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

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

Petitioners,

-against-

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

Respondents,

-and-

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

Intervenors-Respondents.

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Index No. 164002/2025

Hon. Jeffrey H. Pearlman

Motion Seq.001

INTERVENOR-RESPONDENTS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

Petitioners' central thesis is that Article III, Section 4 of the New York Constitution renders the Eleventh Congressional District ("CD11") unconstitutional because, according to their own expert, Black and Latino voters—who make up less than 30% of the district—have "only" obtained a majority in 25% of the elections that their expert hand-picked across that district. Petitioners ask this Court to order the racial reconfiguration of CD11 on that basis. As summarized below, Petitioners' lawsuit is entirely without merit, both as a legal and a factual matter. The New York Constitution does not incorporate the standards of the New York Voting Rights Act ("NYVRA"), which is the only theory presented in Petitioners' Petition and is thus the only theory that this Court can lawfully apply here, consistent with basic principles of fairness and due process.

But even if the NYVRA's standards somehow applied, Petitioners fell far short of carrying their burden at trial of proving their case under those standards. Most obviously, Petitioners have not shown that Black and Latino voters' preferred candidates are "usually defeated" under any administrable, coherent understanding of that phrase. Petitioners' core thesis—that every racial group's candidate of choice must not lose more than half of elections in every congressional district—would render the NYVRA (and, under Petitioners' theory, the New York Constitution) an unconstitutional mess in violation of the U.S. Constitution. Under that approach, every district that happens to have racially polarized voting—a common condition, as the U.S. Supreme Court has explained and Petitioners' own expert admitted—would be illegal as to some race. That would result in New York courts ordering an endless cycle of racial configurations of congressional, county, and local districts, in a futile and unconstitutional effort to racially gerrymander election outcomes. And Petitioners' failure of proof goes even further, as they did not even proffer an expert with any knowledge of Staten Island who was able to testify that their requested racial

reconfiguration makes sense. Indeed, their map-drawing expert admitted to having no knowledge of the relevant communities of interest and then candidly testified that he expected Petitioners to present community-of-interest evidence from some other witness, as was his experience in other redistricting cases. Petitioners remarkably presented no such evidence to the Court.

If this were not enough, given that Petitioners ask for a racial reconfiguration of CD11, they were duty-bound under the U.S. Constitution's Equal Protection Clause to show that the remedy they seek is "narrowly tailored to achieving a compelling state interest." *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 401 (2022) (citation omitted). Yet, Petitioners did not even attempt to carry their burden, as it would be impossible to show that racially redrawing a district so that Black and Latino voters who make up less than 30% of that district must (under Petitioners' own expert's count) win more than 25% of elections is narrowly tailored to serving any compelling state interest. Granting Petitioners relief here would be flatly contrary to binding U.S. Supreme Court precedent, including as recently as *Wisconsin Legislature*, where the Court summarily reversed a state court for adopting a racial configuration of a map without satisfying strict scrutiny. This Court is, of course, bound by the U.S. Supreme Court's pronouncements of the meaning of the U.S. Constitution and has no authority to issue a decision that is contrary to that Court's binding precedents. Petitioners' request that this Court flout the U.S. Supreme Court's binding precedent, which would only lead to a swift summary reversal as in *Wisconsin Legislature*, is not well taken.

PROPOSED FINDINGS OF FACT

I. The Parties

A. Petitioners

1. Petitioners are four individuals who are registered to vote in New York City. NYSCEF Doc. No.1 ("Pet.") ¶¶ 14–18.

2. Petitioner Michael Williams is a Black registered voter on Staten Island. *Id.* ¶ 15.

3. Petitioner Jose Ramirez-Garofalo is a Latino registered voter on Staten Island. *Id.* ¶ 16.

4. Petitioner Axia Torres is a Latina registered voter in Manhattan. *Id.* ¶ 17.

5. Petitioner Melissa Carty is a White registered voter in Manhattan. *Id.* ¶ 18.

B. Respondents

6. Respondent Board of Elections of the State of New York is an Executive Department agency responsible for administering and enforcing New York's election laws. *Id.* ¶ 19.

7. Respondent Kristen Zebrowski Stavisky is the Co-Executive Director of the Board of Elections of the State of New York. *Id.* ¶ 20.

8. Respondent Raymond J. Riley, III, is the Co-Executive Director of the Board of Elections of the State of New York. *Id.* ¶ 21.

9. Respondent Peter S. Kosinski is the Co-Chair and Commissioner of the Board of Elections of the State of New York. *Id.* ¶ 22.

10. Respondent Henry T. Berger is the Co-Chair and Commissioner of the Board of Elections of the State of New York. *Id.* ¶ 23.

11. Respondent Anthony J. Casale is the Commissioner of the Board of Elections of the State of New York. *Id.* ¶ 24.

12. Respondent Emma Bagnuola is the Commissioner of the Board of Elections of the State of New York. *Id.* ¶ 25.

13. Respondent Kathy Hochul is the Governor of New York. *Id.* ¶ 26.

14. Respondent Andrea Stewart-Cousins is the New York State Senate Majority Leader and President *Pro Tempore* of the Senate. *Id.* ¶ 27.

15. Respondent Carle E. Heastie is the Speaker of the New York State Assembly. *Id.* ¶ 28.

16. Respondent Letitia James is the Attorney General of New York. *Id.* ¶ 29.

C. Intervenor-Respondents

17. Intervenor-Respondents consist of Congresswoman Nicole Malliotakis and a number of citizen voters (the "Individual Voters") from CD11.

18. Congresswoman Malliotakis is the incumbent elected Congresswoman from CD11. NYSCEF Doc. No.23 ("Malliotakis Aff.") ¶ 2. Congresswoman Malliotakis is the daughter of immigrants—her father is from Greece and her mother is a Cuban refugee of the Castro dictatorship—and she is the first Latino and minority to represent this District. *Id.* ¶ 3.

19. Congresswoman Malliotakis is the only elected Republican member of Congress representing a part of New York City, *see* N.Y. GIS Clearinghouse, GIS Data, *NYS Congressional Districts* (Oct. 7, 2025).[1] She first won election to the U.S. House of Representatives to represent CD11 in 2020; she won reelection in 2022; and then she won reelection again in 2024. Malliotakis Aff. ¶ 2.

20. The Individual Voters are all citizen voters from CD11 who support Congresswoman Malliotakis and spent significant time and resources campaigning for her during the 2020, 2022 and/or the 2024 election cycles. *See* NYSCEF Doc. No.24 ("Lai Aff.") ¶¶ 2–10; NYSCEF Doc. No.25 ("Medina Aff.") ¶¶ 2–9; NYSCEF Doc. No.26 ("Reeves Aff.") ¶¶ 2–9; NYSCEF Doc. No.27 ("Sisto Aff.") ¶¶ 2–8; NYSCEF Doc. No.28 ("Togba Aff.") ¶¶ 2–8.

21. As residents and voters in CD11, the Individual Voters do not wish to reside in a racially gerrymandered district. *See* Lai Aff. ¶ 11; Medina Aff. ¶ 10; Sisto Aff. ¶ 9; Togba Aff.

[1] Available at https://data.gis.ny.gov/datasets/sharegisny::nys-congressional-districts/explore.

¶ 9. Nor do they wish to be subjected to a racial classification because of reliance on racial criteria in changing CD11. *See* Lai Aff. ¶ 11; Medina Aff. ¶ 10; Sisto Aff. ¶ 9; Togba Aff. ¶ 9.

II. CD11's Boundaries Have Been In Place For Decades

22. In 1982, the then-Fourteenth Congressional District linked Staten Island with the Southern Brooklyn neighborhoods Bay Ridge and Dyker Heights. Trende Rep.19.

23. Ten years later, the district—then the Thirteenth Congressional District—expanded to include Bath Beach, along with a portion of Gravesend and Bensonhurst. *Id.* at 20.

24. The district retained this shape—linking Staten Island and Southern Brooklyn—with only slight alterations, in the congressional district maps enacted in both 2002 and 2012, and the district was renumbered to CD11 in 2012. *Id.* at 21–22.

25. Following the release of the 2020 federal census, "[d]ue to shifts in New York's population, the state lost a congressional seat and other districts were malapportioned, undisputedly rendering the 2012 congressional apportionment [of the State]—developed by a federal court following a legislative impasse—unconstitutional and necessitating the drawing of new district lines." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022) (citation omitted).

26. The 2020 redistricting process was New York's "first opportunity" to have its "district lines [ ] be drawn under the new [Independent Redistricting Commission ("IRC")] procedures established by the 2014 constitutional amendments" to the New York Constitution (the "2014 Amendments"). *Id.* The 2014 Amendments created a mandatory redistricting process vesting primary authority to conduct redistricting following each decennial census in the newly created IRC, and established procedural and substantive safeguards against gerrymandering. *See* N.Y. Const. art. III, §§ 4(c)(5), 5-b; *Harkenrider*, 38 N.Y.3d at 503–04.

27. Although the IRC initially abided by the constitutional process to redistrict the State following the 2020 Census, the IRC's process broke down. *Harkenrider*, 38 N.Y.3d at 504. Eventually, the IRC announced that it had deadlocked and would not be able to submit proposed maps to the Legislature, as the Constitution required. *Id.* at 504–05.

28. The Legislature then purported to adopt its own congressional redistricting plan, which Governor Hochul signed into law on February 3, 2022. *See id.* at 505.

29. Certain citizen voters challenged that congressional map in the Steuben County Supreme Court that same day, and the Court of Appeals ultimately reviewed that challenge in *Harkenrider*. *Id.* at 505–08.

30. In *Harkenrider*, the Court of Appeals held that the Legislature's congressional map was both procedurally and substantively unconstitutional. *Id.* at 508–20.

31. The map that the Court of Appeals struck down as being "drawn with an unconstitutional partisan intent," *id.* at 502, was designed by Democrats to further their "political ambitions to capture the 11th District," NYSCEF Doc. No.100, by making similar changes to the district's boundaries as those that Petitioners have requested here, *see* Pet. ¶ 101, that would render the district "significantly more liberal," NYSCEF Doc. No.101 at 2.

32. To cure the procedural violation, the Court of Appeals instructed the Steuben County Supreme Court to "adopt [a] constitutional map[ ]" itself. *Harkenrider*, 38 N.Y.3d at 524. The Steuben County Supreme Court did so on remand, adopting the *Harkenrider* Map. *See Harkenrider*, Index No. E2022-0116CV, NYSCEF Doc. No.670 at 1–2, 5; *see also Harkenrider*, Index No. E2022-0116CV, NYSCEF Doc. No.696 at 1 (adopting modified map correcting technical violations).

33. As relevant here, the *Harkenrider* Map kept CD11's boundaries largely in-line with the boundaries that had obtained for decades, linking Staten Island with Southern Brooklyn. *See Harkenrider*, Index No. E2022-0116CV, NYSCEF Doc. No.670 at 25.

34. The *Harkenrider* Map governed New York's 2022 congressional elections, *see Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 354–55 (2023), and Congresswoman Malliotakis won CD11, *see* Malliotakis Aff. ¶ 2.

35. After the Steuben County Supreme Court adopted the *Harkenrider* Map, certain petitioners initiated a special proceeding seeking to replace the *Harkenrider* Map for subsequent congressional elections in New York. *Hoffman*, 41 N.Y.3d at 355. In particular, those petitioners claimed that the New York courts should remedy the breakdown of the IRC process that necessitated the adoption of the *Harkenrider* Map by ordering the IRC to reconvene and submit a new proposed redistricting map to the Legislature under the 2014 Amendments. *Id.*

36. The Court of Appeals agreed with these petitioners in *Hoffman*, holding that "the IRC should comply with its constitutional mandate [under the 2014 Amendments] by submitting to the legislature . . . a [ ] congressional redistricting plan and implementing legislation," which plan was to govern congressional elections in New York beginning in 2024. *Id.* at 370.

37. Following *Hoffman*, the IRC proposed a congressional redistricting map to replace the *Harkenrider* Map and submitted it to the Legislature, pursuant to the 2014 Amendments. *See* 2023 NY Senate Bill S8639; 2023 NY Assembly Bill A9304; *see also* NYSCEF Doc. No.19 (N.Y. State Indep. Redistricting Comm'n, *Congressional Plan 2024*).

38. Although the IRC had deadlocked along party lines only two years earlier, leading to the *Harkenrider* litigation, *supra* p.7, the IRC this time overwhelmingly approved this 2024 proposal in a 9–1 vote, NYSCEF Doc. No.20 at 1.

39. The IRC's proposal only slightly modified the *Harkenrider* Map, without altering CD11. *See id.* The IRC's Republican Chairman lauded the IRC's affirmative vote in favor of its proposed map as a "historic moment," while his Democratic counterpart declared that the approval of the proposed map represented a "victory for the commission process." *Id.* at 2.

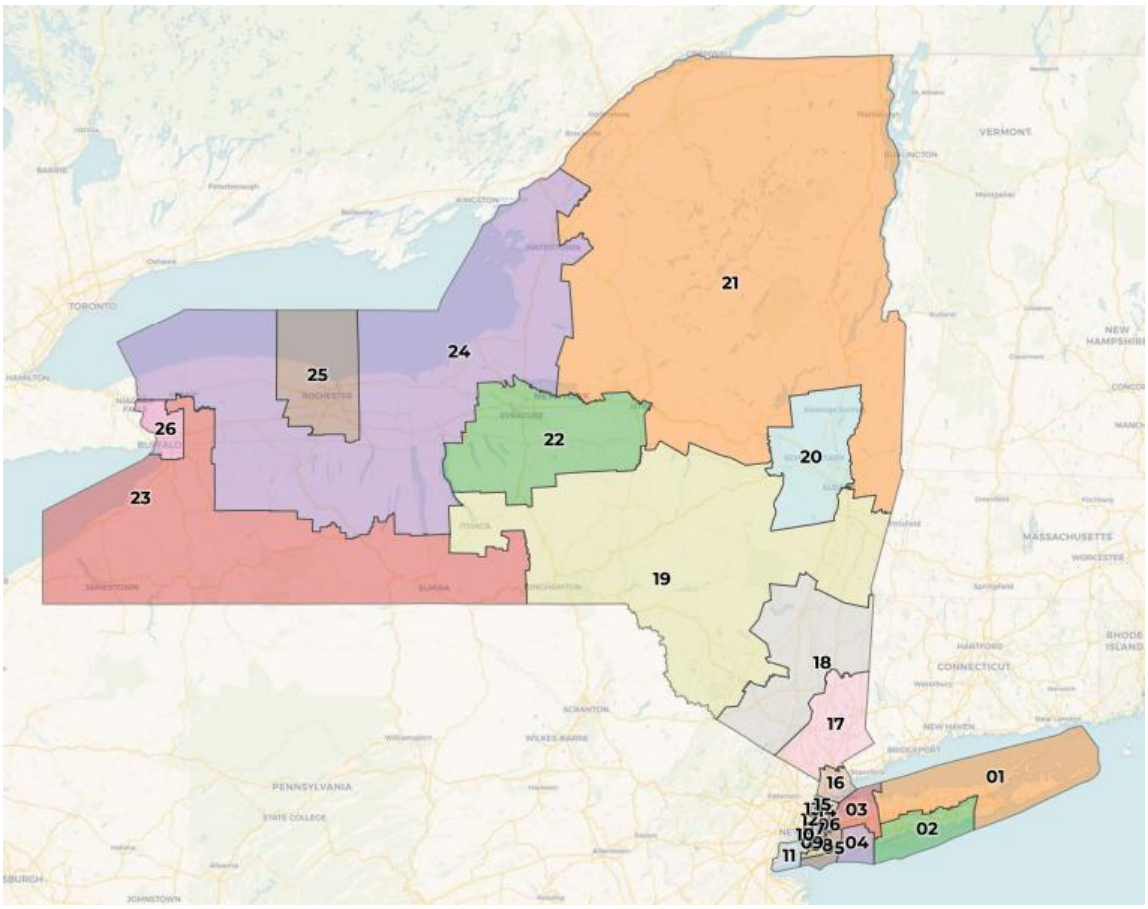
40. The Legislature made modest changes to the IRC's proposed map, *see* NYSCEF Doc. No.21, and sent that proposal to the Governor for her approval, *see* 2023 NY Senate Bill S8653A; 2023 NY Assembly Bill A9310. The Legislature did not alter CD11 either. *See* NYSCEF Doc. No.21 (discussing the Legislature's modest changes to the IRC's proposed map).

41. Large, bipartisan majorities of the Senate (45-17) and the Assembly (118-30) voted in favor of this congressional map. *See* 2023 NY Senate Bill S8653A (providing Senate floor vote details); 2023 NY Assembly Bill A9310 (same, as to Assembly).

42. On February 28, 2024, Governor Hochul signed the congressional map into law. N.Y. State Law §§ 110–12 (the "2024 Congressional Map").

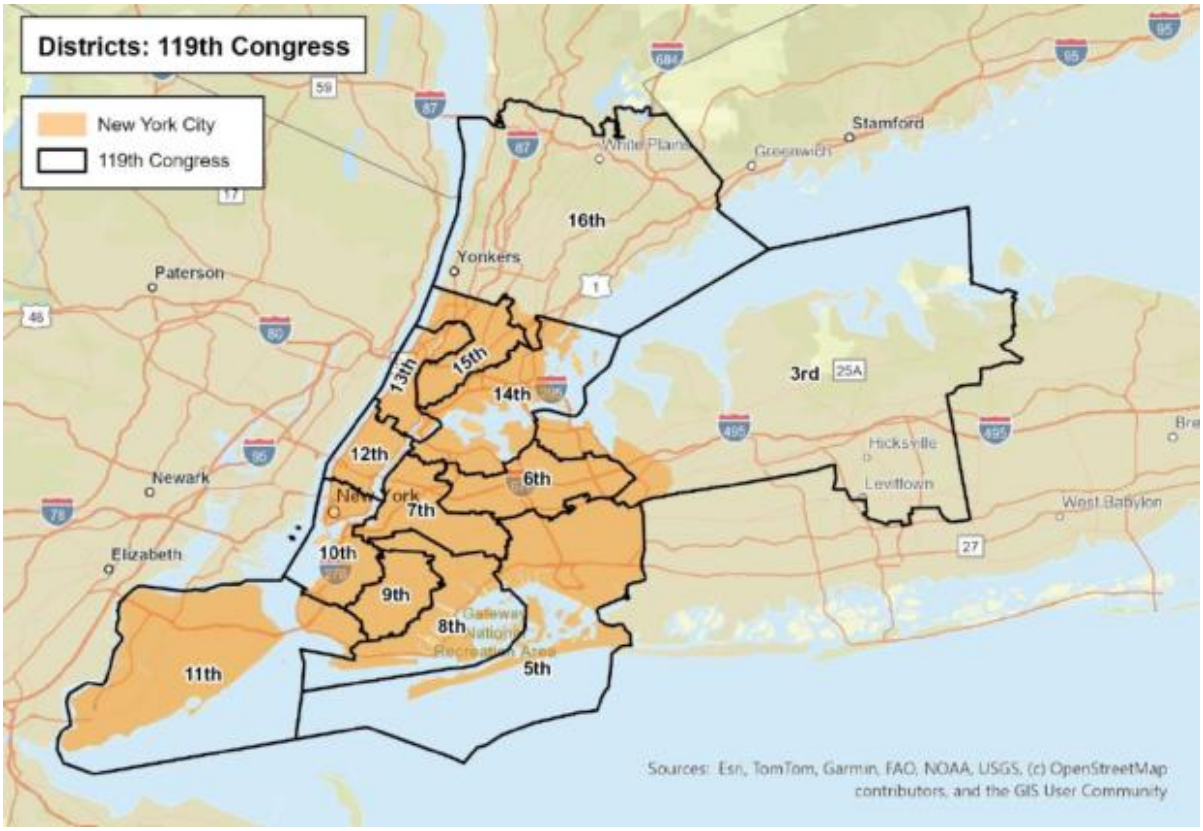
43. Thus, beginning with the 2024 elections, New York was to hold its congressional elections under a redistricting map drawn by the Legislature and signed by the Governor. *Id.*

44. A map of the current congressional districts in New York is below.



NYSCEF Doc. No.19 at 2.

45. A map of the current congressional districts that are at least partially in New York City is below.



Bryan Rep.31.

III. Petitioners Bring This Action Under The New York Constitution

46. On October 27, 2025, Petitioners filed their one-count Petition to initiate this special proceeding, naming as Respondents the Board of Elections of the State of New York and certain state officials, in their official capacities. Pet.1.

47. Petitioners' sole theory is that Article III, Section 4's anti-vote-dilution mandate (adopted in 2014) incorporates the influence-district mandate of the NYVRA (adopted in 2022), and that CD11 reduces the "influence" that Black and Latino voters "could" have in elections in CD11 under that standard. *Id.* ¶¶ 9–12, 98, 100–02.

48. Petitioners request a declaration that the 2024 Congressional Map dilutes the votes of Black and Latino voters in CD11 under the NYVRA's standards; an injunction enjoining Respondents from using the 2024 Congressional Map for any future elections; and an order that

the Legislature adopt a congressional redistricting map that "create[s] a minority influence district in CD-11 that complies with traditional redistricting criteria." *Id.* at 27–28.

