sup> *Id.* ¶¶ 62, 189, 194.

*competition* or for the purpose of *favoring or disfavoring* incumbents or other particular candidates or political parties”] [emphasis added]).

Moreover, Petitioners’ asserted “remedy” does not improve minority opportunity. Alford confirms that, in both the enacted 2024 CD-11 and Cooper’s illustrative map, the combined Black-and-Latino CVAP remains under one-quarter of the district and changes only marginally under Petitioners’ plan.<sup>46</sup> At the same time, Cooper’s plan increases White non-Hispanic CVAP in by about 2.6 percentage points, yields only small upticks for Black and Hispanic CVAP, and sharply reduces Asian CVAP—the largest single minority group in CD-11—by roughly 4.6 percentage points (from about 17.0% to 12.4%).<sup>47</sup> Those shifts are inconsistent with a bona fide minority-protection remedy.

Bryan’s differential-core-retention analysis shows who is actually being moved to effect Petitioners’ design. Between the enacted plan and Cooper’s plan, approximately 31.5% of CD-11 CVAP is relocated overall—but *57.1% of Asian CVAP* is moved out of CD-11, compared to only 12.9% of Any-Part-Black CVAP and roughly 26–28% of White non-Hispanic CVAP. The targeted removal of the largest minority group from CD-11, coupled with only fractional changes to Petitioners’ preferred coalition components, further aligns with partisan engineering.

The nakedly partisan goal of Petitioners’ proposal is confirmed by its electoral effects. As Alford and Bryan explain, Petitioners’ plan accomplishes its supposed minority remedy by shipping out heavily Republican-performing precincts from CD-11 for substantially more Democratic precincts, converting a 2024 Republican margin of about 64.1% into a contrived

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<sup>46</sup> Ex. B (Alford Report) at 7.

<sup>47</sup> Ex. A (Bryan Report) at ¶¶ 197, 199.

near-tie. That is not minority-rights remediation; it is partisan gerrymandering dressed in civil-rights rhetoric.

In short, Petitioners' minority-rights narrative cannot be reconciled with the empirical evidence that their plan: (i) only modestly alters Black-and-Latino CVAP, (ii) materially increases White non-Hispanic CVAP, (iii) significantly diminishes Asian CVAP and removes a majority of Asian CVAP from CD-11, and (iv) severely degrades compactness and communities of interest—all while producing the precise partisan performance shift Petitioners seek.

### **B. Cooper's map flunks compactness**

“[R]eapportionment is one area in which appearances do matter” (*Shaw v Reno*, 509 US 630, 647 [1993]). New York law requires congressional districts to be contiguous and “as compact in form as practicable” (NY Const., Art III § [c] [4]). Compactness has long been a feature of the NY Constitution's “anti-gerrymander provisions” (*Schneider v Rockefeller*, 31 NY2d 420, 429 [1972]).

Compactness refers to the geographical shape of a district. “Bizarrely shaped” districts are not compact (*Bush v Vera*, 517 US 952, 979 [1996]). While districts “need not be drawn in the form of geometric figures or perfect circles,” they should “be as compact as practicable” (*Matter of Bay Ridge Community Council, Inc. v Carey*, 103 AD2d 280, 282 [2d Dept 1984], *affd*, 66 NY2d 657 [1985]). The constitutional requirement for compactness gives the Legislature discretion to account for “existing political subdivision lines, topography, means of transportation and lines of communication,” but it “forbid[s] a complete departure” (*Schneider*, 31 NY2d at 429).

Petitioners' proposed CD-11 radically departs from an otherwise compact district. The enacted CD-11 joins Staten Island and adjacent Brooklyn via the Verrazzano Bridge—an

alignment that is geographically coherent, functionally contiguous, and reflective of long-standing travel, commuting and service corridors.

Cooper's map violates these principles. It stretches a tentacle across approximately five miles of Upper New York Bay to annex Lower Manhattan, which is reachable only by ferry. On all standard metrics, this destroys CD-11's compactness. Bryan's analysis reflects a Reock score drop from approximately 0.52 to 0.30 and a Polsby-Popper decline from about 0.57 to 0.28.<sup>48</sup> Moreover, the "eyeball test for irregularities" confirms what the numbers show—an elongated, irregular district that reaches across open water to grab distant, dense electorates for partisan gain (*Alpha Phi Alpha Fraternity Inc. v Raffensperger*, 700 F Supp 3d 1136, 1255 [ND Ga 2023]).<sup>49</sup>

Incredibly, Cooper tries to salvage this by averaging compactness scores for the separate land pieces he stitches together. This approach "lacks both precedent and logic" and is not accepted in the scientific community as valid.<sup>50</sup> As Bryan explains:

To defend his creative manipulation of conventional compactness measurements, Cooper relies on a novel and counterintuitive narrative that the compactness of his Illustrative Plan should be considered as two separate pieces. This is illogical - since a necessary criterion for all redistricting endeavors is contiguity of geographic space. One cannot simply ignore areas that are either unpopulated or consist solely of water to improve compactness measures.<sup>51</sup>

In other words, compactness is assessed for the district as drawn, not, as Cooper suggests, by disaggregating land patches and ignoring the open space between them.