49. Prior to trial, the parties filed memoranda of law. NYSCEF Doc. No.63; NYSCEF. Doc. No.95 ("Gov.Ltr."); NYSCEF Doc. No.115 ("Int'r.Resp't.Br.); NYSCEF Doc. No.122. Only Intervenor-Respondents and Respondents Kosinski, Casale, and Riley opposed Petitioners' claim. Int'r.Resp't.Br.; NYSCEF Doc. No.122. Petitioners included three expert reports, *see* P001 ("Sugrue Rep."); P003 ("Palmer Rep."); P005 ("Cooper Rep."); Intervenor-Respondents provided three expert reports, *see* IRX001 ("Trende Rep."); IRX002 ("Borelli Rep."); IRX003 ("Voss Rep."); and Respondents provided two expert reports, *see* R001 ("Bryan Rep."); R002 ("Alford Rep.").

50. Respondents Governor Hochul, Stewart-Cousins, Heastie, and James (collectively, the "State Respondents") submitted a letter stating that they did not oppose the Petition but refused to endorse Petitioners' theory, explaining that "the NYVRA is wholly inapplicable to apportionment challenges brought against Congressional or State Legislative Districts" as it is "clearly limited to political subdivisions." Gov.Ltr.2. This is notable given that Governor Hochul signed both the NYVRA and the 2024 Congressional Map.

51. Two *amici* filed briefs proposing their own standards and urged this Court to apply those approaches—even though no party briefed the constitutionality of those standards or submitted expert evidence tailored to those standards. NYSCEF Doc. No.139 ("NYCLU Am.Br.") at 11; NYSCEF Doc. No.135 ("Prof.Am.Br.") at 19–20.

52. The Court held a trial from January 5, 2026 through January 8, 2026. Each of the parties' experts who submitted reports testified.

IV. Petitioners' Experts

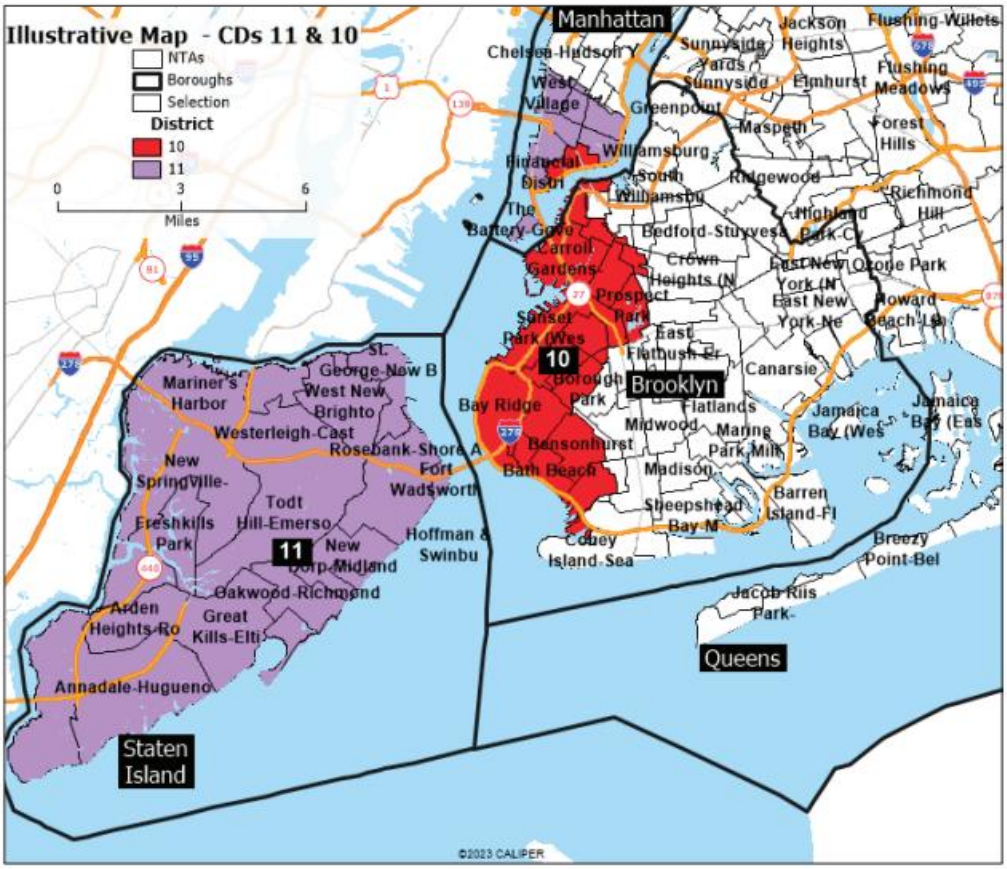
A. Mr. William Cooper

53. Petitioners retained Mr. William Cooper to serve as their demographic and redistricting expert in this case. Cooper Rep. ¶ 1. Mr. Cooper has had his proposed maps rejected by at least one federal court. *See Christian Ministerial All. v. Jester*, 786 F. Supp. 3d 1134, 1142–44 (E.D. Ark. 2025) (explaining why all three of Mr. Cooper's proposed maps "fall short").

54. Petitioners' counsel specifically tasked Mr. Cooper with "develop[ing] an illustrative plan that would join Staten Island with Manhattan in a reconfigured CD-11." Tr.302:10–14; Cooper Rep. ¶ 22. Accordingly, Mr. Cooper did not "consider any plans other than one that would join Staten Island with Lower Manhattan." Tr.305:1–3; Tr.336:4–11 (testimony that Mr. Cooper was not instructed to "consider whether there were other lawful configurations of CD-11 and CD-10").

55. Pursuant to Petitioners' counsel's instruction, Mr. Cooper prepared the below illustrative map, with his proposed new CD11 in purple and his proposed new CD10 in red.

Figure 8: The Illustrative Map – Staten Island, Lower Manhattan, & Brooklyn



Cooper Rep.16 Figure 8.

56. Mr. Cooper's illustrative map "shifts the boundaries of CD 11 to retain all of Staten Island and then adds most, but not all, of the portion of Lower Manhattan currently occupied by CD 10." *Id.* ¶ 43. His map moves "parts of or the whole of" the following Lower Manhattan Neighborhood Tabulation Areas ("NTAs") into CD11: Chelsea-Hudson Yards, the East Village, the Financial District, Gramercy, Greenwich Village, the Lower East Side, Midtown South, SoHo, Little Italy, Tribeca, and the West Village. *Id.*; Tr.317:8–17.

57. Under Mr. Cooper's map, Chinatown remains in CD10, and "Bensonhurst and Bath Beach—two more predominantly Chinese-American neighborhoods in Brooklyn—join CD 10."

Cooper Rep. ¶ 44. In addition, "[p]art of the Financial District is also in CD 10, along with 22 persons in Tribeca to meet one-person, one-vote requirements." *Id.*

58. Mr. Cooper acknowledged that his illustrative CD11 "doesn't make Black or Latino voters a numerical population majority." Tr.347:22–24.

59. Mr. Cooper purported to "follow[ ] traditional redistricting principles" when preparing his illustrative map, including "compactness," "communities of interest," and "least change" (or "core retention"). Cooper Rep. ¶¶ 26–27; *see id.* ¶ 31 (acknowledging that the 2024 Congressional Map is compact); *id.* ¶ 34 (acknowledging that the 2024 Congressional Map accounts for communities of interest).

60. There is no dispute that the illustrative map is less compact than the 2024 Congressional Map. Despite "agree[ing] that with respect to congressional plans, the compactness of a district is necessary," Mr. Cooper admitted that his illustrative CD11 "scores worse for compactness than the currently enacted map." Tr.305:7–20; Cooper Rep. ¶ 54. Mr. Cooper further acknowledged that, "[t]o defend the relatively less compactness of [his] illustrative district, [he] propose[d] averaging compactness scores of separate pieces of land, in this case Staten Island and Manhattan," and had "never offered this sort of subpart averaging as a measure of district compactness in [his] prior work," Tr.350:18–351:6, nor was he "aware of any authoritative source or scholarly material that recommends applying this subpart averaging compactness standard," Tr.352:24–353:10.

61. Mr. Cooper also "agree[d]" at trial that under the New York Constitution, "[t]o the extent practicable, election plans should keep the core population in prior districts together in new districts." Tr.305:21–24. Here, however, while Mr. Cooper conceded that it is "practicable" to "keep Lower Manhattan with Staten Island" in CD11, Tr.314:14–15, he testified that he did not

do that because he was "task[ed]" by Petitioners' counsel with "develop[ing] an illustrative plan that would join Staten Island with Manhattan," Tr.315:1–20, and needed to "take into account the African American and Latino voters in Staten Island" pursuant to the NYVRA, Tr.315:5–11.

62. And although Mr. Cooper opined that his illustrative map "preserves a community of interest at the neighborhood level," Cooper Rep. ¶ 59, his trial testimony revealed that he did not even attempt to discern whether Staten Island and the Lower Manhattan NTAs in his illustrative map's CD10 have any similarities such that they can even conceivably constitute one or more communities of interest.

63. While Mr. Cooper claimed to have considered communities of interest in designing his map, Cooper Rep. ¶¶ 26, 34, he admitted at trial that he was "not that familiar" with New York City, Tr.259:20–21, and had little relevant knowledge concerning the Lower Manhattan NTAs at issue. To take just one example, Mr. Cooper testified that he did not "know much at all about Chelsea" and had "not looked into the details . . . of Chelsea." Tr.317:23–318:22; Tr.318:23–319:21 (similar testimony as to the East Village); Tr.323:6–25 (similar testimony as to Greenwich Village); Tr.327:9–13 (similar testimony as to the Lower East Side); Tr.329:24–330:1 (similar testimony as to SoHo); Tr.330:12–331:6 (similar testimony as to Tribeca and the West Village).

64. Mr. Cooper's testimony concerning the Financial District is emblematic of his lack of relevant knowledge and failure to properly consider communities of interest. When asked whether there are any similarities between Staten Island and the Financial District, Mr. Cooper recalled "having a very tasty outdoor pizza in the Financial District" that he "bought [ ] from a Spanish-speaking gentleman," and that "there are Spanish speakers in Staten Island." Tr.320:4–6. The only other similarity between these communities that Mr. Cooper could identify is that he

was "fairly certain" that "some of the" Financial District has "185 percent census tracts." Tr.322:6–21.

65. The only purported "community of interest" that Mr. Cooper claims to have considered are the "Chinese-American neighborhoods in Lower Manhattan and Brooklyn." Cooper Rep. ¶ 59; *see* Tr.327:18–23 (Mr. Cooper's testimony that "[w]hat I could do in terms of taking into account culture is that by joining Manhattan with Staten Island I then had to move some population back into CD-10 and I chose to move the Chinese American population in Chinatown back into CD-10 joined with Bensonhurst, Bath Beach, Sunset Park. So I was taking culture into consideration.").

66. But Mr. Cooper failed to support even this sole, purported community-of-interest analysis. When asked how he "determine[d]," when authoring his report, "what the Chinese communities in the districts at issue" would "want" with respect to redistricting, Mr. Cooper testified that he simply "identified where the Chinese American community lives," and "understood there had been testimony before the Independent Redistricting Commission that Chinatown wanted to remain joined with Sunset Park" (although Mr. Cooper did not disclose such IRC testimony in his expert report). Tr.331:7–24.

67. Mr. Cooper's attempt to create the alleged Chinese-American community of interest was also flawed, including because it separated Chinatown from the Lower East Side. Mr. Cooper testified that he did not "consider that the Asian Legal Defense Fund treats Chinatown and the Lower East Side as one Asian neighborhood," Tr.344:8–11, was not aware that the "New York Redistricting Committee also considers the Lower East Side as part of Chinatown," Tr.345:3–6, and confirmed that he would have drawn the same plan even without being aware of the IRC testimony referenced immediately above, Tr.334:6–7.

68. When pressed on his lack of knowledge of the relevant communities of interest at trial, Mr. Cooper testified that he "was under the assumption there would probably be petitioners here to testify as there usually are in federal court," and was planning "to defer to their testimony" on this point. Tr.329:15–20. Petitioners never put any such testimony before the Court.

B. Dr. Maxwell Palmer

69. Petitioners offered Dr. Maxwell Palmer as an expert in redistricting, political science, and data analysis. Tr.153:11–15; *see* Palmer Rep.; P004 ("Palmer Reply"). He was asked to provide his expert opinion on the extent to which voting is racially polarized in CD11 and to evaluate the ability of Black and Latino-preferred candidates to win elections in Mr. Cooper's illustrative district. Palmer Rep.2.

70. Dr. Palmer utilized a method of ecological inference that did not consider any polling or survey data. Tr.186:11–18. Nor did Mr. Palmer include any additional covariates to attempt to adjust for aggregation bias—despite using a software that would allow him to. Tr.186:22–187:13. Nor did he use the software's diagnostic tools to attempt to determine whether aggregation bias was contaminating his results. Tr.188:3–189:7.

71. Dr. Palmer asserted that his method of ecological inference is the method typically used in redistricting litigations, but Dr. Palmer does not say whether this method is widely used or typically accepted in social science research or academic work. Palmer Rep.2–3. In fact, a peer-reviewed article published in the American Political Science Review Journal, upon which Dr. Palmer relies, found the simple method of ecological inference that Dr. Palmer used to be a comparatively poor methodology because it provides confidence intervals that are too narrow,

thus giving a false impression of precision, and overestimates group cohesion—especially for Latinos and between Blacks and Latinos. Tr.611:1–9.[2]

72. When Dr. Palmer's analysis was repeated with adjustments for aggregation bias, his results changed. Voss Rep.4. These corrected results show that Latinos are less cohesive and vote less cohesively with Black voters than Dr. Palmer's uncorrected results.

73. Dr. Palmer performed his ecological inference using data only from the results of twenty elections that he selected within an eight-year period in CD11. Tr.191:14–17. He did not, as would be the best practice, Voss Rep.18, incorporate any data from a broader region into his model and use that data to inform the inferences he was drawing about CD11. Tr.191:18–192:20. Dr. Palmer used this narrow scope in this case, despite having previously testified that "we want as much data as we can" get and that "you couldn't do ecological inference on the counties in one congressional district alone because there isn't enough information to look at those and infer with any confidence what the pattern is." Tr.193:7–13.

74. Dr. Palmer determined that Black and Latino voters vote cohesively and support the same candidate in CD11. Palmer Rep.3–4. In so doing, Dr. Palmer stated that "[r]ace and party are fundamentally linked." Palmer Reply at 1.

75. One of Dr. Palmer's conclusions—reached using his ecological inference model that is flawed in the ways described above—is that the Black and Latino-preferred candidate is "usually defeated" in CD11. Tr.194:12-14.

[2] *See* Tr.610:25–611:14 (testimony by Dr. Voss: It is true that the article Dr. Palmer references "used the simple or the naïve ecological inference that made no active steps to take into account aggregation bias. They did use it. But they used it to say how poor it is. They report, first, the confidence intervals are too narrow. It gives a false impression of precision . . . . They say it overestimates group cohesion, specifically, especially for Hispanics . . . . It says that it overestimates racially polarized voting . . . . And here's the kicker, it says that naïve ecological inference will miss the Hispanic vote according to their results by 20 percentage points . . . .").

76. Although Dr. Palmer does not provide party labels within his report, in every contest that he analyzed, the preferred candidate of minority voters is a Democrat. Alford Rep.7.

77. Dr. Palmer based his conclusion that the Black and Latino-preferred candidate is "usually defeated" on the fact that, in CD11, the Black and Latino-preferred candidate received more votes than the other candidate(s) in five out of the twenty elections that Dr. Palmer analyzed between 2017 and 2024. Tr.194:15–18.

78. Dr. Palmer acknowledged that "usually defeated" is "not a social science term that [he] would use regularly in [his] work." Tr.199:18–20. He was not aware of any definition of "usually defeated" in any academic work or scientific literature. Despite this, he claimed that he was still able to conclude that winning 25% of some elections met his definition of usually defeated: "[Y]es, that is my opinion. I think, you know, losing three quarters of the time seems to be, you know, not having a very high success rate." Tr.195:2–4. He was unable to offer any opinion on what other win/loss ratios might also support concluding that a candidate was "usually defeated." Tr.200:19–25 ("Q: So you know that [winning five out of 20 elections] is usually defeated, but you don't know what makes it not usually defeated or what other potential percentages are still usually defeated, correct? A: Yes. I would say that . . . .").

79. Dr. Palmer did not include the 2018 congressional election in CD11 in the set of elections that he analyzed. In that election, the Black and Latino candidate of choice was elected and beat an incumbent candidate. Tr.197:11–198:18.

80. Dr. Palmer claimed that he did not include that election because the boundaries of CD11 changed after the 2020 census. But Dr. Palmer admitted that he did not perform any analysis as to the similarities or differences of the district after the boundaries were redrawn, and

therefore did not know whether the district's boundaries were substantially similar or if there were any differences that would have justified not including the 2018 election. Tr.197:11–198:8.

81. If Dr. Palmer had counted that election, the Black and Latino-preferred candidate would have won six out of twenty-one congressional elections—roughly 28% of them. Tr.199:3–10. Dr. Palmer could not answer whether winning 28% of the given elections would still mean that the candidate was "usually defeated." Tr.199:14–200:2.

82. Even with that election excluded, Dr. Palmer determined that Black and Latino preferred candidates won 25% of the elections that he looked at, Palmer Rep.5–6, where Black and Latinos make up less than 30% of the population in CD11, making this near proportionality.

83. Dr. Palmer's conclusion that Black and Latino-preferred candidates are usually defeated in CD11 failed to consider that "Black and Hispanic preferred candidates routinely win elections . . . in New York City and New York State," and failed to consider how Black and Latino candidates of choice faired in other districts in New York. Tr.205:8–13; Tr.211:13–17 ("Q: You didn't perform any analysis for your reports about whether Black and Hispanic preferred candidates are usually defeated outside of Congressional District 11 and the illustrative district, did you? A: No, I did not. My focus was on the 11th District.").

84. In fact, the candidate of choice of Black and Latino voters in CD11 represent ten out of eleven of the congressional districts in New York City and represent nineteen out of twenty-six of the districts in New York State. Tr.211:6–9.

85. Dr. Palmer also examined whether the Black and Latino-preferred candidate would be usually defeated in the illustrative CD11 that Mr. Cooper drew. Tr.212:17–20. Dr. Palmer concluded that the Black and Latino-preferred candidate would have won sixteen out of the eighteen elections that he analyzed in the illustrative district. Palmer Rep.8.

86. While he was hesitant to identify a White-preferred candidate, Dr. Palmer also concluded that, on average in the illustrative district, only 41.8% of White voters supported the Black and Latino-preferred candidate, while 58.2% of White voters supported a different candidate. Palmer Rep.7; Tr.213:13–20. In other words, the candidate(s) that White voters supported with 58.2% of their vote on average lost in the illustrative district sixteen out of eighteen times, or 88.89%.

87. Dr. Palmer acknowledged that if the candidate that White voters supported more frequently was, indeed, the White-preferred candidate, and the White-preferred candidate lost sixteen out of eighteen times in the illustrative district, then White voters in the illustrative district would be able to claim that their preferred candidate is being "usually defeated" under Dr. Palmer's definition of that term. Tr.221:18–222:7.

C. Dr. Thomas Sugrue

88. Petitioners offered Dr. Thomas Sugrue as an expert in the fields of American History and Social Science focusing on Urban History and Civil Rights. Tr.42:19–23. Petitioners requested that Dr. Sugrue conduct research on historical and current patterns of racial discrimination, racial segregation, and racial disparities in socioeconomic status in New York City, with a focus on Staten Island. *See* Sugrue Rep.; P002 ("Sugrue Reply").

89. As a professor, Dr. Sugrue has taught no classes on Staten Island, no classes about Staten Island, and has not published any scholarly papers or articles specifically related to Staten Island. Tr.84:3–85:9.

90. Within his discussion on the history of Staten Island, Dr. Sugrue ignored the significant and thriving Asian community on Staten Island—the population of which is the third largest racial group on Staten Island. Sugrue Rep.7.

91. As to the discussion he did include, Dr. Sugrue provided a cherry-picked rendition of Staten Island's history, excluding facts that did not fit his narrative. Borelli Rep.3–4. For example, omitted from Dr. Sugrue's discussion is New York's anti-slavery activity prior to the Civil War, the history of civil rights activism thereafter, and the noteworthy advancements made by Staten Islanders in the areas of civil rights and racial equality. *Id.* at 5, 7, 19–29.

92. Dr. Sugrue also failed to include in his report that, today, Staten Island is replete with public and private organizations committed to assisting minorities, including by ensuring their access to the political process. *Id.* Nor did he mention that Staten Island's hate crime occurrence is far lower than Manhattan's. *Id.* at 5.

93. Although Dr. Sugrue provided one alleged example of a voting qualification having been used in New York (literacy tests), Dr. Sugrue did not tie the use of literacy tests—which was permanently banned fifty years ago after being used throughout the country—to current voting conditions in Staten Island. *Id.* And Dr. Sugrue ignored that New York, including Staten Island, has actually expanded language services to assist minority voters. *Id.* at 31–33.

94. In his discussion of the socioeconomic disparities that exist on Staten Island, Dr. Sugrue ignored the progress that has been made in the last few decades. *Id.* at 5, 37–45.

95. Dr. Sugrue provides no evidence that Blacks and Latinos have been excluded from public office and discredits the significant success that minority candidates have achieved, such as the success of Congresswoman Malliotakis. *Id.* at 4.

96. Dr. Sugrue's initial reported evidence of racial appeals in political campaigns omits any discussion of congressional campaigns, provides an incomplete account of the secession campaign, and summarizes four disparate incidents across a dozen years that do not qualify under his own definition of racial appeals. *Id.* at 52–58. The examples he does cite are largely based

on his subjective belief that they are racial appeals. *Id.* Such subjectivity is best demonstrated by his citation to the secession movement. *Id*. at 57. The secession movement was not motivated by racial reasons, but political ones, *id.*, as Dr. Sugrue ultimately conceded, *see* Sugrue Reply 17. But by allowing his own subjective notions of racial appeals dominate his methodology, Dr. Sugrue offers unreliable opinions on this topic. Borelli Rep.57–60.

97. Dr. Sugrue did not provide any opinion on whether those on Staten Island have anything in common with residents of Lower Manhattan.

V. Intervenor-Respondents' Experts

A. Dr. Sean Trende

98. The Court admitted Dr. Sean Trende as an expert in redistricting. Tr.384:16–20. Intervenor-Respondents retained Dr. Trende to evaluate and respond to Mr. Cooper's expert report dated November 17, 2025. *See* Trende Rep. Dr. Trende also analyzed partisan performance in both New York City and New York State. *Id.* at 5–9. He further provided an opinion on the consequences of adopting lenient standards under the New York Constitution and/or the NYVRA. *Id.* at 9–15.

99. Dr. Trende is one of the nation's foremost experts on elections and legislative maps, and he has vast experience with both analyzing electoral maps to determine their legality and drawing maps that are enacted into law. *Id.* at 1–2.

100. Dr. Trende served as one of two special masters appointed by the Supreme Court of Virginia to redraw the districts that will elect the Commonwealth's representatives to the House of Delegates, state Senate, and U.S. Congress in the following decade. *Id.* at 4. The Supreme Court of Virginia accepted those maps, and they were praised by observers across the political spectrum. *Id.* Dr. Trende was also appointed the court's expert by the Supreme Court of Belize to determine whether Belize's electoral divisions (similar to our congressional districts)

conformed with international standards of democracy as they relate to malapportionment claims, and to draw alternative maps that would remedy any existing malapportionment. *Id.*

101. Dr. Trende coauthored the 2014 Almanac of American Politics, which is considered a foundational text for congressional districts and the representatives of those districts, as well as the dynamics in play behind the elections. *Id.* at 2.

102. In this matter, Dr. Trende examined how often minority candidates of choice, as identified by Dr. Palmer, are defeated in CD11 and in other districts throughout New York City and the State as a whole. *Id.* at 5.

103. Dr. Trende concluded that in New York City and in New York State, the minority candidates of choice routinely win elections. *Id.* The last registered Republican to win a mayoral election was Michael Bloomberg in 2005; no Republican has been elected Comptroller since 1938, and no Republican has ever been elected NYC Public Advocate. *Id.*

104. At the citywide level, Democrats carried each statewide election in Dr. Palmer's dataset. *Id.* Democrats therefore can obviously win citywide elections in New York City and there is a question of whether Republicans can do so at all. *Id.*

105. Looking to the statewide results, the Democratic candidate routinely wins statewide elections. *Id.* at 6. The last Republican to carry New York State in a presidential election was Ronald Reagan in 1984; the last Republican to win a gubernatorial election was George Pataki in 2002; the last Republican to win a Senate election was Al D'Amato in 1992; the last Republican to win an attorney general election was Dennis Vacco in 1994; and the last Republican to win a Comptroller election was Edward Regan, who won the office in 1990. *Id.*

106. Dr. Trende then analyzed election results at the level of individual congressional districts. *Id.* at 6–9. His results are shown in the table below:

District	Gov 18	AG 18	Sen 18	Comp 18	Pres 20	Comp 22	Sen 22	Gov 22	AG 22	Sen 24	Pres 24	# D Wins	% D Wins
1	50.9%	50.7%	53.1%	55.5%	49.1%	46.0%	44.3%	41.9%	42.7%	47.1%	44.9%	4	36.4%
2	52.6%	52.3%	54.6%	56.8%	48.8%	43.2%	41.8%	39.0%	40.1%	45.2%	43.0%	4	36.4%
3	58.9%	57.7%	60.0%	62.2%	55.7%	50.8%	49.8%	45.8%	46.7%	50.1%	47.8%	7	63.6%
4	60.8%	59.6%	61.6%	63.3%	57.3%	51.5%	50.6%	47.1%	48.1%	52.8%	50.6%	9	81.8%
5	88.2%	88.3%	88.3%	88.6%	81.4%	75.5%	76.6%	73.3%	74.8%	74.1%	71.3%	11	100.0%
6	74.7%	74.6%	75.0%	75.2%	64.8%	58.3%	59.8%	53.7%	55.7%	58.1%	53.3%	11	100.0%
7	90.1%	90.5%	90.5%	90.2%	80.5%	77.9%	80.3%	74.0%	77.7%	77.4%	73.6%	11	100.0%
8	86.0%	86.2%	86.1%	86.0%	77.9%	73.9%	74.7%	71.7%	73.3%	75.2%	72.5%	11	100.0%
9	85.9%	86.9%	85.5%	86.2%	76.2%	74.1%	75.1%	68.7%	72.8%	75.2%	70.6%	11	100.0%
10	89.5%	89.5%	90.1%	89.3%	85.7%	82.7%	85.1%	80.6%	82.3%	82.8%	81.0%	11	100.0%
11	54.0%	53.5%	55.4%	55.7%	46.1%	39.4%	40.1%	36.3%	37.4%	41.2%	37.6%	4	36.4%
12	86.2%	84.7%	86.6%	85.3%	86.0%	80.9%	83.5%	80.1%	79.9%	81.9%	82.4%	11	100.0%
13	95.3%	95.3%	95.2%	95.0%	88.8%	86.5%	89.1%	86.4%	87.7%	83.5%	80.1%	11	100.0%
14	86.4%	86.7%	86.7%	86.8%	77.8%	70.6%	73.1%	69.1%	70.7%	70.0%	66.2%	11	100.0%
15	93.1%	93.0%	92.9%	93.1%	85.5%	81.0%	83.5%	80.3%	81.9%	78.1%	74.4%	11	100.0%
16	74.2%	74.5%	75.6%	76.0%	72.5%	65.6%	66.2%	63.3%	64.0%	68.6%	66.6%	11	100.0%
17	55.6%	58.4%	60.0%	61.8%	55.1%	52.4%	52.3%	48.3%	50.4%	55.1%	50.3%	10	90.9%
18	49.8%	55.8%	59.3%	59.3%	54.6%	53.3%	52.2%	49.1%	51.0%	56.9%	51.7%	9	81.8%
19	46.8%	52.6%	57.6%	59.1%	52.3%	52.2%	50.3%	46.5%	48.5%	54.4%	50.9%	8	72.7%
20	49.4%	57.0%	62.1%	66.7%	59.8%	60.4%	56.6%	52.9%	54.8%	60.1%	57.2%	10	90.9%
21	35.0%	42.2%	50.9%	52.4%	42.0%	43.1%	40.0%	34.4%	37.6%	44.3%	39.6%	2	18.2%
22	49.5%	54.4%	59.5%	62.5%	55.8%	54.3%	54.1%	48.9%	50.1%	56.2%	53.8%	9	81.8%
23	36.4%	37.5%	46.8%	48.4%	40.7%	40.3%	38.9%	35.5%	36.4%	41.9%	39.4%	0	0.0%
24	33.1%	37.7%	45.5%	47.0%	39.6%	38.1%	37.2%	32.7%	34.1%	41.0%	38.4%	0	0.0%
25	54.3%	57.0%	62.2%	63.2%	60.5%	57.4%	57.0%	53.8%	54.0%	60.0%	59.3%	11	100.0%
26	59.8%	58.5%	66.9%	69.0%	62.8%	62.1%	61.6%	58.4%	58.8%	62.6%	59.8%	11	100.0%

Id. at 6.

107. The minority candidate of choice is capable of winning elections in CD11 as they won four of the eleven elections in Dr. Trende's dataset. *Id.* at 7. There is a history of Black and Latino candidates of choice either winning or coming very close in CD11. Tr.386:7–9.

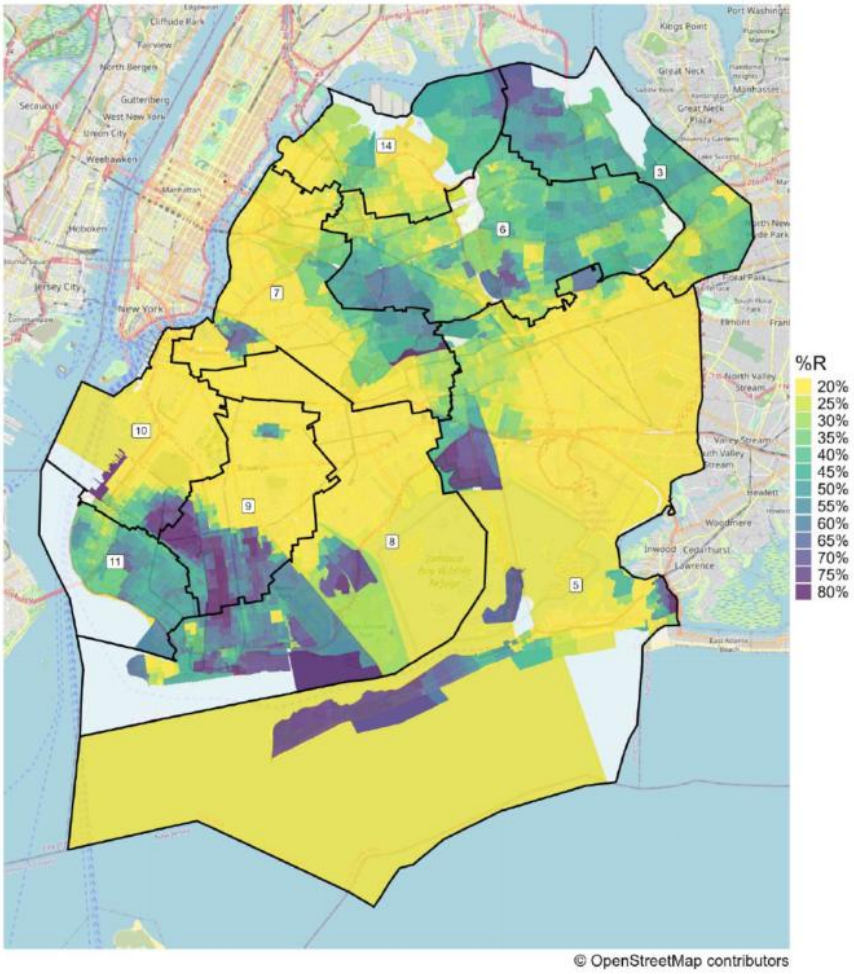
108. In every district wholly within New York City outside of CD11, Democrats have never lost a statewide election, and for those districts around New York City, Democrats have won almost every statewide election. Trende Rep.9. Additionally, all of the districts wholly or partially within New York City, with the exception of CD11, have elected Democrats to Congress, representing 92% of the delegation. *Id.* at 7–8. In nearly all of these circumstances, the Democrats won by wide margins. Tr.402:11–18. Notably, about two-thirds of the New York City delegation to Congress are minorities. Tr.404:17–25.

109. Similarly, New York's congressional delegation statewide currently includes only seven Republicans, comprising 27% of the total delegation. Trende Rep.8. Democrats thus constitute 73% of the New York congressional delegation. *Id.*

110. Although Dr. Trende did not provide a definition of "usually defeated," he warned that without a stringent definition, the NYVRA's standards can collapse upon themselves. *Id.* at 9. Because redistricting can be robbing Peter to pay Paul, anything that one does to reduce Republican performance or White-preferred candidate performance in one district is going to change it another. Tr.411:7–13. So, changing districts so that minority-favored candidates win more would then mean that the same district would need to be changed back so that White voters' candidates of choice do not lose too often. Trende Rep.10–15. This would create what is called a "doom loop"—an endless loop of litigation. Tr.396:3–20.

111. For example, because the NYVRA protects White voters, *see Clarke v. Town of Newburgh*, 237 A.D.3d 14, 33 (2d Dep't 2025), White voters would have viable claims all over New York's congressional map under Petitioners' theory. Trende Rep.10. This can be illustrated by looking at the areas covered by the Fifth, Eighth, and Ninth Congressional Districts. *Id.* Democrats have won every statewide election in each of these districts. *Id.* at 8. But the heatmap below shows that there is a large cluster of Republican precincts contained within these heavily Democratic districts.

Figure 2: R voting percentage by precinct using index of statewide elections, NYC



Id. at 11.

112. These districts could be reconfigured so that the Republican candidate wins more often than not, while also seemingly satisfying the requirements of the NYVRA. *Id.* at 11–12.

113. Similarly, if Petitioners were to succeed here, White residents of the newly created CD11 could now bring a claim and offer an even stronger map in which Republicans have won every election in the newly configured CD11 since 2022. *Id.* at 13–14.

114. Mr. Cooper did not comply with traditional redistricting criteria as his illustrative map is not compact. Tr.411:18–412:6. Mr. Cooper's map cuts CD11's Polsby-Popper score in

half and its Reock Score by two thirds, sacrificing compactness to achieve his other goals. Trende Rep.16–17. Indeed, under Mr. Cooper's map, CD11 would have the worst Reock score in the entire State and would be well below average. *Id.* His theory, if taken literally, would write compactness out of the New York Constitution, according to Dr. Trende. Tr.394:21–395:1.

115. There is no justification for Mr. Cooper's low compactness scores. Although Mr. Cooper attempts to "remove" the intervening waterways and look only to the land areas of CD11, there is no precedent to judge a district's compactness by breaking it up into pieces and examining the pieces. Trende Rep.17.

116. Mr. Cooper attempted to respond to these concerns by pointing to a district that connects two subparts separated by Lake Pontchartrain, but those two subparts are connected by a causeway—making his example more like crossing the Verrazzano-Narrows Bridge to Brooklyn, not to Manhattan. Tr.417:22–418:3.

117. Finally, Mr. Cooper overstated his case when he suggested that there is ample precedent for connecting Staten Island with Manhattan. *Id.* at 18. In terms of congressional maps, Mr. Cooper points only to a single congressional map, drawn in the first Nixon Administration. But that map was drawn just seven years after the opening of the Verrazano-Narrows Bridge. *Id.* at 18. Before that, travel to Brooklyn and to Manhattan both required ferry rides; direct travel by car to other places in New York required a drive through New Jersey. *Id.* More importantly, since that map, Staten Island has always been connected to Brooklyn, much as it is in the current map. *Id.* at 18–24. As to the assembly map that Mr. Cooper points to, that map connects Staten Island to both Brooklyn and Lower Manhattan, meaning that it utilizes both the Verrazzano-Narrows Bridge connection and the ferry route. Tr.419.16–21.

B. Dr. Stephen Voss

118. The Court admitted Dr. Stephen Voss as an expert on ecological inference and redistricting. Tr.589:19–24. Intervenor-Respondents retained Dr. Voss to evaluate and respond to Dr. Palmer's expert report, focusing on Dr. Palmer's "use of ecological inference to estimate racial/ethnic voting behavior in New York City." Voss Rep.3.

119. Dr. Voss is a professor at the University of Kentucky. *Id.* at 1. Since 1996, Dr. Voss has published scholarly work on elections and voting behavior related to race and ethnicity, including in peer-reviewed disciplinary journals. *Id.*

120. Dr. Voss has experience serving as a consultant and expert witness in multiple redistricting and voting-rights cases. *Id.* at 2.

121. As part of his engagement with Intervenor-Respondents, Dr. Voss assessed whether Dr. Palmer's (1) ecological inference analysis used scientific best practices, and (2) methodology could be trusted to produce accurate results. *Id.* at 3. By extension, because Dr. Palmer's report analyzed New York congressional maps, Dr. Voss evaluated both the enacted New York congressional districts and the illustrative maps developed by Mr. Cooper. *Id.*

122. To verify Dr. Palmer's ecological inference results, Dr. Voss used the same programming language, the same ecological-inference package, and the same racial/ethnic and vote-choice data as Dr. Palmer. *Id.* Dr. Voss considered other Census and election data only when extending his review past CD11 and the rival illustrative district. *Id.*

123. Ultimately, while Dr. Voss was able to replicate Dr. Palmer's results, Dr. Voss concluded that some of the decisions that Dr. Palmer made do not conform to best practices in ecological inference research, resulting in Dr. Palmer's results being flawed in several respects, *id* at 4–5, such as: (1) Dr. Palmer's results "were inaccurate and not reliable based on the method and data he used," Tr.596:5–7; (2) Dr. Palmer implied a "higher level of confidence and a sort of

false sense of precision th[a]n really [was] warranted," Tr.596:8–10; and (3) Dr. Palmer "is overestimating cohesion among some of the groups in the electorate and overestimating racial polarization compared to what is defensible," Tr.596:12–15.

124. There were several red flags that highlighted Dr. Palmer's flawed methodology and results. For one, his results differed from his practical understanding about voters and available polling data. Tr.602:4–15. For example, Dr. Voss expected Latino voters to vote for Democratic candidates at lower rates than Black voters. Tr.602:19–23. But Dr. Palmer's results did not reflect this. Palmer Rep.4. For another, Dr. Palmer's confidence intervals—a way to measure the precision of the estimate being reported—"were telling him that the Asian vote might be 50/50, but it could be as low as in the 30s, could be as high as the 60s." Tr.604:11–15. Such a wide confidence interval indicates a lack of precision in the results. Tr.619:4–9; 626:19–627:2.

125. The first methodological decision that Dr. Palmer made that contributed to his faulty results is that he employed a simple version of ecological inference that assumes that members of a group vote the same way everywhere, aside from random variation and the occasional deviation from the norm. Voss Rep.4.

126. In other words, Dr. Palmer's model assumes, for instance, that "Hispanic voters are going to be equally likely to vote for the democrat regardless of the type of place where they live, what their socioeconomic status is and the like." Tr.599:12–15.

127. It is not true that "people are the same way everywhere," and assuming they are "can blow[ ] your ecological inference results." Tr.599:21–600:2. Failing to account for these contextual effects is called "aggregation bias." Voss Rep.4; Tr.601:15–23.

128. Dr. Voss corrected for potential aggregation bias by including a covariate to "(1) soften assumptions of homogeneity within racial/ethnic groups and instead (2) invite the

methodology to account for possible contextual patterns." Voss Rep.4. In other words, Dr. Voss instructed the model to "allow for the possibility that how Hispanics vote depends on whether they're in a very White place, or a place with a very large minority population." Tr.605:11–16. When Dr. Voss repeated Dr. Palmer's analysis with that adjustment, the ecological inferences changed, putting them more in line with conventional understandings about voters as well as ecological inference results reported by other sources, like VoteHub. Voss Rep.4; Tr.608:3–7. Ultimately, this adjustment shows that, contrary to the assertion contained in Dr. Palmer's results, the "gap between Black voters and Hispanic voters appears to have widened, as consistent with [Dr. Voss'] expectations." Tr.609:1–8.

129. Dr. Palmer's second methodological error was using incorrect assumptions about voter turnout. Voss Rep.4–5. Again, the turnout estimates that Dr. Palmer's model used contradicted conventional understanding about voter behavior, saying that Asian turnout was one-third the size of Black turnout and a quarter the size of Latino turnout. Tr.614:10–14. Dr. Palmer's underestimation of Asian turnout resulted in an erroneous assignment of Asian votes to other racial and ethnic groups, making his voter preference numbers wrong. Tr.616:22–617:3.

130. Finally, Dr. Palmer employed an erroneous scope to make his ecological inferences. Dr. Palmer restricted his analysis to a single congressional district's precincts, which does not conform to best practices. Voss Rep.5. "Even if all you cared about is what's going on in District 11, you should use more information to get better estimates for District 11 . . . [the best practice is to] run the ecological inference using a broader territory to improve your CD-11 estimates over one that only looks at those precincts." Tr.617:10–618:22.

131. To attempt to correct for this error in Dr. Palmer's methodology, Dr. Voss performed an ecological inference using New York City-wide data provided by Dr. Sean Trende.

Tr.620:4–12; Voss Rep. App'x B at 21. This ecological inference estimated votes by Black, White, Latino, and Asian voters in the 2022 Gubernatorial election in New York City's congressional districts (5–15) and in the illustrative CD10 and CD11. Voss Rep. App'x B at 21.

132. When using this larger data set, the results are much closer to Dr. Voss' estimates with the covariate added than they are to Dr. Palmer's results that fail to correct for aggregation bias. *Id*.

133. This correction, too, shows that "the cohesion between Black and Hispanic voters is less, and the gap between Hispanic voters and White voters is less than" Dr. Palmer reported. Tr.627:5–8. Dr. Voss "tried to correct Dr. Palmer's results in two totally separate ways and reached the same finding that his results were incorrect in the same way." Tr.625:5–15.

134. Such narrowing of the focus provides a misleading picture of how cohesive a racial or ethnic group actually is in the area where mapmakers were working, and will give a distorted view of the level of racial polarization as well. Voss Rep.5; Voss Rep. App'x B at 20.

135. By focusing only on a single congressional district, the same voters can be made to look polarized or not polarized due to the narrow focus. Voss Rep.20. For instance, Dr. Voss identified a "fairly large White population that votes overwhelmingly Republican in the current District 11." Tr.623:14–17. "But," he uncovered, "the illustrative maps crack that White vote so that those Republican voters are being buried in the new District 10, and buried in the new District 11." Tr.623:17–19.

136. Mr. Cooper's illustrative map makes the polarization numbers in each illustrative district look better "not because it groups protected minority populations who have been separated from each other artificially by district lines" but instead because White Republicans "are cracked away from like-minded voters." Voss Rep.6.

137. "[Y]ou're not going to catch that you're taking this White Republican vote between Brooklyn and Staten Island and cracking it to create two Democratic districts unless . . . you're looking broader than a single district." Tr.623:21–25.