Bryan further explains that Cooper's novel approach to compactness results in absurdities:

If Cooper's logic is held, what are the practical limits? Could Staten Island potentially be connected to the Bronx via the East River? Going further, what about the highly compact Poughkeepsie City (nearly 90 miles up the Hudson), which has a 35.4% Black population and 22.5% Hispanic population?<sup>43</sup> Or perhaps Hudson City (130 miles up the Hudson), with 16.5% Black population and 10.4% Hispanic

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<sup>48</sup> Ex. A (Bryan Report) ¶ 141, Table V.C.2.

<sup>49</sup> *Id.* ¶¶ 145-147.

<sup>50</sup> *Id.* at ¶ 109.

<sup>51</sup> *Id.* at ¶ 109.

Population?<sup>44</sup> Those are connected to Staten Island by water? The actual compactness scores of those combinations would be effectively zero – but by Cooper’s logic, the compactness would be acceptable – because each distant individual piece is compact.<sup>52</sup>

Since Cooper’s compactness analysis is not generally accepted by the scientific community, it should be rejected as unreliable.

### C. Cooper’s plan fractures political geography and communities of interest

The NY Constitution also directs map-drawers to “consider the maintenance of existing districts, of preexisting political subdivisions, . . . and of communities of interest” (NY Const. art. III, § 4 [c] [5]). Core retention “is simply a demographic accounting of the movement of persons from one district to another brought about by redistricting. A CRA is a way of quantifying precisely how a realignment affects the continuity of representation among a district’s residents.”<sup>53</sup>

The enacted 2024 plan satisfies core retention requirements. Using current precincts, it splits none. Cooper’s Illustrative map, however, jettisons twelve current precincts without any population-equality necessity.<sup>54</sup> Petitioners thus cannot claim any improvement on this measure.

Petitioners’ map also disserves the Asian community, which is the largest minority community of interest in CD-11.<sup>55</sup> Bryan demonstrates that Asians are the single largest minority CVAP in both CD-10 and CD-11 under the enacted map and are nearly evenly distributed between the two.<sup>56</sup> Cooper’s plan radically disrupts this balance, ballooning the Asian population in CD-10 to roughly 224,000 and slashing it in CD-11 to about 105,000, while physically severing

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<sup>52</sup> *Id.* at ¶ 136.

<sup>53</sup> *Id.* at ¶ 146.

<sup>54</sup> *Id.* at ¶ 132.

<sup>55</sup> *Id.* at ¶ 55

<sup>56</sup> *Id.* at ¶ 28.

contiguous concentrations of Chinese residents in Lower Manhattan and reattaching Chinatown to distant, demographically dissimilar Brooklyn neighborhoods.<sup>57</sup>

Cognizant of this major flaw, Petitioners assert that their plan “unite[s]” Chinese-American communities, but the data show the opposite: it relocates and dilutes Asian CVAP in CD-11 and stitches disparate neighborhoods across non-Asian corridors.<sup>58</sup>

Petitioners’ proposed plan objectively is not compact, fails the core retention analysis, and divides communities of interest. Taken together, these failings “have sufficient probative force to call for an explanation” (*Karcher v Daggett*, 462 US 725, 755 [1983] [STEVENS, J., concurring]).

#### IV. Petitioner’s proposed plan fails because it cannot satisfy *Gingles*

The standard here should be the Supreme Court’s framework in *Gingles*, not the NYVRA, because Article III, § 4 is expressly “[s]ubject to the requirements of the federal constitution and statutes.” In fact, as discussed above, the NYVRA cannot provide the standard because the NY Constitution expressly omits state statutes from the laws by which it is governed.

Applying the *Gingles* framework for section 2 of the federal VRA also makes far more sense because *Gingles* was established law at the time the 2014 Amendments were enacted, and Article III, § 4(c) closely tracks Section 2 of the federal VRA in both its phrasing and test. Section 2 prohibits voting practices that “*result[] in a denial or abridgement*” of the right to vote based on race, and a violation “is established if, *based on the totality of circumstances*, it is shown that members of a protected class “have less opportunity than other members of the electorate to

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<sup>57</sup> *Id.* at ¶ 28.

<sup>58</sup> *Id.* at ¶ 145.

*participate in the political process and to elect representatives of their choice*” (52 USC § 10301 [a], [b] [emphasis added]).