138. Regarding relevant characteristics, communities who commute into larger cities do not necessarily share common interests, particularly in a city as big as New York. Tr.621:14–622:19. Instead, people who both commute into the city, such as those in Brooklyn and Staten Island, should be grouped because they go into Manhattan to work but return to their driveway communities. Tr.621:22–622:4.

139. Finally, certain of New York City's congressional districts as a whole exhibit racially polarized voting, a portion that assists with some of Dr. Trende's analysis. *See supra* pp.19–21.

140. In the Fifth Congressional District in the 2022 Gubernatorial race, for instance, approximately 96% of Black voters supported the Democratic candidate while only 33.8% of White voters supported that same candidate. Voss Rep. App'x B at 21; Tr.627:16–629:8. In the Eighth Congressional District, 97.1% of Black voters supported the Democratic candidate, but only 40% of White voters supported that candidate. Tr.629:9–13. And in the Ninth Congressional District, 96.2% of Black voters supported the Democratic candidate while only 37.9% of White voters supported that same candidate. Tr.629:14–17. Such a divergence is a "big gap." Tr.630:5–14.

141. In illustrative CD11, where Black voters supported the Democratic candidate with 95.1% of the vote and White voters only supported that candidate with 42.2% of the vote, there were also "significant" levels of polarization. Tr.631:1–12.

C. Mr. Joseph Borelli

142. The Court admitted Mr. Joseph Borelli as an expert in the history and current conditions of Staten Island. Tr.731:19–732:1. Intervenor-Respondents retained Mr. Borelli to evaluate and respond to Dr. Sugrue's expert report. Borelli Rep.1.

143. Mr. Borelli is a lifelong Staten Island resident and has spent most of his career representing Staten Island in public office. *Id.*

144. Mr. Borelli is also an expert on Staten Island's history. *Id.* at 2–3. In addition to focusing his graduate research on Staten Island's political history in the 1960s and 1970s, Mr. Borelli published two books on Staten Island's history. *Id.* Mr. Borelli has written numerous articles and pieces on Staten Island, often focusing on the issues that uniquely affect Staten Island's residents, such as property taxes and secession. *Id.* at 3.

145. As part of his engagement with Intervenor-Respondents, Mr. Borelli assessed Petitioners' contention that CD11 must be reconfigured to connect "communities of interest" on Staten Island and Lower Manhattan, as well as Dr. Sugrue's reported history of Staten Island. *Id.* at 3–5.

146. Starting with the communities of interest point, the demographics and practical realities of Staten Island's geographic isolation undermine Petitioners' request to connect the "communities of interest" on Staten Island and Lower Manhattan. *Id.* at 3. The diverse populations and physical distance between these two boroughs have ensured that they have little in common, such that it is impractical to group the two areas together. *Id.*

147. Nearly everyone who moves to Staten Island moves from Brooklyn. Tr.738:6–23. They are not moving from Lower Manhattan. Tr.738:6–14. And those who move to Lower Manhattan move from around the country and world; not Staten Island. Tr.739:7–18.

148. Although those in Lower Manhattan can use the ferry to travel to Staten Island, Staten Island's more suburban atmosphere makes such travel impractical. Borelli Rep.17. Most Staten Island residents have to take multiple modes of transportation to get to work in Lower Manhattan if they use the Ferry. Tr.749:1–5. Additionally, Staten Island's ferry does not carry cars, but driving is practically a must on Staten Island, which lacks Manhattan's transit system. Borelli Rep.17. Staten Island has the highest vehicle ownership rate, with the average number of vehicles per household nearly six times that of Manhattan's, which is the lowest. *Id.*

149. That may be in part why people from Manhattan (whose vehicle ownership is less than six times that of Staten Island) do not migrate to Staten Island. *Id.* Those on Staten Island could not take their kids to school, go to the grocery store, or even really get to the ferry without a car. Tr.743:2–18. This significant difference in car ownership has led those in Lower Manhattan to want to "break[ ] the car culture"—an idea that is foreign to the Staten Island way of life. Tr.743:2–11.

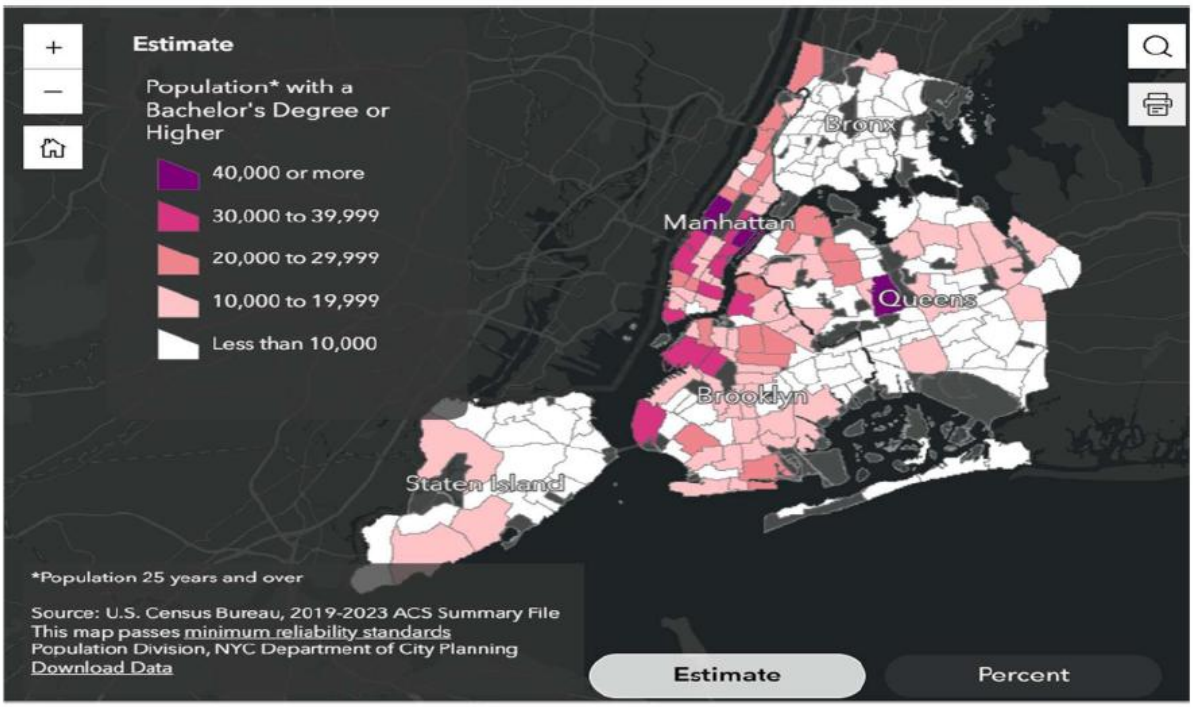
150. Another significant difference between Staten Island and Lower Manhattan is the rate of home ownership. Staten Island has a very high rate of home ownership, whereas most residents of Lower Manhattan are renters. Tr.739:21–740:4. This difference matters because those who live on Staten Island care about issues that affect homeowners uniquely, such as property tax reform, and those in Manhattan do not. Tr.742:9–21. Staten Island residents also care about congestion pricing, and those in Lower Manhattan do not. Tr.742:22–743:1.

151. Those on Staten Island and Brooklyn also uniquely care about tolling on the Verrazzano-Narrows Bridge in way that those in Lower Manhattan—who, again, largely do not own cars—simply do not. Tr.745:1–12.

152. From a zoning perspective, Staten Island and Lower Manhattan could not be more different. Tr.745:25–746:25. Lower Manhattan has some of the highest density zoning regulations in the city, but Staten Island is largely one- to three-family homes. Tr.745:25–746:25. "If [you] blindfolded someone and opened their eyes right outside of [the] courtroom in [L]ower Manhattan, nobody would think they were in Staten Island." Tr.776:8–13.

153. Similarly, from a demographics perspective, Staten Island and Lower Manhattan are nothing alike. Borelli Rep.15. Lower Manhattan is a largely White population, lacking northern Staten Island's diversity. *Id.* And even their minority communities diverge from each other. For example, Puerto Ricans have historically been the most numerous Latino subgroup on Staten Island, while in Lower Manhattan the predominant Latino subset is Mexican. *Id.* at 11–12. However, it is worth noting that southwestern Brooklyn has a Latino population that parallels Staten Island's Latino population. *Id.*

154. Manhattan also has a greater population with a bachelor's degree or higher, as demonstrated by the map below.



Id. at 17.

155. Staten Island has much in common with Brooklyn. *Id.* at 18. Since the completion of the Verrazzano-Narrows Bridge, many Brooklynites—particularly those that lived nearest the bridge—have settled in Staten Island's growing neighborhoods. *Id.* In 2020, 26% of all Staten Island homebuyers were from Brooklyn, a number that grew to 31% in the first half of 2021. *Id.* And during the first half of 2025, of all Staten Island homebuyers that came from New York City (excluding those already living on Staten Island), 92% came from Brooklyn. *Id.* at 18–19.

156. That a number of Staten Island's residents commute to Lower Manhattan for work, therefore, is irrelevant. Tr.740:8–741:5. If commuting into Lower Manhattan alone were sufficient to form a community of interest, any community that commutes to Lower Manhattan would form such a community, such as Westchester County. Tr.740:17–24.

157. Instead, Staten Island is more like the community in Southwest Brooklyn, which also commutes into Lower Manhattan for work. Tr.740:24–741:5; Tr.742:4–21.

158. Moreover, not everyone who commutes from Staten Island to Manhattan works in Lower Manhattan. Tr.749:6–20. There are two major business districts in New York, one of which is in midtown. Tr.749:9–12. Additionally, a lot of Staten Island's residents are municipal workers who work in particular precincts—specific firehouses, schools, or police stations—that are not necessarily in Lower Manhattan. Tr.749:16–20.

159. Any assertion that Staten Island bears more similarity or has deeper connections—by any metric—to any community in New York City other than southwest Brooklyn is both ahistorical and unsupported. Borelli Rep.19. The current congressional map, therefore, makes more sense from a communities-of-interest perspective. Tr.774:24–775:20.

160. Pursuant to Petitioners' theory that the NYVRA's standards apply to their constitutional claim, Mr. Borelli framed the remainder of his report and trial testimony under the NYVRA's totality-of-the-circumstances factors. Those factors are: (a) the history of discrimination in or affecting the political subdivision; (b) the extent to which members of the protected class have been elected to office in the political subdivision; (c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme; (d) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election; (e) the extent to which members of the protected class contribute to political campaigns at lower rates; (f) the extent to which members of a protected class in the State or political subdivision vote at lower rates than other members of the electorate; (g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection; (h) the extent to which

members of the protected class are disadvantaged in other areas that may hinder their ability to participate effectively in the political process; (i) the use of overt or subtle racial appeals in political campaigns; (j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and (k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy. N.Y. Elec. Law § 17-206(3).

161. None of these factors support Petitioners. Borelli Rep.3–5.

162. Starting with factor (a)—the history of discrimination in or affecting Staten Island—Dr. Sugrue's description of racial disparities is taken out of context and deficient, ignoring the significant and thriving Asian community on Staten Island and the noteworthy advancements made by Staten Islanders in the areas of civil rights and racial equality. *Id.* at 3–4.

163. Twelve percent of Staten Island's residents are Asian, making them the third-largest ethnic group in the county after White and Latino residents. *Id.* at 10. The Asian population on Staten Island is incredibly diverse, with numerous households representing Chinese, Indian, Filipino, Pakistani, Middle Eastern, and Korean backgrounds. *Id.* The Asian population's Index of Dissimilarity on Staten Island reveals a number that is both low and declining—meaning that they are well dispersed around Staten Island. *Id.* Asian students are well-represented in local and regional institutions of higher education. *Id.* at 11. And the thriving Asian population on Staten Island is growing—largely moving from Brooklyn. Tr.751:2–13.

164. Mr. Borelli then responds to Dr. Sugrue's contention that a history of slavery, a literacy test, and isolated incidents of racism impair the ability of Black and Latino voters on Staten Island to fully participate through voting or electing favored candidates to office today.

Borelli Rep.19. Dr. Sugrue tends to cherry-pick facts, obscure context, ignore progress, and disregard good intentions of public officials in national, state, and county offices seeking to address serious and complicated socioeconomic problems. *Id.*

165. A full history of racial discrimination in New York tells a more complicated story than Dr. Sugrue lets on, and, more importantly, shows significant progress in addressing racial discrimination in housing, employment, and voting rights on the state and national levels through both legal decisions and legislation. *Id.* at 19–20.

166. Dr. Sugrue disregarded the history of the abolition movement on Staten Island, which greatly involved the residents of Staten Island. *Id.* at 20. New York, which was once a slave state, voted for emancipation well ahead of many other States. *Id.* at 21. And it did so with the help of multiple New York organizations and individuals. *Id.* For example, the New York Manumission Society, including its members from Staten Island, organized a national convention to explore how to persuade Congress to pass anti-slavery legislation and to coordinate efforts to prevent free Blacks from being kidnapped by slave traders. *Id.*

167. Staten Island was also a significant stop along two routes of the Underground Railroad, with passengers crossing the kill either at Perth Amboy or Elizabeth. *Id.* at 22.

168. And once slavery was outlawed in New York, Staten Island itself became a magnet for freed slaves. *Id.* at 23. In 1828, a free Black ferryboat captain named John Jackson bought land just south of Rossville, in an area known as Sandy Ground. *Id.* During its heyday, the community consisted of Black and White individuals who worshipped and went to school together. *Id.* at 24. For almost two hundred years, this settlement continues to hold the distinction of being the longest continually occupied settlement of former slaves, with many of the descendants of the original families still living in the neighborhood. *Id.* at 23.

169. Thereafter, New York became one of the leading States for civil rights advocacy. *Id.* at 25. New York enacted the Ives-Quinn Act in 1945 with broad bipartisan support, which aimed at preventing discrimination in employment. *Id.* at 26. And the State was the first to establish a state commission with broad powers to investigate claims, formulate policy, and create local and regional boards to implement policy. *Id.*

170. During a time in which the KKK was extremely active, Staten Island had a relatively minor KKK influence—especially as compared to the rest of New York City. *Id.* at 27.

171. Although Dr. Sugrue has a large focus on federal housing policy, Dr. Sugrue failed to show that any of these policies were unique to Staten Island or demonstrate that these policies that were in place over seventy years ago currently impair the ability of Black and Latino voters on Staten Island to elect minorities to office. *Id.* at 28–29.

172. Dr. Sugrue's suggestion that Latinos are segregated on Staten Island is inaccurate. *Id.* at 12–13. The diverse Latino population is spread throughout the borough, maintaining representation in each zip code and with no single zip code containing a majority of Latinos. *Id.* This wide residual distribution provides evidence of ethnic integration on Staten Island and challenges Dr. Sugrue's claims of potential racial discrimination and segregation toward Latinos. *Id.* at 13. And though the current dissimilarity rates demonstrate a "moderate degree of segregation," the dissimilarity rate on Staten Island is on the very low end of moderate. *Id.*

173. While the dissimilarity rate for Black individuals on Staten Island is on the high end, it is not as high as the dissimilarity rate for New York City as a whole. Tr.798:4–15.

174. Regarding factor (b)—the extent to which members of the protected class have been elected to office in the political subdivision—there is no evidence that members of the protected

class have been excluded from public office, and, to the contrary, racial and ethnic minorities have had great success on Staten Island in recent years. Borelli Rep.29.

175. From 2010 to 2020, the New York City Council representative for District 49, which covers nearly the entire North Shore of Staten Island, was represented by Debi Rose, a Black woman. *Id.* at 29–30. She was then succeeded by Kamillah Hanks, another Black woman. *Id.* The Assemblyman for New York 61st State Assembly District, which covers the North Shore of Staten Island, is Charles B. Fall, a Black, Muslim man whose family is from Guinea, West Africa. *Id.* at 30. CD11, which encompasses the entirety of Staten Island, is also represented by Latino Congresswoman Nicole Malliotakis in the House of Representatives. *Id.*

176. Minorities have also had success obtaining appointments to the judiciary on Staten Island—with at least one Black woman, the Honorable Anne Thompson, having been elected. *Id.* at 30.

177. As to factor (c)—the use of any voting qualification that may enhance the dilutive effects of the election scheme—Dr. Sugrue's reliance on the use of literacy tests in the 1920s to support his argument is misguided. *Id.* at 31. Beyond the fact that literacy tests were used throughout the State decades ago, Dr. Sugrue ignores the fact that New York revised the test to make it easier to pass and actively funded evening programs, public schools, and community centers to provide an extensive educational campaign to ensure an expanded electorate would pass the exam. *Id.* Due to these efforts, within its first decade, the fail rate for the exam fell from 21.4% to 10.1%. *Id.* These sustained efforts often allowed immigrants to pass in greater numbers. *Id.* Moreover, ultimately, legal and education organizations for Mexicans and Puerto Ricans helped lobby Congress, brought successful legal challenges, and helped introduce legislation to protect Spanish speakers—demonstrating the political success of Latino voters. *Id.* at 32.

178. Today, there are extensive government resources meant to ensure that all eligible voters have access to the ballot, regardless of their country of origin or primary language. *Id.* at 33. For example, New York City provides foreign language services for protected classes in voting, appearing at the polls to assist non-English speakers, and provides printable resource guides in 14 different languages. *Id.*

179. Regarding factor (d)—denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election—neither Dr. Sugrue nor Petitioners provide any support for the suggestion that Black and Latino voters or candidates have been denied access to the ballot, financial support, or other support. *Id.* To the contrary, dozens of candidates have run for office who not only qualified to be on the ballot over the last few decades but have also qualified for the City's and, more recently, the State's matching funds program—which provide candidates of all ethnicities with matching funds at a multiplier rate in addition to the dollars they raise from traditional donations. *Id*. This has resulted in diverse candidates in every election cycle. *Id.*

180. As to factors (e) and (f)—the extent to which members of the protected class contribute to political campaigns at lower rates and vote at lower rates than other members of the electorate—there is no evidence that Black and Latino voters on Staten Island are being denied access to voting. *Id.* at 33–34.

181. Although voting turnout in the State of New York is not categorized by race or ethnicity, the available regional and national data suggests that Latino voters have increased their election participation in New York City throughout the last decade. *Id.* at 34. During the June 2025 primaries, for example, more than 165,000 Latinos voted, apparently shattering prior turnout

records. *Id.* This is consistent with national data showing increased Latino voter eligibility throughout the country. *Id.* Similarly, Black voters have even higher turnout than Latinos nationally. *Id.* at 37.

182. As to factor (g)—the extent to which members of the protected class are disadvantaged in areas including, but not limited to, education, employment, health, criminal justice, housing, land use, or environmental protection—although there are disparities between Whites and Blacks and Latinos on Staten Island, Dr. Sugrue failed to recognize that the disparities have decreased in recent years. *Id.*

183. For example, the percentage of Blacks attaining a high school degree on Staten Island increased from 85.8% in 2015 to 86.4% in 2020 and 90.2% in 2024. *Id.* at 38. The percentage of Blacks attaining bachelor's degrees similarly increased from 24.6% in 2015 to 28.7% in 2020 and 30.0% in 2024. *Id.* Likewise, the percentage of Latinos on Staten Island earning a high school degree increased from 78.4% in 2020 to 82.8% in 2024, and the percentage of Latinos who earned a bachelor's degree increased from 18.0% in 2015 to 22.0% in 2024. *Id.* Other measures of inequality, such as per pupil spending in public schools, also suggest no disparities. *Id.* at 39–40.

184. While there is some income disparity between Whites, Blacks, and Latinos on Staten Island, the disparity must be viewed in context, which shows that the disparity is decreasing and will likely continue to do so. *Id.* at 43–45. For example, Dr. Sugrue ignores that Black and Latino median income has been increasing steadily and decreasing the income disparity. *Id.* at 43. Blacks on Staten Island have increased their mean income by more than 33%, growing from $20,785 in 2010 to $32,154 in 2024. *Id.* This resulted in a 4.14% increase in Black income as a percentage of White income. *Id.* And Latinos have similarly increased their mean income

on Staten Island. *Id.* Latino mean income grew from $21,379 in 2010 to $31,399 in 2024, increasing their percentage as compared to White income. *Id.* Likewise, Asians on Staten Island have seen an increase in mean income, from $26,439 in 2010 to $35,068 in 2024. *Id.*

185. Additionally, focusing only on the gaps in homeownership rates between Whites, Blacks, and Latinos, Dr. Sugrue ignores that Staten Island has a far higher rate of homeownership than the New York City, New York State, and national averages, and disregards the fact that the high demand for housing on Staten Island has greatly increased the cost of housing. *Id.* at 41–42.

186. The homeownership rate on Staten Island is 67.9%, which is more than two times greater than New York City's average of 31%, and significantly higher than the statewide average of 53.6%. *Id.* Blacks and Latinos therefore have historically had, and will likely continue to have, a better chance of owning a home on Staten Island than they would elsewhere in the area, in the State, or around the country. *Id.* at 42.

187. Regarding factor (h)—the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate in the political process—Dr. Sugrue erroneously disregards Staten Island's clear commitment to supporting its minority residents and ending racism through community resources and other support. *Id.* at 45. "Without acknowledging these facts, Dr. Sugrue's presentation of Staten Island is incomplete." *Id.*

188. For example, Dr. Sugrue ignored Staten Island's extensive minority resources meant to protect legal rights and provide an array of services for minorities, ensuring community development, voting rights, legal counseling, and minority integration. *Id.* at 45. These resources include numerous agencies and community groups, some of which are specifically dedicated to increasing political participation. *Id.* at 46–47.

189. Dr. Sugrue myopically focuses on racism that occurred decades ago and a handful of purported hate crimes that occurred more recently, while ignoring Staten Island's significant progress in combating racism. *Id.* at 48.

190. Staten Island has consistently had one of the lowest incident rates of hate crimes in its precincts for several decades. *Id.* at 48. Quarterly-reported hate crimes on Staten Island, most of which involve graffiti and literature rather than physical attacks, decreased 66% from 2018 to 2019, while New York City as a whole saw a 67% increase. *Id.* at 48–49. In the last five years, Staten Island has had 4% of New York City's hate crime reports, and 3% of New York City's hate crime arrests, meaning that Staten Island's hate crimes occur at a far lower rate than the rest of New York City. Tr.769:13–23. And, in 2025, the New York City Police Department Hate Crimes dashboard shows that only two hate crimes in 2025 targeted Blacks. Borelli Rep.48.

191. Dr. Sugrue's contention that so-called "anti-immigrant" protests demonstrate an anti-Latino sentiment on Staten Island is wrong. *Id.* at 49–50. To start, the relevant protests were not anti-immigrant, but were driven by numerous legitimate concerns. *Id.* at 49–50. For instance, the New York City mayor invited migrants to stay in converted hotels, which became de facto homeless shelters, and this had a negative impact on the surrounding communities. *Id.* These protests were not unique to Staten Island, and instead occurred in nearly every neighborhood and borough where the hotels were sited, including even the most progressive neighborhoods and communities of color. *Id.*

192. When instances of hate have occurred, residents of Staten Island have taken action in response, expressing their objection to such conduct. *Id.* at 50–52.

193. Regarding factor (i)— use of overt or subtle racial appeals in political campaigns— Mr. Borelli conducted an objective, replicable search of newspapers on Newspapers.com to

determine the prevalence of racial appeals as might have appeared in congressional races. *Id.* at 52–53. Mr. Borelli selected this method because, although accusations of racial appeals are often subjective in nature, an examination of newspapers in which charges of racism are reported against a candidate provides an objective measure in collecting racial appeals. *Id.* Rather than impose his own subjective thoughts on what issues are inherently racist, Mr. Borelli relied on the reporters of the time to make that determination. *Id.* For example, while the phrase "illegal aliens" may be considered racist or disrespectful by some today, the term was in common circulation in the past by members of both political parties that sought to stop illegal entry to the United States. *Id.* at 53. "This method can be replicated by other investigators, a standard practice of social scientists." *Id.* at 53. And it was praised in *Pierce v. North Carolina*, __ F. Supp. 3d ___, 2025 WL 2841008, at *44–47 (E.D.N.C. Sept. 30, 2025). Tr.760:21–24.

194. The search examined racial appeals in congressional campaigns in the twenty-four-year period from 2000 to 2024. Borelli Rep.53. It focused on "racism" and "issues" for each general election race. *Id.* The search results showed that there was only one charge of racism and one potential charge of antisemitism that was not reported as such. *Id.* at 54.

195. Given that racial issues became more prominent nationally starting in 2014, it is remarkable that in 2020, racial identity politics played a small role in that congressional race. *Id.*

196. Dr. Sugrue's evidence of racial appeals in political campaigns does not include any incident in a congressional campaign, provides an incomplete account of the secession campaign, and summarizes four disparate incidents across a dozen years that do not qualify under Dr. Sugrue's own definition of racial appeals. *Id.* at 52.

197. Regarding the secession movement, Dr. Sugrue incorrectly framed the Staten Island secession movement solely in racial terms—though Dr. Sugrue backed off that framing in his

rebuttal. *Id.* at 54. In reality, the secession movement was motivated largely by poor infrastructure, overcrowded schools, a lack of sewers, tolling on the Verrazzano-Narrows Bridge, and the long history of the Fresh Kills Landfill. *Id.* at 54–55.

198. Dr. Sugrue's citation to the criminal conduct of Mr. Richard A. Luthmann, who was indicted for election law violations and a bevy of criminal charges, as a racial appeal during the 2016-2017 election cycle is erroneous. *Id.* at 58. Mr. Luthmann was an equal opportunity political impersonator—as he had impersonated three local politicians on social media. *Id.* The primary takeaway is that this bizarre conduct was prosecuted and Mr. Luthman's efforts do not reflect the thoughts, wishes, or views of any politician or political party. *Id.* at 58–59.

199. The ad of Max Rose that Dr. Sugrue contends is a racial appeal was actually about being anti-police, not about Black lawlessness. Tr.765:9–766:25. The ad showed individuals marching toward the police station, calling for a defunding of the police, and was meant to create a wedge between Max Rose and some of the moderate Democrats—not make a racial appeal. Tr.765:2–766:25.

200. Finally, Dr. Sugrue's citation to four isolated incidents (more than a decade apart) were not racial appeals. To the contrary, they all show local government officials acting to protect racial minorities. Borelli Rep.59–60.

201. In sum, Dr. Sugrue's opinions on the totality-of-the-circumstances factors do not include the full context of Staten Island's history, diversity, and great progress, making his opinions unreliable. *Id.* at 62.

VI. Respondents' Experts

A. Mr. Thomas Bryan

202. Respondents Kosinski, Casale, and Riley retained a demographic expert, Mr. Thomas M. Bryan, to assess the demographic, geographic, and political performance characteristics of New York City congressional districts—including CD10 and CD11—under the pre-2020 plan, the 2021 plan, the 2024 plan, and Petitioners' expert Mr. Cooper's illustrative plan. *See* Bryan Rep.11.

203. Mr. Bryan is an experienced demographer who has analyzed demography, census data, and population data for decades. *Id.* at 6. He worked as a statistician for the U.S. Census Bureau in the Population Division for multiple years. *Id.* He has extensive redistricting experience, having provided expert demographic and analytic support in over one-hundred-twenty school redistricting projects and forty-five general redistricting projects, including being retained as the redistricting expert for the State of Illinois. *Id.* at 6–8.

204. Mr. Bryan first assessed demographic patterns across the thirteen congressional districts in and around New York City under the pre-2020 plan, the 2021 plan, and the 2024 plan. *Id.* at 20. Citywide, the Any Part Black, non-Hispanic ("APBNH") and Latino populations together constitute nearly half of the total population and CVAP, and eight to nine of the thirteen districts contain more than 25% combined APBNH and Latino CVAP, with several majority-minority districts. *Id.* at 26, 30.

205. Focusing on CD10 and CD11, under the pre-2020 plan, CD10 was majority White non-Latino, with relatively modest APBNH and Latino shares and a sizeable Asian population, and CD11 similarly had a White non-Hispanic ("WNH") majority, with combined APBNH and

Latino populations around one-quarter and Asians constituting roughly one-sixth of the population. *Id.* at 26.

206. Under the 2021 and 2024 plans, the State equalized total population to within one person of the ideal district size and made various adjustments that altered the racial and ethnic composition of CD10 and CD11. *Id.* at 28−34. In CD10, WNH percentages decreased and APBNH, Latino, and Asian shares increased; in CD11, the combined APBNH + Latino share remained essentially unchanged at approximately 22–26%, while the Asian share increased and the WNH share declined slightly. *Id.*

207. CD11 is the only congressional district in or around New York City currently represented by a Republican, Congresswoman Nicole Malliotakis, who has increased her margin of victory in each successive election under the post-2020 plans despite only modest changes in the combined APBNH and Latino CVAP in CD11. *Id.* at 18.

208. Mr. Bryan's report also evaluated the compactness of the districts in each plan and explained that compactness is a "traditional redistricting criterion" required by both the federal Voting Rights Act and the New York Constitution, which provides that "[e]ach district shall be as compact in form as practicable." *Id.* at 14, 40−41.

209. Using standard empirical measures (including Reock and Polsby–Popper), the 2021 and 2024 plans substantially improved the compactness of CD10 and CD11 compared to the pre-2020 map, and the enacted 2024 version of CD11 is a highly compact district. *Id.* at 44, 46.

210. By contrast, Mr. Cooper's illustrative plan "significantly" reduces the compactness of both CD10 and CD11. *Id.* at 42, 46. In CD11, the Reock score drops from roughly 0.52 under the 2024 Plan to about 0.30, and the Polsby–Popper score is cut roughly in half—which would

place Mr. Cooper's CD11 among the least compact congressional districts nationwide under common benchmarks. *Id.* at 45–46.

211. There were also internal inconsistencies and outright errors in Mr. Cooper's compactness reporting, including Reock scores that conflict with Cooper's own averages and cannot be reproduced using accepted software. *Id.* at 14, 45−46. These errors fall below the professional standards expected of experts in redistricting analytics and undermine the reliability of Mr. Cooper's compactness analysis. *Id.* at 45–46.

212. Applying an "eyeball test" similar to that used by federal courts, Mr. Cooper's proposed CD11 is an "extremely elongated and irregular district" that stretches from Staten Island across approximately five miles of water to Lower Manhattan, in stark contrast to the 2024 Congressional Map, which connects Staten Island to adjacent Brooklyn over roughly one mile via a single bridge. *Id.* at 42, 49. In fact, Mr. Cooper's CD11 resembles the type of "oddly shaped, sprawling" district that courts have rejected as non-compact. *Id.* at 14, 47–48.

213. Cooper's argument that CD11 should be considered "compact" because its two land components—Staten Island and Lower Manhattan—are individually compact is without merit. *Id.* at 42–43. Compactness must be assessed for the district as a whole, including the water area that makes the two pieces contiguous, and treating each component separately is a "novel" and illogical approach with no support in case law or accepted redistricting practice. *Id.* Mr. Cooper's proposed map extends CD11 by miles in order to connect it with Lower Manhattan. Tr.547:9–13.

214. If Mr. Cooper's reasoning were accepted, map-drawers could justify linking distant, compact minority enclaves across large expanses of water, producing districts with

virtually no overall geographic or population compactness, notwithstanding the New York Constitution's compactness requirement. Bryan Rep.44.

215. Mr. Bryan evaluated communities of interest in three dimensions: (1) political geography (precinct/voting district splits), (2) neighborhood integrity (NTAs), and (3) racial and ethnic communities—particularly Asian and Chinese-American communities—in and around CD10 and CD11. *Id.* at 51.

216. With respect to political geography, Cooper counts splits using outdated 2020 Voting Tabulation Districts rather than current New York City precinct boundaries. *Id.* at 51−52. Using current precinct data, neither the 2021 nor the 2024 plan splits any precincts between CD10 and CD11, whereas Cooper's illustrative plan splits twelve current precincts between the two districts. *Id.* at 52. The enacted 2024 plan thus better respects existing political communities than Mr. Cooper's proposed map. *Id.*

217. At the neighborhood level, the 2024 plan split two NTAs between CD10 and CD11. *Id.* at 53. However, Mr. Cooper's illustrative plan reports three NTA splits. *Id.* at 54.

218. Turning to racial and ethnic communities of interest, Chinese-American communities differ markedly across neighborhoods in income, housing patterns, and co-residential groups. *Id.* at 54−57. Lower Manhattan's historic Chinatown has relatively low median income and high poverty, Sunset Park combines a large Latino and Asian population, and neighborhoods like Bensonhurst and Dyker Heights are majority White or mixed, with growing but socioeconomically distinct Asian populations. *Id.* at 56−57.

219. Under the 2024 Congressional Map, Asians are nearly evenly distributed between CD10 and CD11 and constitute the largest single minority group in both districts. *Id.* at 58−59. By contrast, under Mr. Cooper's illustrative plan, approximately 36% of Asians in CD10 and 57%

of Asians in CD11 are moved to the other district, so that nearly half of the Asian population in the two districts is reassigned. *Id.* at 59.

220. Mr. Cooper's map fractures contiguous Chinese-American communities in and around Chinatown, leaving some Chinese residents in CD11 while attaching the remainder to distant Asian pockets in Sunset Park, Bensonhurst, and other parts of Brooklyn that are separated by non-Asian neighborhoods and differ materially in socio-economic profile. *Id.* at 56–57. Mr. Cooper's map actually separates Chinese Americans that live across the street from each other to connect those in Chinatown with those in Brooklyn. Tr.515:6–22. Mr. Cooper's claim that his plan "unif[ies]" Chinese communities of interest is materially misleading and, in practice, the illustrative plan disrupts and dilutes a cohesive Asian community in CD11. Bryan Rep.56–57.

221. There are significant differences between the Asian population on Staten Island and the Asian population in Lower Manhattan, as well as significant differences between the Latino population on Staten Island and the Latino population on Lower Manhattan. Tr.544:19–545:15; Tr.546:16–547:8. And the distance between the communities on Staten Island and Lower Manhattan—separated by miles of water with no physical connection—makes it more difficult for communities of interest to form. Tr.548:2–6; Tr.549:18–550:6. The proximity of people to one another, "especially [in] a very densely concentrated place like New York[,] is important to determining whether a community" of interest can form. Tr.550:7–11.

222. Responding to testimony about Staten Island residents who commute to Lower Manhattan forming a community of interest with residents of Lower Manhattan, Mr. Bryan provided data regarding commuters and gave his opinion on that purported community of interest. Tr.523:17–30:4. Only one in five workers in Manhattan actually live in Manhattan; the rest commute in from elsewhere. Tr.524:10–15. Roughly 60,000 people from Staten Island commute

to Manhattan for work, Tr.524:20–24—a "relatively small" "subset of the adults that live on Staten Island," Tr.525:2–9, making up only 2.4% of Manhattan's workforce, Tr.526:2–6. And those commuters do not necessarily work in Lower Manhattan. Tr.543:15–19. Nor do they all take the ferry given that the ferry only carries about 45,000 people per day. Tr.525:10–25. Few people go into Staten Island from Manhattan for work. Tr.527:19–25.

223. Because only a small subset of the population goes into Manhattan for work and they do not take the same mode of transportation each day, it cannot be said that Staten Island residents who work in Manhattan form a community of interest. Tr.529:20–530:4.

224. Mr. Bryan also analyzed the partisan and racial effects of Mr. Cooper's illustrative plan using precinct-level election data from the 2024 elections. Bryan Rep.71−73.

225. The precincts that Cooper moved from CD10 to CD11 voted approximately 80% Democratic in recent statewide and congressional contests, while the precincts moved from CD11 to CD10 voted only about 42–47% Democratic. *Id.* at 71. In fact, the portion of Lower Manhattan that Mr. Cooper carved out of CD11 is the lowest performing precinct for Democrats in Lower Manhattan. Tr.540:7–15. And Mr. Cooper did not just carve out Chinatown, he carved out "numerous blocks that go outside of Chinatown, kind of down to the southwest that have highly irregular moves, block by block that contain other relatively low performing democratic precincts as well." Tr.540:16–24. In other words, Mr. Cooper's map systematically imports heavily Democratic precincts into CD11 and exports more competitive or Republican-leaning precincts to CD10. Bryan Rep.71.

226. Thus, notwithstanding Petitioners' characterization of Mr. Cooper's map as a remedial coalition district for Black and Latino voters, the plan's principal effect is to strengthen

the White, liberal (Democratic) vote in CD11 while diminishing the representational strength of Asians—the largest existing minority group in that district under the enacted map. *Id*. at 74.

227. Mr. Cooper's movement of vast numbers of the population—one-third of the population was moved in order to generate two percentage points of change in CD11—fails to satisfy the traditional redistricting principle of core retention. Tr.533:22–534:3.

228. Accordingly, Mr. Cooper's illustrative plan is inferior to the enacted 2024 plan on compactness and communities-of-interest metrics, and its demographic and political effects show that it is better understood as a partisan reconfiguration benefiting White, non-Latino Democratic voters than as a genuine remedy for racial vote dilution. Bryan Rep.74.

B. Dr. John R. Alford

229. The Court accepted Dr. John Alford as a witness in voter dilution and polarization. Tr.674:21–675:7. Respondents Kosinski, Casale, and Riley retained Dr. Alford in this litigation to evaluate and respond to Dr. Palmer's expert report. Alford Rep.4.

230. The improved performance for minority preferred candidates that Dr. Palmer reports in the illustrative district comes largely from swapping White voters between CD11 and CD10 to net more Democratic leaning voters in the illustrative CD11, and to a lesser extent from making a similar swap of Asian voters. *Id.* at 9.

231. Regarding Dr. Palmer's comments on the performance of various districts, in its current form CD11 leans Republican, but "in a good year for Democrats, like President Trump's midterm in 2018, Democrats can carry the district as they did in all four of the statewide contests." *Id.* at 12.

232. In its current form, CD11 would also be expected to elect minority candidates to office. Tr.683:12–21. The empirical evidence shows that the race of a candidate is not influential in CD11. Tr.693:13–16.

233. Petitioners' focus on party voting patterns is no accident. Alford Rep.14. Black and Latino voters in CD11 prefer Democratic candidates, and White voters in CD11 prefer Republican candidates. *Id.* "The partisan nature of this polarization clarifies the context for the attempt in the illustrative district to alter the configuration of the district to achieve a Democratic majority despite actually increasing the [White] CVAP share of the district population." *Id.*

234. Because CD11 is not unique, with no lower bound on the proportion of minority voters needed, any Republican leaning district with any minority population, which is effectively any Republican district, is subject to the same legal liability as here. *Id.* at 15. That is particularly true because racial polarization is increasingly common. Tr.684:19–20.

235. So, for example, the Black or Latino voters in the First and Second Congressional Districts could sue to compel both districts to be reconfigured to achieve a pro-Democratic lean by reaching further west into more Democratic voting areas, and the Seventeenth Congressional District could be forced to be reconfigured to reach down the Hudson River to incorporate more Democratic voters to the south. Alford Rep.15.

236. The converse is also true. Tr.700:3–14. Because Hasidic Jews are a recognized minority group that lean Republican, if one of New York's congressional districts that consistently elects the Democratic candidate has a population with 9% Hasidic Jews, they will have a right to a Republican district under Petitioners' theory. Tr.699:22–700:10.

PROPOSED CONCLUSIONS OF LAW

I. Petitioners' Claim Fails Under The New York Constitution

A. Applicable Legal Principles

1. This Court construes the New York Constitution in the same way that it "constru[es] the language of a statute," giving "the language used its ordinary meaning" and applying well-settled principles of construction. *Sherill v. O'Brien*, 188 N.Y. 185, 207 (1907); *see Harkenrider*, 38 N.Y.3d at 509.

2. Courts must give effect "to the entire [provision] and every part and word thereof," *Lynch v. City of New York*, 40 N.Y.3d 7, 13 (2023) (citation omitted), "avoiding a construction that treats a word or phrase as superfluous," *Columbia Mem'l Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022).

3. The Court cannot "amend" a provision "by adding words that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004).

4. It is a "fundamental rule of construction" that courts "presume[ ]" the Legislature "does not act in a vacuum" and was "aware of the law existing at th[e] time" it enacted the provision. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep't 1983).

5. When a state-law provision is either "modeled after a federal statute," *Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (Sup. Ct. Yates Cnty. 1938), or is "substantively and textually similar to [its] federal counterpart[ ]," the Court generally construes it "consistently with federal precedent" interpreting the federal law, "striv[ing] to resolve federal and state" claims in the same way, *Zakrzewska v. New School*, 14 N.Y.3d 469, 479 (2010) (citation modified); *see also Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25–26 (2002). That is especially so when "state and local provisions overlap with federal" provisions that involve "civil rights,"

because "these statutes serve the same remedial purpose . . . to combat discrimination." *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429 (2004).

6. Finally, when a law is open to two interpretations, "one of which would obey and the other violate the Constitution, the universal rule of courts is to select the former." *People ex rel. Bridgeport Sav. Bank v. Feitner*, 191 N.Y. 88, 97–98 (1908).

B. The New York Constitution Does Not Recognize Petitioners' Theory

7. Petitioners' lawsuit rests on the assertion that New York's 2024 Congressional Map violates Article III, Section 4 of the New York Constitution by "dilut[ing]" the ability of Black and Latino voters in CD11 "to influence the outcome of elections" under the standards articulated in the NYVRA. Pet. ¶¶ 96–102.

8. The Black and Latino populations together comprise less than 30% of Staten Island, Borelli Rep.7, and there is no "reasonably configured legislative district," *Cooper v. Harris*, 581 U.S. 285, 287 (2017), in which the Black and Latino populations—whether considered independently, or even combined—would constitute a majority, Cooper Rep. ¶ 50 & Corrected Figure 9 (percentage of non-Hispanic Any Part Black plus Latino CVAP under Petitioners' illustrative map is 24.71%); Tr.347:22–24 (Mr. Cooper's testimony that Petitioners' illustrative map "doesn't make Black or Latino voters a numerical population majority").

9. Petitioners therefore seek to redraw CD11 as a "minority influence district"—that is, a district where the Black and Latino populations together constitute less than 50% of the total population. Pet. ¶¶ 96–102.

10. The New York Constitution does not recognize Petitioners' theory of the case. *See* N.Y. Const. art. III, § 4.

11. As an initial matter, Article III, Section 4—which is modeled on Section 2 of the federal Voting Rights Act ("VRA")—does not mandate the creation of influence districts at all. *Infra* pp.60–66. For this reason alone, Petitioners' lawsuit must be dismissed.

12. And even if the New York Constitution did require influence districts, the only influence theory that Petitioners put forward is under the NYVRA's standards. *Infra* p.68. Those standards cannot apply under the New York Constitution, where the NYVRA was adopted eight years after the 2014 amendments to Article III and only governs local elections. *Infra* pp.68–73.