Article III, § 4(c) is materially parallel. It provides that district lines shall not “*result in, the denial or abridgement*” of minority voting rights, and must 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 . . . and to elect representatives of their choice*” (emphasis added). Given these similarities, and the established body of federal law existing at the time the 2014 Amendments were ratified, application of *Gingles* to Article III, § 4(c) is the only sensible choice.

The Supreme Court has interpreted section 2 of the federal VRA as prohibiting vote dilution (*Wisconsin Legislature*, 595 US at 402, citing *Thornburg v Gingles*, 478 US 30, 46–51 [1986]). In *Gingles*, the Supreme Court provided exactly what Petitioners seek here: “a framework for demonstrating a violation of that sort” (*id.* at 402). Since Article III, § 4(c) is expressly subject to “the federal constitution and statutes,” and section 2 of the federal VRA tracks the language of that constitutional provision, the Supreme Court’s *Gingles* framework is not just the most logical standard, but also the only legal one.

Under *Gingles*, a plaintiff must first satisfy three “preconditions”: “(1) The minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district, (2) the minority group must be politically cohesive, and (3) a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group’s preferred candidate” (*Wisconsin Legislature*, 595 US at 402, citing *Gingles*, 478 US at 50-51). Only when these preconditions are satisfied does a court proceed to considering the “totality of circumstances to determine ‘whether the political process is equally open to minority voters’” (*id.* at 402, quoting *Gingles*, 478 US at



79). Satisfaction of the *Gingles* preconditions is thus “necessary but not sufficient” to prove vote dilution (*id.* at 402).

With respect to the first precondition, “[a] district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact” *Allen v Milligan*, 599 US 1, 18 [2023]). There is no liability for vote dilution where “because of the dispersion of the minority population, a reasonably compact majority-minority district cannot be created” (*Bush v Vera*, 517 US 952, 979 [1996]). In other words, “if a reasonably compact district can be created, nothing in § 2 requires the race-based creation of a district that is far from compact” (*id.*). This is because the purpose of the first precondition is to “establish that the minority has the potential to elect a representative of its own choice in some single-member district” (*Grove v Emison*, 507 US 25, 40 [1993]).

Here, when properly considered under the *Gingles* framework, Petitioners’ vote dilution claim fails out of the starting gate. It is undisputed that the Black and Latino voting population in CD-11 is neither sufficiently large nor compact to constitute a majority in any reasonably configured district. The Black and Latino population within CD-11 is concentrated along Staten Island’s north shore and includes only 199,394 voters,<sup>59</sup> or 25.7% of the total CVAP,<sup>60</sup> with Black voters constituting only 7.4% and Latino voters constituting only 18.3%.<sup>61</sup> Even assuming, *arguendo*, that combining Black and Latino voters is legally permissible (*Petteway v Galveston County*, 111 F4th 596, 599 [5th Cir 2024] [holding that combining minority groups for so-called “coalition claims” is impermissible]), the combined population in CD-11 is too small and disperse

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<sup>59</sup> Ex. A (Bryan Report) ¶ 88, Table IV.E.1.

<sup>60</sup> *Id.* at ¶ 81.

<sup>61</sup> *Id.* at pg. 31, Table IV.G.2 (2024 Plan Total Population Percentages: 13 Districts in and Around NYC).

to create a reasonably configured majority-minority district (*see e.g., Reed v Town of Babylon*, 914 F Supp 843, 868 [EDNY 1996] [rejecting vote dilution claim where African-American population constituted only 13.3% of the voting-age population, were divided into three separate concentrations separated by significant white populations and geographic barriers, and creation of a majority-minority district would require “a minimum of about 94% of the entire African-American population of the Town” to be placed in a single district]).

V. **Even if the NYVRA applied, Petitioners claim fails because they have not established that their preferred candidates “would usually be defeated”**

Under section 2(b)(ii) of the NYVRA, a plaintiff alleging vote dilution in a district-based election system must make a threshold showing that “candidates . . . preferred by members of the protected class *would usually be defeated*” and either (A) racially polarized voting or (B) under the “totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired.”

This Court should give the phrase “usually be defeated” its plain and ordinary meaning—namely, that candidates preferred by the protected class would regularly or almost always lose. “[T]he text of a provision ‘is the clearest indicator of legislative intent and courts should construe unambiguous language to give effect to its plain meaning’” (*Matter of Albany Law School v New York State Off. of Mental Retardation and Dev. Disabilities*, 19 NY3d 106, 120 [2012] [internal citation omitted]). Where a term is undefined, New York Courts “construe words of ordinary import with their usual and commonly understood meaning” and often rely on “dictionary definitions as useful guideposts in determining the meaning of a word or phrase” (*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016]).