13. Finally, adjudicating this case under any approach other than the NYVRA theory that Petitioners presented in their Petition—which shaped expert submissions and all of the briefing in this case—would violate the Fourteenth Amendment's Due Process Clause and basic principles of fairness. *Infra* pp.73–76.

a. New York Modeled Article III, Section 4 On Section 2 Of The VRA, And So Article III, Section 4 Does Not Require Influence Districts

14. Petitioners' lawsuit fails because Article III, Section 4 does not recognize Petitioners' influence district theory.

15. To address a history of "partisan and racial gerrymandering," *Harkenrider*, 38 N.Y.3d at 503, the People in 2014 amended Article III of the New York Constitution.

16. Today, Article III, Section 4 provides that, "[s]ubject to the requirements of the federal constitution and statutes," the "following principles shall be used in the creation" of congressional districts: "Districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgment of" "racial or language minority voting rights," but instead "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." N.Y. Const. art. III, § 4(c).

17. New York "modeled" Article III, Section 4 "after" Section 2 of the federal VRA, *Bicknell*, 6 N.Y.S.2d at 453–54, and it is "substantively and textually similar" to Section 2, *Zakrzewska*, 14 N.Y.3d at 479.

18. Congress enacted the VRA in 1965 to create "stringent new remedies for voting discrimination, attempting to forever banish the blight of racial discrimination in voting." *Allen v. Milligan*, 599 U.S. 1, 10 (2023) (citations omitted).

19. Section 2 originally provided that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973 (1970). Following the U.S. Supreme Court's interpretation of that language in 1980 "not [to] prohibit laws that are discriminatory only in effect," Congress in 1982 amended Section 2 to its current form. *Allen*, 599 U.S. at 11–14.

20. Section 2 provides that no "standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or" "because he is a member of a language minority group." 52 U.S.C. §§ 10301(a), 10303(f)(2).

21. A violation of Section 2 occurs when, "based on the totality of circumstances," racial or language minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301.

22. Section 2 bars "vote dilution" through the "dispersal of a group's members into districts in which they constitute an ineffective minority of voters." *Cooper*, 581 U.S. at 292 (citation modified).

23. *Thornburg v. Gingles*, 478 U.S. 30 (1986), identified "three threshold conditions for proving a [Section 2] vote-dilution claim," commonly referred to as the *Gingles* factors. *Id.* at 287.

24. First, a "'minority group' must be 'sufficiently large and geographically compact to constitute a *majority*' in some reasonably configured legislative district." *Id.* (emphasis added) (quoting *Gingles*, 478 U.S. at 50).

25. Second, "the minority group must be 'politically cohesive.'" *Id.* (quoting *Gingles*, 478 U.S. at 51).

26. And third, "a district's white majority must 'vote[ ] sufficiently as a bloc' to usually 'defeat the minority's preferred candidate.'" *Id.* (quoting *Gingles*, 478 U.S. at 50–51).

27. Section 2 does not demand any court-ordered relief if the minority group at issue cannot constitute a majority in a reasonably configured district. *See League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 446 (2006) ("*LULAC*") (plurality op.).

28. In *LULAC*, for example, the U.S. Supreme Court held that Section 2's text does not require the "creat[ion of] an influence district," 548 U.S. at 446 (plurality op.), that is, a district where minority groups can "play a substantial, if not decisive, role in the electoral process," *id.* at 479 n.15 (Stevens, J., concurring in part) (citation omitted). Because Section 2 guarantees minority groups only the "opportunity" to "elect representatives of their choice," a claim under Section 2 "requires more than the ability to influence the outcome." *Id*. at 445–46 (plurality op.).

29. Were it otherwise and Section 2 "were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *Id.*

30. The U.S. Supreme Court has warned that "[d]isregarding the majority-minority rule . . . would involve the law and courts in a perilous enterprise," "invit[ing] divisive constitutional questions that are both unnecessary and contrary to the purposes of" the VRA. *Bartlett v. Strickland*, 556 U.S. 1, 21–23 (2009) (plurality op.) (explaining that Section 2 does not require "crossover districts").

31. Following the 1982 amendments to Section 2 and the U.S. Supreme Court's decision in *LULAC*, the People in 2014 adopted Article III, Section 4, modeling it on Section 2 and using substantially similar language. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

32. Both provisions seek to combat discrimination by prohibiting voting districts that "result[ ]" in the "denial or abridgement" of voting rights based on race or "language minority" status. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). And both are violated when, "based on the totality of the circumstances," racial groups "have less opportunity to participate in the political process" and to "elect representatives of their choice." *Compare* 52 U.S.C. §§ 10301(b), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

33. Because New York modeled Article III, Section 4 on Section 2 of the VRA, Article III, Section 4 similarly does not require drawing district lines to increase the influence of a minority group where that group is not a majority in a reasonably configured district.

34. Article III, Section 4 follows Section 2's language, substantively and textually. *See Bicknell*, 6 N.Y.S.2d at 453–54; *Zakrzewska*, 14 N.Y.3d at 479.

35. To begin, Article III, Section 4 provides that "districts shall not be drawn to have the purpose of, *nor shall they result in, the denial or abridgment of*" "*racial or language minority voting rights*." N.Y. Const. art. III, § 4(c)(1) (emphases added). This first provision mirrors

Section 2, which states that no "standard, practice, or procedure" (including the drawing of district lines) "shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or*" "*because he is a member of a language minority group*." 52 U.S.C. §§ 10301(a), 10303(f)(2) (emphases added); *see Cooper*, 581 U.S. at 292.

36. Article III, Section 4 then states that 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*." N.Y. Const. art. III, § 4(c)(1) (emphasis added). This second provision also tracks Section 2, which states that a violation occurs when, "*based on the totality of circumstances*," racial or language minorities "*have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice*." 52 U.S.C. § 10301 (emphases added).

37. Accordingly, because the U.S. Supreme Court has determined that Section 2 does not require the creation of minority influence districts, *LULAC*, 548 U.S. at 446 (plurality op.); *Bartlett*, 556 U.S. at 21–23 (plurality op.), this Court must likewise construe the analogous Article III, Section 4 not to require creating minority influence districts.

38. To succeed on their Article III, Section 4 claim, Petitioners must therefore demonstrate that either the Black population or the Latino population is "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." *Cooper*, 581 U.S. at 287 (citation omitted).

39. Petitioners did not present any evidence suggesting that there is a "reasonably configured legislative district," *id.*, in which the Black and Latino populations, considered

independently or even combined, would constitute a majority. *See* Tr.347:22–24; Cooper Rep. ¶ 50 & Corrected Figure 9 (percentage of NH AP Black plus Latino CVAP under Petitioners' illustrative map is 24.71%).

40. Courts in other States have similarly interpreted their State's redistricting provisions by reference to similarly worded provisions in the VRA.

41. In *In re Colorado Independent Congressional Redistricting Commission*, 497 P.3d 493 (Colo. 2021), the Supreme Court of Colorado construed a state constitutional amendment by reference to the federal VRA, *id.* at 512. The Colorado constitutional amendment at issue prohibited a redistricting plan that denied or abridged a citizen's right to vote on account of "race or membership in a language minority group, including diluting the impact of [a] racial or language minority group's electoral influence." *Id.* at 505 (citation omitted).

42. Notwithstanding that additional language, the court concluded that Colorado's amendment was "coextensive with the VRA provisions as they existed in 2018 and create[d] no further [redistricting] requirements" to "create additional protections for [minority] voters in the form of influence, crossover, or coalition districts." *Id.* at 512.

43. The court reasoned that the Colorado General Assembly failed to define separately the terms "dilution" or "electoral influence," "which [was] curious if [that] language was intended to establish new protections beyond those existing in federal law." *Id.* at 510; *see also Asian Ams. Advancing Just.-L.A. v. Padilla*, 41 Cal. App. 5th 850, 872 (2019) (concluding that the phrase "single language minority" in a California election statute must be interpreted in accordance with the federal VRA because the legislature "undoubtedly would have[ ] said so" if it intended the phrase "to have a different meaning under state law").

44. This logic applies with even greater force here given how closely Article III, Section 4's language mirrors that of Section 2. *Supra* pp.63–65.

45. Interpreting Article III, Section 4 as mandating the creation of influence districts would also violate principles of constitutional avoidance. *Bridgeport*, 191 N.Y. at 97–98; *see also infra* pp.67–68.

46. Absent the *Gingles* safeguards or some equally effective safeguard, reading a minority influence-district mandate into Article III, Section 4 would plunge New York courts into endless race-based redraws, "unnecessarily infus[ing] race into virtually every redistricting, raising serious constitutional questions." *LULAC*, 548 U.S. at 445–46 (plurality op.).

47. Given the zero-sum nature of elections and the widespread phenomenon of racial polarization—*see Cooper*, 581 U.S. at 304 n.5 (explaining that it was not a "great surprise" that "in North Carolina, as in most States, there are discernable, non-random relationships between race and voting"); Palmer Reply at 1 ("[r]ace and party are fundamentally linked in American politics")—at any given time in any given district, at least one White or non-White racial minority group (or groups) would be able to claim that it lacks sufficient "influence" because the racial group's candidates of choice are winning too few elections. That racial group could then demand a race-based redraw of its district, which would then lead to other racial groups having the same race-based lack-of-influence complaint.

48. This concern applies with full force to the map that Petitioners have proposed in this case. *See* Cooper Rep. Corrected Figure 9.

49. In the current CD11, there is a "fairly large White population that votes overwhelmingly Republican." Tr.623:14–17. Petitioners' illustrative map "tak[es] this White Republican vote between Brooklyn and Staten Island and crack[s] it to create two Democratic

districts," thereby "bur[ying]" Republican voters "in the new District 10" and "District 11." Tr.623:17–25.

50. If this Court were to adopt Petitioners' proposed map (or another map that achieves the same result), White Republican voters in the new CD11 would, under Petitioners' theory, very likely have a vote-dilution claim, where their votes have been "crack[ed]" and packed to diminish these voters' overall electoral influence. *See* Tr.623:14–25; Trende Rep.9–15; *see also* Tr.222:2–7 (Dr. Palmer testifying that Petitioners' proposed illustrative map could result in an NYVRA claim if "there is strong evidence of racially polarized voting so that we know who the preferred candidates of each group are, like we have in [the current] CD 11").

51. Similarly, for White voters in New York's Eighth Congressional District, their preferred Republican candidates are routinely defeated by non-White racial groups' preferred Democratic candidates there. *See* NYSCEF Doc. No.115 at 23. That district could be redrawn to create an influence district where White voters' preferred candidates win more—but then Black voters could have an influence-district claim in the same district because they would no longer be able to elect the candidate of their choice more often than not. *See id.*; *infra* pp.80–83.

52. The same would be true of one of New York's congressional districts that consistently elects Democratic candidates if it had, for example, a population with just 9% Hasidic Jews; they are a recognized minority group that leans Republican so they would have a right to a Republican influence district in that situation, *see* Tr.699:22–700:10, thereafter triggering the same for a Democratic leaning minority group. *Infra* pp.81–82.

53. Such an endless loop of jurisdictions being forced to draw new districts for the express purpose of giving different racial groups more electoral influence would both trigger and fail strict scrutiny under the Equal Protection Clause of the Fourteenth Amendment to the U.S.

Constitution, because doing so constitutes race-based government action that does not further any compelling government interest in the least restrictive (*i.e.*, necessary) means. *See infra* pp.103–21.

54. Because this conclusion would apply to the creation of an influence district drawn under any influence-district mandate read into Article III, Section 4, the constitutional-avoidance canon requires this Court to reject such an interpretation of Article III, Section 4. *See Bridgeport*, 191 N.Y. at 97–98.

55. Notably, the U.S. Supreme Court cited constitutional avoidance as a reason for interpreting Section 2 of the VRA as not requiring the creation of minority influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.), and the Court has only grown more skeptical of race-based government action, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) ("*SFFA*").

b. At Minimum, This Court Cannot Read The NYVRA Retroactively Into Article III, Section 4

56. Even if this Court believed that Article III, Section 4 could possibly be read to include some sort of influence-district mandate, *but see supra* pp.60–68, Petitioners' lawsuit would still fail as a matter of law because their only influence theory is under the NYVRA's standards, and those standards cannot be retroactively adopted into the New York Constitution.

57. Petitioners ask the Court to impose the NYVRA's statutory standards—enacted in 2022, eight years after the People adopted the current version of Article III, Section 4 that Petitioners invoke—retroactively into Article III, Section 4. Pet. ¶¶ 97–98. But this Court cannot retroactively amend the New York Constitution's language adopted in 2014 for congressional districts to reflect statutory language enacted eight years later related to other jurisdictions. *See Sgaglione v. Levitt*, 37 N.Y.2d 507, 514 (1975).

58. The Legislature enacted the NYVRA in 2022 to establish greater voting rights protections applicable to local New York "board[s] of elections" and "political subdivision[s]." N.Y. Elec. Law § 17-206(2)(a).

59. The NYVRA explicitly on the face of its text departs from the federal VRA and the U.S. Supreme Court's interpretation of that statute in multiple respects. *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 22 (2d Dep't 2025) (citation omitted). As relevant here, the NYVRA includes a "[p]rohibition against vote dilution," which bans localities from "us[ing] 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*, as a result of vote dilution." N.Y. Elec. Law § 17-206(2) (emphasis added).

60. In contrast to Article III, Section 4, the NYVRA allows plaintiffs challenging local maps to pursue claims based on minority groups' ability to "influence the outcome of elections," *id.* § 17-206(2)(b)(ii)(B), as well as claims that rely on a "combin[ation]" of multiple minority groups into a coalition, *id.* § 17-206(2)(c)(iv).

61. To prevail on a claim against a district-specific system under the NYVRA, a plaintiff must demonstrate that the "candidates or electoral choices preferred by members of the protected class would usually be defeated." *Id.* § 17-206(2)(b)(ii); *infra* pp.76–87.

62. If this threshold requirement is met, the NYVRA provides two paths for the plaintiff to prove a violation. The plaintiff can "either" show (a) that the "voting patterns of members of the protected class within the political subdivision are racially polarized," or (b) that "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." N.Y. Elec. Law § 17-206(2)(b)(ii) (emphasis added); *infra* pp.87–99.

63. Unlike the NYVRA, Article III, Section 4 says nothing about a minority group's ability to "influence the outcome of elections." *Compare* N.Y. Elec. Law § 17-206(2), *with* N.Y. Const. art. III, § 4(c). Article III, Section 4 does not mention "influence" and instead focuses solely on ensuring an equal "opportunity to participate," N.Y. Const. art. III, § 4(c)(1), using the same language as Section 2 of the VRA, which does not recognize influence districts, *supra* pp.61–63.

64. Nor does the NYVRA's "statement of purpose," adopted in 2022, support Petitioners' interpretation of Article III, Section 4. That 2022 statement of purpose provides New York's policy "to participate in the [State's] political processes . . . and especially to exercise the elective franchise" and recognizes "the constitutional guarantees . . . against the denial or abridgment" of voting rights. NYSCEF Doc. No.63 ("Pet'r's.Mem.") at 15 (citation omitted).

65. There is no authority suggesting that the policy of a later-enacted statute should inform the Court's interpretation of a constitutional provision adopted eight years prior, *see generally* Pet'r's.Mem.15–16, and, in any event, interpreting Article III, Section 4 to be consistent with Section 2—without a minority-influence-district guarantee—expressly ensures the right to "participate" in New York's political process and in no way denies or abridges voting rights, *see LULAC*, 548 U.S. at 434 (plurality op.).

66. Petitioners contend that this Court can use "[s]tatutory interpretation principles" to graft the NYVRA's vote-dilution framework retroactively onto Article III, Section 4 because courts may look to state law when interpreting a constitutional provision. Pet'r's.Mem.15. But Petitioners point to no case in which a court did so in the context of a law enacted years *after* the constitutional provision at issue.

67. Rather, Petitioners' cited authority explains that courts may consider "*preexisting* State statutory or common law" when interpreting constitutional provisions. *People v. Harris*, 77 N.Y.2d 434, 438 (1991) (citation omitted) (emphasis added).

68. Petitioners have also argued that *Harkenrider* supports their position because it "suggested" that Article III, Section 4, like the NYVRA, provides broader protection against vote dilution than the federal VRA. Pet'r's.Mem.17. However, *Harkenrider* stated only that the 2014 Amendments' "prohibition against discriminating against minority voting groups at the least encapsulated the requirements of the Federal Voting Rights Act, and according to many experts expanded their protection." Pet'r's.Mem.17 (citing *Harkenrider*, 173 N.Y.S.3d at 112). Even so, the views of some "experts" do not allow this Court to disregard Article III, Section 4's plain text, *Lynch*, 40 N.Y.3d at 13, and transport the NYVRA's 2022 provisions into the 2014 Amendments.

69. Petitioners have also invoked the "distinctive attitudes of the [New York] citizenry," but have cited no case that suggests that courts can amend constitutional text to conform to the abstract desires of New York citizens to "ensur[e] strong protections against minority vote dilution in all aspects of the political process." Pet'r's.Mem.19.

70. Petitioners argue that interpreting Article III, Section 4 according to its plain language may "create an inconsistent application of vote dilution protections across New York" because the NYVRA's "more robust protections" will apply only to "municipal and local elections," while Article III, Section 4's "lesser protections [will] apply[ ] to congressional and senate elections." Pet'r's.Mem.18. But the Legislature in the NYVRA did not impose its standards on congressional redistricting and instead limited its reach to "board[s] of elections" and local "political subdivision[s]" of New York. N.Y. Elec. Law § 17-206(2)(a).

71. Petitioners' claim that "determin[ing] an appropriate standard under which to evaluate a vote dilution claim under the New York Constitution . . . is consistent with a core and longstanding function of this Court," NYSCEF Doc. No.156 ("Pet.Opp.") at 32, is incorrect. This Court can determine the appropriate standard to apply to a claim brought under the New York Constitution, but in doing so, the Court cannot "transgress the ordinary bounds of judicial review," *Moore v. Harper*, 600 U.S. 1, 36 (2023), in a federal election case by interpreting the New York Constitution in a manner that drastically departs from prior doctrine without violating the Elections Clause, *infra* pp.122–25.

72. The Elections Clause "vests power to carry out its provisions in '*the Legislature'* of each State," *Moore*, 600 U.S. at 34 (emphasis added), and a state court violates that provision by "arrogat[ing] to [itself] the power vested in state legislatures to regulate federal elections," *id.* at 36. This Court thus does not have "free rein," *id.*, to disregard New York's longstanding principles of constitutional interpretation to achieve Petitioners' desired policy ends, whether they are workable or not. *See infra* pp.122–25.

73. Adopting Petitioners' theory would drastically depart from longstanding rules of construction under New York law by requiring the Court retroactively to amend Article III, Section 4's text to adopt standards from the NYVRA that were enacted eight years later, *Am. Transit Ins. Co*, 3 N.Y.3d at 76, and by requiring the Court to read the NYVRA's express reference to "influence" as superfluous, *Columbia Mem'l Hosp.*, 38 N.Y.3d at 271; *supra* pp.69–70.

74. As Article III, Section 4 makes no mention of "influence" and uses substantially similar language to Section 2 of the VRA—which the U.S. Supreme Court has held does not require influence districts, *supra* pp.61–63—accepting Petitioners' theory would "impermissibly

distort[ ]" state law "in a federal election case," *Moore*, 600 U.S. at 38 & n.1 (Kavanaugh, J., concurring), for the purpose of striking down a legislatively drawn congressional map, plainly violating the Elections Clause, *see id.* at 36 (majority op); *see infra* pp.125–26.

75. That Petitioners believe that the NYVRA provides a "workable standard" for influence claims, Pet.Opp.32, is legally irrelevant. It is immaterial whether the NYVRA provides a "workable standard," *contra* Pet.Opp.32, because—even though the NYVRA's standard contains multiple important legal wrinkles that the Court would need to adjudicate to decide Petitioners' claim on the merits, *see* Int'r.Resp't.Br.20–31—the Court cannot read the NYVRA's standard as retroactively applying to a constitutional provision adopted eight years before the NYVRA existed.

76. Under the Elections Clause, the proper course of action for Petitioners to accomplish their desired policy ends for a congressional redistricting plan is to bring their requests to the Legislature—not ask this Court to depart from established notions of New York constitutional interpretation to mandate the alteration of a legislatively adopted map.

c. Adjudicating Petitioners' Claim On Any Non-NYVRA Theory Would Violate Due Process And Basic Principles Of Fairness

77. Rather than defend Petitioners' sole theory of reading the NYVRA's standards into Article III, Section 4, the Governor and certain *amici* have attempted to reframe Petitioners' case. But adjudicating this case under any theory other than the one that Petitioners placed into their Petition—which shaped expert submissions and all briefing in this case—would violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and basic principles of fairness to litigants.

78. The Fourteenth Amendment's Due Process Clause "centrally concerns the fundamental fairness of governmental activity," *N.C. Dep't of Revenue v. Kimberly Rice Kaestner 1992 Fam. Tr.*, 588 U.S. 262, 268 (2019); *see also People v. Collier*, 223 A.D.3d 539, 542 (1st

Dep't 2024), *leave to appeal denied*, 42 N.Y.3d 962 (2024), and "imposes on the States the standards necessary to ensure that judicial proceedings are fundamentally fair," *Lassiter v. Dep't of Soc. Servs.*, 452 U.S. 18, 33 (1981).

79. "[A]t a minimum," those standards require "notice and opportunity for hearing appropriate to the nature of the case," *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950); *see also People ex rel. Abrams v. Apple Health & Sports Clubs, Ltd., Inc.*, 80 N.Y.2d 803, 806 (1992), that is "reasonably calculated, under all the circumstances, to . . . afford [participating parties] an opportunity to present their objections," *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010); *see Am. Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932) (due process requires "an opportunity to present every available defense").