“Usually” should be construed in accordance with its common usage. “Usually” is defined as (1) “[o]rdinary; customary” and “[e]xpected based on previous experience, or on a pattern or

course of conduct to” by Black’s Law Dictionary, (2) “in the way that most often happens” by the Cambridge Dictionary, and (3) “according to the usual or ordinary course of things : most often: as a rule” in the Merriam-Webster Dictionary (Black’s Law Dictionary, usual [12th ed. 2024]; Merriam-Webster Online Dictionary, usually [https://www.merriam-webster.com/dictionary/usually]; Cambridge Online Dictionary, usually [https://dictionary.cambridge.org/dictionary/english/usually]). In other words, “usually” refers to events that occur customarily, normally, or with consistent frequency.

Nothing in the NYVRA supplies a technical definition of “usually,” and no contextual cue suggests a specialized or idiosyncratic meaning. To the contrary, the statute’s structure and purpose confirm that the phrase functions as a threshold indicator of systemic electoral disadvantage—*i.e.*, a condition in which candidates of choice for the protected class do not merely lose occasionally or sporadically, but are defeated as a matter of course. Reading “usually” to mean “regularly” or “almost always” calibrates the threshold to capture entrenched patterns of defeat while avoiding any distortion that would trivialize the standard (*e.g.*, by equating “usually” with “sometimes”).

Additionally, in the context of a district-based system, the Court should consider whether the preferred candidates are “usually” defeated across the entirety of the district, not just the particular district being challenged. Section 2(b)(ii) is directed at vote dilution in a “district-based election system,” which, by definition, is a method of election implemented through a multi-district plan. In this context, the threshold question whether minority-preferred candidates “would usually be defeated” should be evaluated across the plan as a whole, not confined to outcomes in a single electoral district. A single-district snapshot cannot capture whether the districting scheme systematically impairs the protected class’s electoral opportunity—it speaks only to local partisan lean or candidate-specific dynamics. A plan-wide assessment, by contrast, asks the right question:

whether, in the ordinary course, the design and interaction of districts result in the recurring defeat of the protected class's candidates of choice.

Focusing narrowly on one district would misread the statutory threshold and produce an unworkable rule. In any jurisdiction with normal political geography, some districts will naturally lean toward a party or coalition that is not the protected class's candidate of choice—that alone does not evidence dilution. If a single-district showing sufficed, the statute would mandate reengineering every partisan-leaning district whenever minority-preferred candidates lose there, regardless of whether the plan overall affords genuine electoral opportunity elsewhere. That is not what the NYVRA provides. The statute targets systemic dilution—patterns where the protected class's candidates of choice are regularly or almost always defeated across the map—not the ordinary operation of political preference within one safely partisan district.

Here, looking at New York's congressional map as a whole, the preferred candidates of Black and Latino voters are not “usually defeated.” In the 2018 election, under the pre-2020 census map, every one of the thirteen House seats in and around New York City elected a Democrat, including CD-11.<sup>62</sup> The 2020 election was also a “landslide” for Democrats across the state, except that CD-11 swung to the republican candidate.<sup>63</sup> In 2022, under the newly drawn maps, all but two House seats in and around New York City elected a Democrat.<sup>64</sup> And in 2024, under the second set of new maps, all but CD-11 elected Democrats.<sup>65</sup> In total, from 2018 to 2024, the congressional map has largely favored Democrat candidates: of fifty-two House races in and around New York City, Democrats won forty-eight.<sup>66</sup>

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<sup>62</sup> Ex. A (Bryan Report) ¶ 118.

<sup>63</sup> *Id.* at ¶ 178.

<sup>64</sup> *Id.* at ¶ 179.

<sup>65</sup> *Id.* at ¶ 181.

<sup>66</sup> *Id.* at ¶ 190.

**CONCLUSION**

For the foregoing reasons, Respondents respectfully request that this Court deny the relief sought in the Petition, dismiss this proceeding, and grant such other and further relief as this Court deems just and equitable.

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Albany, New York

CULLEN AND DYKMAN LLP

By: /s/ Nicholas J. Faso  
Nicholas J. Faso, Esq.  
Christopher E. Buckey, Esq.  
80 State Street, Suite 900  
Albany, New York 12207  
(518) 788-9440  
[nfaso@cullenllp.com](mailto:nfaso@cullenllp.com)  
[cbuckey@cullenllp.com](mailto:cbuckey@cullenllp.com)

*Attorneys for Respondents*

**CERTIFICATE OF COMPLIANCE**

The undersigned counsel hereby certifies pursuant to the word count stipulation in this action that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 11,153 words, based on the calculation made by the word-processing system used to prepare this document.

I certify that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within the submission.

Dated: December 8, 2025  
Albany, New York

/s/ Nicholas J. Faso