80. A court deprives a party "of the right of fair warning," *Bouie v. City of Columbia*, 378 U.S. 347, 352 (1964), when it "reconfigure[s]" the applicable "scheme, unfairly, in *midcourse* [ ] to 'bait and switch'" the responding party, *Reich v. Collins*, 513 U.S. 106, 111 (1994) (emphasis in original).

81. Here, the Governor has advised this Court that it may adopt whatever standard it sees fit to resolve this case in Petitioners' favor. Gov.Ltr.2–3. Petitioners similarly claim that this Court must ultimately "decide in the first instance what standard governs [their] vote dilution claim," Pet.Opp.4 (emphasis omitted), while claiming only that their own NYVRA-based standard is the "better framework," Pet.Opp.5. Two sets of *amici* urge the Court to adopt their own separate standards, despite the fact that no party has briefed the constitutionality of those standards or submitted expert evidence tailored to those standards. NYCLU Am.Br.11; Prof.Am.Br.19–20.

82. This Court following any of these suggestions to decide this case under a different standard from the one articulated in the Petition would unconstitutionally "bait and switch" the

parties "unfairly, *in midcourse*," *Reich,* 513 U.S. at 111, depriving them of the "right of fair warning," *Bouie,* 378 U.S. at 352, and transgressing basic principles of fairness, *see N.C. Dep't of Revenue,* 588 U.S. at 268.

83. The only theory that the Petition argued was that this Court should "apply the same standards set forth under the NY VRA to adjudicate" Petitioners' Article III, Section 4 claim, Pet. ¶ 50, and determine whether, under that NYVRA standard, "[a] minority influence district is both possible and required" in CD11, Pet. ¶¶ 97–102.

84. Given that framing, the other parties developed expert evidence responding to Petitioners' claim under the NYVRA's standards and, relying on those experts, submitted extensive merits briefing under that theory. *See* Int'r.Resp't.Br.20–31. Similarly, the sole theory explored at trial was the one set forth in the Petition: that Article III, Section 4—like the NYVRA—mandates the creation of influence districts.

85. Altering the applicable standard now and adjudicating this case under an approach that Petitioners did not articulate in their Petition—whether put forward by *amici* or adopted by this Court upon Petitioners' and the Governor's belated invitation—would deny other parties the "minimum," guarantees of due process, *Mullane,* 339 U.S. at 313, by failing to provide them a meaningful "opportunity to present their objections," *United Student Aid Funds,* 559 U.S. at 272.

86. The suggestion is even more inappropriate given the timing of this case. Petitioners waited twenty months after Governor Hochul signed the 2024 Congressional Map to bring this lawsuit, and they could have spent that unreasonably long amount of time determining how best to frame their argument and developing alternative theories. Petitioners' failure to do so is not something that other parties, *amici,* or this Court can change now at this late stage.

87. Here, due process requires the Court to consider only the standard that Petitioners advanced at the outset of this litigation and that Intervenor-Respondents had an opportunity to respond to—that the NYVRA governs claims brought under Article III, Section 4.

88. Because that theory is a legal nonstarter, *supra* pp.59–72, this Court must deny the Petition on this basis alone.

II. Even If The NYVRA's Standards Applied, Petitioners Still Cannot Prevail

A. Petitioners Have Not Satisfied The NYVRA's Threshold "Usually Be Defeated" Mandate

89. Even under Petitioners' theory that Article III, Section 4 incorporates the NYVRA's later-enacted vote-dilution standards, Petitioners failed to put forth sufficient evidence to satisfy the NYVRA's threshold "usually be defeated" inquiry. N.Y. Elec. Law § 17-206(2)(b)(ii).

a. Petitioners Need To Satisfy The NYVRA's "Usually Be Defeated" Standard

90. The NYVRA is a recently enacted statute, and no court has determined what it means for a candidate to "usually be defeated," a threshold requirement for district-specific vote dilution claims under the NYVRA. *Id.* Accordingly, adjudicating Petitioners' only merits theory requires this Court to be the first to determine how that provision works, and to do so in the context of congressional redistricting—a context that the NYVRA does not even cover.

91. To conduct that inquiry, this Court must apply the same interpretative principles discussed above, *supra* pp.58–59, including taking care to avoid adopting any interpretation that leads to absurd results, *see People ex rel. McCurdy v. Warden*, 36 N.Y.3d 251, 262–63 (2020).

92. If this Court accepts Petitioners' Article-III-Section-4-Equals-NYVRA theory, this Court must interpret Subsection 17-206(2)(b)(ii)'s "usually be defeated" language as requiring an

NYVRA vote-dilution plaintiff to demonstrate that minority-preferred candidates are routinely defeated in elections across the entire jurisdiction.

93. The NYVRA does not define "usually," *see* N.Y. Elec. Law § 17-204, but the plain meaning of "usually" reveals that the Legislature intended this to be a robust requirement.

94. "Usually" refers to something that occurs "ordinarily" or "as a rule." *Usually*, Oxford English Dictionary ("OED") (2024)[3]; *see Usually*, MerriamWebster.com Dictionary, Merriam-Webster (2024) (defining usually as "most often" or "as a rule").[4]

95. Thus, the NYVRA's "usually be defeated" language means that one will routinely or "as a rule" be defeated, implying a standard that is far more robust than "more likely than not" or 50% plus one. In other words, one could not reasonably conclude that a racial group's preferred candidates are defeated "ordinarily" or "as a rule" in a political subdivision where they win, for example, 49% of races in the relevant jurisdiction. *See Usually*, OED, *supra*.

96. The best reading of the NYVRA's statutory text also compels the Court to evaluate NYVRA vote-dilution claims on a jurisdiction-wide basis—here, across New York's entire 2024 Congressional Map or at least CD11's surrounding region—because the NYVRA's vote-dilution analysis is not district-specific by its statutory text.

97. The NYVRA provides that "evidence concerning whether members of a protected class are geographically compact or concentrated," N.Y. Elec. Law § 17-206(2)(c)(viii), such that they could form a voting "majority in a reasonably configured district," *Wis. Legislature*, 595 U.S. at 402, "shall *not* be considered [for liability]," N.Y. Elec. Law § 17-206(2)(c)(viii) (emphasis added). The NYVRA also allows vote-dilution plaintiffs to reach all over the relevant jurisdiction, "combin[ing]" members of multiple minority groups to bring a vote-dilution "[c]oalition claim[ ],"

[3] Available at https://www.oed.com/dictionary/usually_adv?tab=factsheet#16029712.
[4] Available at https://www.merriam-webster.com/dictionary/usually.

N.Y. Elec. Law § 17-206(8), regardless of what district those members live in within the jurisdiction. Further, if a violation is found, the NYVRA provides a host of remedies that affect the entire "political subdivision" and do not alter the boundaries of any particular district. *See id.* § 17-206(5).

98. Thus, unlike with Section 2 of the VRA, there is no requirement for a court evaluating an NYVRA claim to "carefully evaluat[e] evidence at the district level," or evaluate "the design of [a new] district." *Wis. Legislature*, 595 U.S. at 401, 404. Accordingly, the best reading of the NYVRA's text is that NYVRA vote-dilution claims should be evaluated on a jurisdiction-wide basis.

99. This conclusion is confirmed by the fact that any other approach would "lead to absurd results." *McCurdy*, 36 N.Y.3d at 262.

100. Reading "usually be defeated," N.Y. Elec. Law § 17-206(2)(b)(ii), as meaning anything less than a minority group's preferred candidates losing elections "ordinarily" or "as a rule," *see Usually*, Oxford English Dictionary, *supra*, across the entire relevant jurisdiction would often render compliance with the NYVRA impossible. After all, at least *some* racial groups' candidates of choice are bound to be defeated more than 50% of the time in any given jurisdiction at any given time that has racial polarized voting as between any racial group, absent some unusual and mathematically improbable (or impossible) circumstance. *See* Trende Rep.9–15.

101. "Redistricting is always a zero-sum game" where "[m]oves that benefit one side hurt another side," *id.* at 15, meaning that by redrawing districts to ensure that one racial group's preferred candidates will not be defeated over 50% of the time in one individual district, the jurisdiction would inevitably "hurt" another racial group's ability to elect its preferred candidates in at least one other district, *see id.* at 9–15.

102. Given the zero-sum nature of elections, at least some racial group's candidates of choice will be defeated over 50% of the time in any hand-selected district or districts where there is racially polarized voting. *See id.* Racially polarized voting is common. *See Cooper*, 581 U.S. at 304 n.5; Palmer Reply ¶ 4 ("[r]ace and party are fundamentally linked in American politics"). This Court cannot assume that the New York Legislature enacted an absurd statute that makes compliance with the NYVRA impossible in any political subdivision that happens to have the commonplace condition of racially polarized voting. *See McCurdy*, 36 N.Y.3d at 262.

103. This is especially true given that the NYVRA has been interpreted "as allowing members of *all* racial groups, including white voters, to bring vote dilution claims," *Clarke*, 237 A.D.3d at 33 (emphasis added), making it almost certain that either Whites or at least one non-White racial group (or groups) would be able to bring a vote-dilution claim at any given time there is racially-polarized voting. *See supra* pp.66–68.

104. Petitioners' theory would exacerbate that "absurd result[ ]," *McCurdy*, 36 N.Y.3d at 262, because any racial group (or groups)—including Whites—whose preferred candidates are defeated more often than not in a jurisdiction could claim that they lack "an equal opportunity to influence elections," Pet'r's.Mem.14, as other racial groups and demand that jurisdiction's maps be redrawn to create a new "minority influence district" for them, *id.* at 39.

105. This is not "a purely hypothetical concern" in New York: there is "racially polarized voting in the area covered by district[s] 5, 8, and 9," and, under Petitioners' interpretation of the NYVRA, "it would appear that White voters would have viable claims all over New York's congressional map"; and "changing districts so that minority-favored candidates of choice win more would then mean the same district would need to be changed back so that White voters' candidates of choice are not usually defeated." Trende Rep.10; *supra* pp.66–68.

106. The NYVRA defines "racially polarized voting" to mean "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." N.Y. Elec. Law § 17-204(6). Again, the NYVRA protects White voters, in addition to all other "class[es] of individuals who are members of a race, color, or language-minority group." *Id.* § 17-204(5); *see Clarke*, 237 A.D.3d at 33.

107. In several current New York districts where the White population constitutes the minority, there is clear racial polarization—that is, a "divergence" in "political preferences" and "electoral choice" between White voters and Black and Latino voters, with White voters preferring the Republican candidate and Black and Latino voters preferring the Democratic candidate. N.Y. Elec. Law § 17-204(6); Voss Rep.21 Table 6; Tr.627:13–630:14; *see* Trende Rep.10–15.

108. That is evidenced by the 2022 Gubernatorial race. *See* Tr.627:13–630:14. In District 5, 96% of Black voters and 74.89% of Latino voters voted for the Democratic candidate, whereas only 33.8% of White voters voted for the Democratic candidate. Tr.627:20–629:8. In District 8, 97.1% of Black voters and 78.2% of Latino voters voted for the Democratic candidate, whereas only 40% of White voters voted for the Democratic candidate. Tr.629:9–13. And in District 9, 96.2% of Black voters and 77.6% of Latino voters voted for the Democratic candidate, whereas only 37.9% of White voters voted for the Democratic candidate. Tr.629:14–17.

109. These "big gap[s]," Tr.630:11–12, or "divergence[s]," N.Y. Elec. Law § 17-204(6), in political preferences constitute racial polarization. *See id.*

110. In any of these racially polarized districts, White voters would, under Petitioners' theory, be able to claim that they lack an equal opportunity to influence elections as compared to other racial groups and request that their district be redrawn as a "minority influence district."

111. For example, District 8, where Whites constitute "a minority" and non-White racial groups' preferred Democratic candidates routinely defeat White-preferred Republican candidates, Trende Rep.10, could be redrawn to create a district "where Republican candidates win more often than not," *id.* at 12, while keeping the remaining districts "heavily Democratic," *id.* at 10, but then "the minorities in District 8 . . . would have a claim" because they would no longer be able to "elect their candidate of choice" more often than not and "[t]here is still racially polarized voting in District 8," *id.* at 14.

112. Similarly, because Hasidic Jews are a recognized minority group that lean Republican, if one of New York's congressional districts that consistently elects Democratic candidates has "a population of Hasidic Jews that reaches 7, 8, 9 percent, as the Black population does on Staten Island," the NYVRA would, under Petitioners' interpretation, give these voters a vote-dilution claim. Tr.699:22–700:10.

113. Petitioners' expert, Dr. Palmer, himself confirmed that even Petitioners' proposed illustrative map—which would result in the Democratic candidate winning approximately 88% of the time, *see* Palmer Rep.8—could, if adopted, result in an NYVRA claim, if "there is strong evidence of racially polarized voting so that we know who the preferred candidates of each group are, like we have in [the current] CD 11." Tr.222:2–7; *see* Tr.686:1–10 (Dr. Alford testifying that "White non-Hispanic voters vote decidedly republican" in the current CD11, and that Black and Latino voters vote "overwhelmingly democratic").

114. Dr. Palmer concluded that, on average in the illustrative map, White voters only support the Black and Latino preferred candidates with 41.8% of the vote, Palmer Rep. ¶ 25; Tr.213:13–17, whereas Black voters supported that candidate with 87.9% of the vote and Latino voters supported that candidate with 83.1% of the vote, Palmer Rep. ¶¶ 23–24. This "big gap,"

Tr.630:11–12, or "divergence," between the "political preferences" of White voters, on the one hand, and the political preferences of Black and Latino voters, on the other hand, is indicative of racially polarized voting, N.Y. Elec. Law § 17-204(6), such that the illustrative map would give rise to an NYVRA claim for White voters.

115. To make the point more generally, for any district that exhibits racially polarized voting—which again is an extremely common condition, *see, e.g.*, *Cooper*, 581 U.S. at 304 n.5; Palmer Reply ¶ 4 ("[r]ace and party are fundamentally linked in American politics")—reconfiguring that district to ensure that one racial group's preferred candidate is not "usually defeated" will necessarily mean that the other racial group's preferred candidate *will* be "usually defeated" in future elections under Petitioners' theory, giving rise to a new NYVRA claim.

116. Thus, "[c]onducting the analysis only on the basis of the district in question—especially without a stringent requirement that the racial group's candidate of choice be 'usually defeated'" routinely in elections across the jurisdiction—would lead to a never-ending cycle of jurisdictions being forced to draw new districts to benefit different racial groups, Trende Rep.10—a manifestly "absurd result[ ]" that this Court should avoid, *McCurdy*, 36 N.Y.3d at 262.

117. Section 2 of the VRA does not share this never-ending-violation issue, *see Wis. Legislature*, 595 U.S. at 401–04, because Section 2 requires plaintiffs to satisfy the stringent two-step framework for evaluating vote-dilution claims that the U.S. Supreme Court established in *Gingles*. A given jurisdiction only violates Section 2's vote-dilution provisions if a plaintiff can first satisfy all three *Gingles* preconditions as to each new majority-minority district that the plaintiff seeks to force the jurisdiction to create. *Gingles*, 478 U.S. at 50–51; *Wis. Legislature*, 595 U.S. at 402.

118. Under the first precondition, "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district." *Wis. Legislature*, 595 U.S. at 402. A plaintiff cannot satisfy this precondition by showing that it is possible to create an "influence district[ ]." *LULAC*, 548 U.S. at 446 (plurality op.). The second precondition requires that "the minority group must be politically cohesive." *Wis. Legislature*, 595 U.S. at 402. And the third precondition requires that "a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate." *Id.*

119. If the plaintiff satisfies those preconditions, the plaintiff would then need to make the required showing under the separate second-step of *Gingles*' vote-dilution analysis—the totality-of-the-circumstances inquiry—by demonstrating that "the political process is [not] equally open to minority voters" in the jurisdiction. *Id.* (citations omitted).

120. These safeguards—which are absent from the NYVRA—cabin Section 2's application, ensuring that jurisdictions can comply with its requirements and that creating a new majority-minority district to remedy a violation under Section 2 will not generally give rise to another Section 2 claim in another jurisdiction.

b. Petitioners Do Not Satisfy The NYVRA's "Usually Be Defeated" Standard

121. Here, Petitioners failed to make the NYVRA's threshold "usually be defeated" showing. Black and Latino voters' candidates of choice—Democrats—are not "usually defeated" across the State of New York, within the region surrounding CD11, or even within CD11 itself. Trende Rep.6–9.

122. First, Black and Latino voters' candidates of choice—Democrats—are not "usually defeated" across the State of New York. *See* Alford.Rep.14; Tr.686:6–10 (Dr. Alford testifying that the preferred candidate for Black and Latino voters in CD11 is "overwhelmingly democratic");

Tr.208:19–209:2 (Dr. Palmer testifying that it is "plausible" that Democratic candidates are the "Black preferred candidates" throughout the State).

123. Statewide across New York's twenty-six congressional districts, Democrats comprise 73% of New York's congressional delegation, leaving Republicans with the remaining 27%—only seven seats. Trende Rep.8. The below table summarizes Democratic candidates' performance in statewide races in New York's congressional districts.

District	Gov 18	AG 18	Sen 18	Comp 18	Pres 20	Comp 22	Sen 22	Gov 22	AG 22	Sen 24	Pres 24	# D Wins	% D Wins
1	50.9%	50.7%	53.1%	55.5%	49.1%	46.0%	44.3%	41.9%	42.7%	47.1%	44.9%	4	36.4%
2	52.6%	52.3%	54.6%	56.8%	48.8%	43.2%	41.8%	39.0%	40.1%	45.2%	43.0%	4	36.4%
3	58.9%	57.7%	60.0%	62.2%	55.7%	50.8%	49.8%	45.8%	46.7%	50.1%	47.8%	7	63.6%
4	60.8%	59.6%	61.6%	63.3%	57.3%	51.5%	50.6%	47.1%	48.1%	52.8%	50.6%	9	81.8%
5	88.2%	88.3%	88.3%	88.6%	81.4%	75.5%	76.6%	73.3%	74.8%	74.1%	71.3%	11	100.0%
6	74.7%	74.6%	75.0%	75.2%	64.8%	58.3%	59.8%	53.7%	55.7%	58.1%	53.3%	11	100.0%
7	90.1%	90.5%	90.5%	90.2%	80.5%	77.9%	80.3%	74.0%	77.7%	77.4%	73.6%	11	100.0%
8	86.0%	86.2%	86.1%	86.0%	77.9%	73.9%	74.7%	71.7%	73.3%	75.2%	72.5%	11	100.0%
9	85.9%	86.9%	85.5%	86.2%	76.2%	74.1%	75.1%	68.7%	72.8%	75.2%	70.6%	11	100.0%
10	89.5%	89.5%	90.1%	89.3%	85.7%	82.7%	85.1%	80.6%	82.3%	82.8%	81.0%	11	100.0%
11	54.0%	53.5%	55.4%	55.7%	46.1%	39.4%	40.1%	36.3%	37.4%	41.2%	37.6%	4	36.4%
12	86.2%	84.7%	86.6%	85.3%	86.0%	80.9%	83.5%	80.1%	79.9%	81.9%	82.4%	11	100.0%
13	95.3%	95.3%	95.2%	95.0%	88.8%	86.5%	89.1%	86.4%	87.7%	83.5%	80.1%	11	100.0%
14	86.4%	86.7%	86.7%	86.8%	77.8%	70.6%	73.1%	69.1%	70.7%	70.0%	66.2%	11	100.0%
15	93.1%	93.0%	92.9%	93.1%	85.5%	81.0%	83.5%	80.3%	81.9%	78.1%	74.4%	11	100.0%
16	74.2%	74.5%	75.6%	76.0%	72.5%	65.6%	66.2%	63.3%	64.0%	68.6%	66.6%	11	100.0%
17	55.6%	58.4%	60.0%	61.8%	55.1%	52.4%	52.3%	48.3%	50.4%	55.1%	50.3%	10	90.9%
18	49.8%	55.8%	59.3%	59.3%	54.6%	53.3%	52.2%	49.1%	51.0%	56.9%	51.7%	9	81.8%
19	46.8%	52.6%	57.6%	59.1%	52.3%	52.2%	50.3%	46.5%	48.5%	54.4%	50.9%	8	72.7%
20	49.4%	57.0%	62.1%	66.7%	59.8%	60.4%	56.6%	52.9%	54.8%	60.1%	57.2%	10	90.9%
21	35.0%	42.2%	50.9%	52.4%	42.0%	43.1%	40.0%	34.4%	37.6%	44.3%	39.6%	2	18.2%
22	49.5%	54.4%	59.5%	62.5%	55.8%	54.3%	54.1%	48.9%	50.1%	56.2%	53.8%	9	81.8%
23	36.4%	37.5%	46.8%	48.4%	40.7%	40.3%	38.9%	35.5%	36.4%	41.9%	39.4%	0	0.0%
24	33.1%	37.7%	45.5%	47.0%	39.6%	38.1%	37.2%	32.7%	34.1%	41.0%	38.4%	0	0.0%
25	54.3%	57.0%	62.2%	63.2%	60.5%	57.4%	57.0%	53.8%	54.0%	60.0%	59.3%	11	100.0%
26	59.8%	58.5%	66.9%	69.0%	62.8%	62.1%	61.6%	58.4%	58.8%	62.6%	59.8%	11	100.0%

Id. at 6.

124. As the table above demonstrates, Democratic statewide candidates have won in *every* New York congressional district except for two districts, the Twenty-Third Congressional District and the Twenty-Fourth Congressional District in upstate New York. *Id.* at 8–9; *see* Tr.686:6–10 (Dr. Alford testifying that the preferred candidate for Black and Latino voters in CD11 is "overwhelmingly democratic"); Tr.208:19–209:2 (Dr. Palmer testifying that it is "plausible" that Democratic candidates are the "Black preferred candidates" throughout the State).

125. Outside of the First and Second Congressional Districts on Long Island—where Democrats have still won four elections—Democrats have won most of the statewide elections in every remaining district throughout the State. Trende Rep.8–9.

126. Overall, Democratic statewide candidates have won an outright majority of the statewide races that Petitioners' expert, Dr. Palmer, analyzed in all but six of New York's twenty-six districts—a staggering 77%. *Id.*

127. Second, Black and Latino voters' candidates of choice, Democrats, *see* Alford.Rep.14; Tr.686:6–10; Tr.208.19–209:2, are not "usually defeated" within the region surrounding CD11.

128. With the exception of CD11, Democrats have *never* lost a statewide election in any of the eleven districts wholly within New York City. Trende Rep.7; *see* Tr.686:6–10 (Dr. Alford testifying that the preferred candidate for Black and Latino voters in CD11 is "overwhelmingly democratic," and that "White non-Hispanic voters vote decidedly republican"); Tr.208:19–209:2 (Dr. Palmer testifying that it is "plausible" that Democratic candidates are the "Black preferred candidates" throughout the State). Moreover, Democrats usually win those elections "by wide margins," such that there is only one district wholly within New York City "where a Democratic candidate has ever dropped below 60%." Trende Rep.8.

129. Even including the two districts that are partly within New York City, the Third Congressional District and the Sixteenth Congressional District, does not change this conclusion because Democrats still routinely win or are at least competitive in statewide elections in those districts as well. *See id.* at 5–7.

130. Accordingly, far from being usually defeated, minority-preferred candidates "routinely win[ ] elections in congressional districts across New York City." *Id.* at 7.

131. Finally, Black and Latino voters' candidates of choice in CD11 itself are Democratic candidates, Tr.686:6–10 (Dr. Alford testifying that the preferred candidate for Black and Latino voters in CD11 is "overwhelmingly democratic"); *see* Alford.Rep.14, and these candidates are not "usually defeated" within CD11.

132. As shown in the above chart, the minority candidate of choice is plainly still "capable of winning elections in District 11." Trende Rep.7.

133. Dr. Trende explained that Democrats "have won four of eleven elections" there since 2018, *id.*, when looking at "more probative" statewide elections held in even years there (the same years as congressional elections) as opposed to local races held in odd-numbered years when congressional races are not held, *id.* at 5 & n.1. Democrats "have won a third of recent [statewide] elections" in the district, *id.* at 8, and "Joe Biden carried 46% of the vote in 2020," *id.* at 7. This means that Black and Latino voters' preferred Democratic candidates are certainly capable of winning in CD11, *see id.*, and often win a greater share of the vote than Black and Latino voters' approximate 30% proportion of the population in CD11, *see* Pet. ¶ 52.

134. Even applying Dr. Palmer's numbers—that include odd-year local elections when congressional races are not held—leads to the same conclusion: Democrats won five of the twenty elections Dr. Palmer examined, meaning Black and Latino voters achieve almost near proportionality between their population share in the district and their preferred candidates' electoral success (winning 25% of elections with less than 30% of the electorate). *See* Palmer Rep.5–6.

135. In all, Black and Latino favored candidates do not lose "routinely" or "as a rule" in New York State, New York City, or even CD11 (even assuming that focusing only on that district was appropriate, which it is not).

136. Petitioners have thus failed to make the necessary "usually defeated" showing under the NYVRA's standards.

B. Petitioners Have Not Satisfied The NYVRA's Racially-Polarized-Voting Test Or Totality-Of-The-Circumstances Test

137. But even if Petitioners had satisfied the "usually defeated" showing, they did not submit sufficient evidence to establish that CD11 violates the NYVRA under either the statute's racially-polarized-voting or totality-of-the-circumstances inquiries.

138. For jurisdictions using a district-based system of election, the NYVRA provides that the political subdivision has engaged in "vote dilution" when minority-preferred candidates "would usually be defeated" and either of two showings are made: (A) there is "racially polarized" voting in the jurisdiction; "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." N.Y. Elec. Law § 17-206(2)(b)(ii).

139. Petitioners failed to make either showing.

a. Petitioners Did Not Satisfy The Racially-Polarized-Voting Test Because Their Only Evidence On This Element—Dr. Palmer's Testimony—Is Too Limited And Flawed In Multiple Respects

140. Under the NYVRA, "racially polarized voting" means the "divergence in the . . . choice[s] of members in a protected class from the . . . choice[s] of the rest of the electorate." *Id.* § 17-204(6). The U.S. Supreme Court has explained that "racially polarized voting" is the "discernible, non-random relationship[ ] between race and voting." *Cooper*, 581 U.S. at 304 n.5.

141. Accordingly, to establish the existence of racially polarized voting, an NYVRA plaintiff must present evidence of a "discernible, non-random relationship[ ] between race and voting" choices among the plaintiff's identified minority group, *id.*, and that those electoral choices

"diverge[ ]" from the "electoral choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), on a statewide (or at least region-wide) basis—which, as explained, *supra* pp.20–25, is the proper way to conduct the NYVRA's vote-dilution analysis.

142. The NYVRA requires evaluating vote-dilution claims on a statewide basis or, at minimum, a regional basis. *Supra* pp.76–83.

143. The *only* evidence that Petitioners, who carry the burden here, provided was one "inaccurate," Tr.596:5–7, and "unreliable," Voss Rep. at App'x B at 9, expert opinion on the existence of a "discernible, non-random relationship [ ]" between Black and Latino CD11 residents' "race" and their "voting" for Democratic candidates, *Cooper*, 581 U.S. at 304 n.5, and evidence showing that those "choice[s]" "diverge[ ]" from the "choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), in CD11 who tend to favor Republicans, *see* Palmer Rep.2–5.

144. Petitioners' expert, Dr. Palmer, made a series of methodological errors that render his report unreliable. For instance, he used a simple version of ecological inference that generally assumes members of a group vote the same way everywhere, Palmer Rep.4, but is it simply not true that people "vote the same way everywhere," and Dr. Palmer's failure to account for these contextual effects constitutes "aggregation bias," Voss Rep.4; Tr.601:15–23. He also used incorrect assumptions about voter turnout, Voss Rep.4–5, which resulted in an erroneous assignment of Asian votes to other racial and ethnic groups, Tr.616:22–617:3.

145. In addition to these methodological flaws in Dr. Palmer's report, Petitioners also presented *no* expert evidence on a regional or statewide basis.

146. Rather, Dr. Palmer "restrict[ed] his analysis to a single congressional district's precincts—either only the precincts in the current [CD11] or only the illustrative district's precincts"—rendering his analysis "unreliable." Voss Rep.5.

147. "[A]n analysis of group cohesion and of racially polarized voting [ ] needs to extend beyond a single legislative district," *id.*, as an analyst conducting a racially polarized voting analysis should "[i]deally" identify "meaningful subdivisions within a state—such as regions with a shared history or that share known economic or cultural commonalities—and conduct[ ] the ecological inferences within those regions, combining them into statewide results if desired," *id.* at App'x B at 19.

148. The "substantive[ ] problem" with Dr. Palmer's narrow focus on a "single district" to "conduct[ ] ecological inferences" is that the "same voters can be made to look polarized, or not polarized, depending on how one draws the lines." *Id.* at App'x B at 20. In other words, "[f]ocusing on a single district . . . renders a vote-dilution analysis practically worthless, because mapmakers can manipulate the level of racial/ethnic voting cohesion—by separating or merging like-minded members of a demographic group." *Id.* at 5.

149. "A cohesive White and Asian population in Staten Island"—currently in CD11 and who tend to "prefer Republican representation"—"can be brought into relief, or hidden, depending on the other precincts tossed into the district" from the current CD10. *Id.* at App'x B at 20. Similarly, "[f]airly cohesive Republican communities in Brooklyn can be made to look less cohesive by merging them into CD10." *Id.*

150. Since Petitioners' only expert on racially polarized voting presented only a flawed, limited analysis of the issue, Petitioners failed to carry their burden on this element of their theory.

b. Petitioners Have Not Satisfied The NYVRA's Totality-Of-The-Circumstances Test

151. Regarding the totality-of-the-circumstances inquiry, the NYVRA provides a non-exhaustive list of eleven factors that courts may consider in determining whether "the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired," N.Y. Elec. Law § 17-206(2)(b)(ii), in order to "establish[ ] that [ ] a violation" of the NYVRA's vote-dilution prohibition "has occurred," *id.* § 17-206(3).

152. Those factors include "the history of discrimination" in the jurisdiction, the use of voting or election practices that have had "dilutive effects" on the identified minority group's voting strength, the use of "racial appeals" in campaigns, the extent to which members of the minority group have participated in the electoral and political processes and been elected to office, and whether those members "are disadvantaged" in other socioeconomic areas such as "education" and "employment." N.Y. Elec. Law § 17-206(3)

153. Looking at these factors, an NYVRA plaintiff must show that "the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), in order to "establish[ ] that [ ] a violation" of the NYVRA's vote-dilution prohibition "has occurred," *id.* § 17-206(3).

154. Petitioners' evidence was insufficient to establish that "the ability of" Black and Latino voters in CD11 "to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), under a proper application of the NYVRA's vote-dilution prohibition.

155. As Mr. Borelli explained, the history of racism on Staten Island provided by Petitioners' expert, Dr. Sugrue, is one-sided and omits the significant progress that Staten Island has made to counter any disparate treatment of minorities. Borelli Rep.18–26.

156. First, the "history of discrimination," *id.* § 17-206(3), in New York is not a simple story of persistent oppression but one of sustained and meaningful progress, including on Staten Island. Borelli Rep.19.

157. New York voted for emancipation well ahead of many other States, aided by organizations such as the New York Manumission Society—including members from Staten Island—who organized national conventions to press Congress for anti-slavery legislation and to prevent the kidnapping of free Blacks. *Id.* at 21. Beyond attempting to change the laws, the New York Manumission Society provided education to Blacks to equip them for citizenship, including by teaching them financial and other skills necessary for free Black leaders. *Id.* at 21.

158. Staten Island's own residents attempted to further the abolitionist cause. *Id.* at 22. Governor Daniel Tomkins was a long champion of abolition, and Staten Island's residents threw a great reception when Governor Tomkins' manumission bill passed in 1817, emancipating every slave in New York within ten years. *Id.* at 22. Nearly every elected official on the island participated in the celebration. *Id.*

159. Staten Island was also a significant stop along two routes of the Underground Railroad, serving as a refuge for those crossing from New Jersey. *Id.*

160. After slavery was abolished in New York, a number of freed Blacks moved to Staten Island, resulting in the establishment of Sandy Ground by John Jackson, a free Black ferryboat captain who purchased land in 1828. *Id.* at 23. For nearly two centuries, Sandy Ground has remained the longest continually occupied settlement of former slaves, with Black and White residents historically worshipping and going to school together. *Id.* at 23–24.

161. Further, New York—and Staten Island as part of it—has long been a leader in civil-rights protections. New York enacted the Ives-Quinn Act in 1945, with broad bipartisan

support, to prevent discrimination in employment and became the first State to establish a commission with broad powers to investigate claims, formulate policy, and create local and regional boards to implement anti-discrimination measures. *Id.* at 25–26.

162. Petitioners' reliance on sporadic KKK activity and decades-old federal housing policies is misleading. Staten Island had a relatively minor KKK influence as compared to the rest of New York City. *Id.* at 27. Even in the late 1980s and 1990s when there was a national uptick in KKK activity, neo-Nazi activity remained minimal on Staten Island. *Id.* And Staten Island never had full scale race riots—which cannot be said of its neighboring boroughs. *Id.* Moreover, Petitioners offer no evidence that such incidents left lingering political disabilities for modern Black and Latino voters. *Id.*

163. Likewise, while federal housing policies from over seventy years ago were deeply flawed, Petitioners failed to show that any of those policies were unique to Staten Island or demonstrate that they impair the ability of Black and Latino voters currently on Staten Island to elect minorities to office. *Id.* at 28–29. And though Dr. Sugrue suggests there continues to be significant segregation on Staten Island as a result of these policies, he ignores that minorities live all over Staten Island. *Id.* at 9–14.

164. For example, Staten Island's diverse Latino population is spread significantly throughout the borough, with representation in every zip code and no single zip code containing a majority of Latinos. *Id.* at 12–13. The dissimilarity score for Latino residents on Staten Island is on the very low end of moderate, indicating substantial integration rather than the type of entrenched residential segregation that might impair political participation. *Id.*

165. Dr. Sugrue also ignored the significant and thriving Asian community on Staten Island. *Id.* at 7. Asians constitute approximately 12% of Staten Island's population—making them

the third-largest ethnic group, after White and Latino residents—and include diverse national origins (Chinese, Indian, Filipino, Pakistani, Middle Eastern, Korean, among others). *Id.* at 10. Their Index of Dissimilarity score is both low and declining, and Asian students are well-represented in local and regional institutions of higher education. *Id.*

166. The Index of Dissimilarity score for Black residents also remains lower than the score for New York City as a whole, indicating that Black residents of Staten Island are more dispersed throughout the borough as compared to the rest of the City. *Id.*

167. Second, Black and Latino candidates have "been elected to office" and are not excluded from political power. N.Y. Elec. Law § 17-206(3)(b). Petitioners identified no pattern of minority candidates being systematically defeated by bloc voting or barred from office, and the undisputed record instead shows that Black and Latino candidates can and do attain elected office on Staten Island.

168. CD11 is represented by a Latino woman and the daughter of immigrants. Borelli Rep.30.

169. The North Shore of Staten Island—which Petitioners claim is the center of Black and Latino political disadvantage—has repeatedly elected Black representatives at multiple levels of government. *Supra* pp.42–43. From 2010 to 2020, a Black woman, Debi Rose, represented New York City Council District 49, covering nearly the entire North Shore. Borelli Rep.29–30. Kamillah Hanks, another Black woman, succeeded her and currently holds that seat. *Id*.

170. Likewise, Charles B. Fall, a Black Muslim man whose family hails from Guinea, represents the 61st State Assembly District covering the North Shore. *Id.* at 30. Minority candidates have also had success in the local judiciary, including at least one Black woman, the Honorable Anne Thompson, who has been elected to the bench. *Id.* at 30–31.

171. Third, Petitioners' reliance on historic "voting qualification[s]," N.Y. Elec. Law § 17-206(3)(c), such as the use of literacy tests that were abolished decades ago, is misplaced. Borelli Rep.31−33. Literacy tests were not unique to Staten Island; they were used statewide decades ago. *Id.* at 31. And New York actually revised its exam to make it easier to pass and actively funded evening programs, public schools, and community centers to provide an extensive educational campaign so that a broader electorate could pass. *Id.* Within the first decade after these reforms, the exam's fail rate dropped from 21.4% to 10.1%. *Id.*

172. Petitioners do not identify any current Staten Island voting qualification that operates like a literacy test or otherwise furthers vote dilution.

173. Rather, New York and Staten Island now offer extensive government resources in order to ensure that all eligible voters have access to the ballots, regardless of their country of origin or primary language. *Id.* at 33. New York City provides foreign-language services for protected classes at the polls, deploys interpreters to assist non-English speakers, and distributes printable resource guides in fourteen different languages. *Id.*

174. Fourth, Black and Latino candidates and voters are not "den[ied]" ballot access or campaign resources on Staten Island. N.Y. Elec. Law § 17-206(3)(d). Over the last several decades, dozens of candidates of various ethnic backgrounds have successfully qualified for the ballot in Staten Island elections and the record shows diverse candidates in every election cycle. Borelli Rep.31−33.

175. Diverse candidates have also qualified for New York City's—and New York State's—public matching-funds programs, which provide candidates with matching funds at a multiple of each dollar raised from small donor contributions, making it easier for challengers, including candidates from minority communities, to mount credible campaigns. *Id*.

176. Fifth, there is no evidence that Black and Latino Staten Islanders are systematically "contribut[ing] to political campaigns at lower rates," N.Y. Elec. Law § 17-206(3)(e), nor that such contributions—or any supposed disparities in them—translate into an impaired ability to elect preferred candidates in CD11.

177. The success of minority candidates in Staten Island elections, *supra* pp.42–43, suggests that minority communities are able to mobilize sufficient political and financial support.

178. Sixth, the available data suggests that the "rate[ ]" of voting participation, N.Y. Elec. Law § 17-206(3)(f), is increasing nationally, particularly among Latino voters, Borelli Rep.33–34.

179. Latino participation in New York City has increased throughout the last decade, culminating in more than 165,000 Latinos voting in the June 2025 primaries—shattering prior turnout records. *Id.* at 34.

180. This trend is consistent with national data showing increased Latino voter eligibility and participation across the country. *Id.*

181. Black voters, in turn, have even higher turnout than Latinos nationally, *id.* at 37, and Black turnout is comparable to, or in some instances higher than, White turnout, *see id.* at 35.

182. Seventh, socioeconomic disparities—"in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection"—between members of different races are narrowing on Staten Island and do not translate into impaired electoral opportunity. *See* N.Y. Elec. Law § 17-206(3)(g).

183. Educational attainment among Black and Latino Staten Islanders has improved over the last decade, with the percentage of Black residents attaining a high-school diploma increasing from 85.8% in 2015 to 86.4% in 2020 and 90.2% in 2024. Borelli Rep.38.

184. Black bachelor's-degree attainment likewise rose from 24.6% in 2015 to 28.7% in 2020 and 30.0% in 2024. *Id.*

185. For Latinos, the percentage earning a high-school diploma increased from 78.4% in 2020 to 82.8% in 2024, and the share with bachelor's degrees grew from 18.0% in 2015 to 22.0% in 2024. *Id.*

186. Further, per-pupil spending in public schools shows no evidence of disfavored treatment of Black and Latino students. *Id.* at 39–40.

187. These trends reflect expanding, not shrinking, human capital in minority communities—conditions that naturally support, rather than impede, political participation.

188. Similarly, income gaps are narrowing and homeownership rates are high on Staten Island. *Id.* at 41–45.

189. Black mean income on Staten Island increased by more than 33%, from $20,785 in 2010 to $32,154 in 2024, resulting in a 4.14% increase in Black income as a percentage of White income. *Id.* at 43. Latino mean income likewise rose from $21,379 in 2010 to $31,399 in 2024, and Asian mean income increased from $26,439 to $35,068 over the same period. *Id.*

190. As for housing, Staten Island has a far higher rate of homeownership than the New York City, New York State, and national averages. *Id.* at 41–42. Staten Island's overall homeownership rate is 67.9%—more than twice New York City's rate of 31% and substantially above the statewide rate of 53.6%. *Id.*

191. As such, Black and Latino residents have historically had, and will likely continue to have, a better chance of owning a home on Staten Island than they would elsewhere in the area, in the State, or around the country. *Id.* at 42.

192. Eighth, Black and Latino residents are not "disadvantaged in other areas which may hinder their ability to participate effectively in the political process." *See* N.Y. Elec. Law § 17-206(3)(h). Instead, community resources, integration, and low hate-crime levels support, rather than hinder, minority political participation, and Petitioners erroneously disregard Staten Island's clear commitment to supporting its minority residents and ending racism through community resources and other support. Borelli Rep. 45.

193. Numerous agencies and community groups operate in the borough to assist minority residents. *Id.* at 45–48. These organizations provide economic, social justice, immigration, legal, voting, family, and other social support. *Id.* at 46–47. And they demonstrate that Staten Island is committed to supporting its minority residents.

194. Staten Island has also consistently had one of the lowest incident rates of hate crimes among New York City precincts for several decades. *Id.* Quarterly reported hate-crime incidents—most involving graffiti or literature rather than physical attacks—decreased by 66% from 2018 to 2019 on Staten Island, even as the city as a whole saw a 67% increase. *Id.* at 49. Over the last five years, Staten Island accounted for only 4% of New York City's hate-crime reports and 3% of hate-crime arrests—far below its share of the city's population. Tr.769:13–23. According to the NYPD Hate Crimes dashboard, there were only two hate crimes in 2025 targeted at Black individuals on Staten Island. Borelli Rep.48.

195. Although Petitioners suggest Staten Island is anti-Latino by pointing to certain "anti-immigrant" protests, that is wrong. Those protests were driven by legitimate concerns about the City's decision to convert hotels into de facto homeless shelters for migrants—decisions that had significant impacts on surrounding communities. *Id.* at 49–50. Similar protests occurred in nearly every neighborhood and borough where the hotels were sited, including even the most

progressive neighborhoods and communities of color. *Id.* Far from evidencing an anti-Latino climate on Staten Island, these protests reflected a citywide policy dispute.

196. In reality, Staten Island's community consistently responds to isolated incidents of racism by showing support for their minority communities. For example, after a racist group chat's messages were leaked from the Manhattan-based New York Young Republic Club to the media, every Staten Island elected official, including every Republican politician, rallied against the messages and denounced all those involved. *Id*. at 52.

197. Ninth, there have been no "overt or subtle racial appeals in political campaigns" on Staten Island. N.Y. Elec. Law § 17-206(3)(i). To assess this factor objectively, Mr. Borelli conducted a replicable content analysis of campaign-related newspaper coverage using Newspapers.com, focusing on congressional general elections from 2000 through 2024. Borelli Rep.52–54. Using this method, Mr. Borelli found only one explicit charge of racism and one potential charge of antisemitism (which was not reported as such) over a twenty-four-year period. *Id.* at 54.

198. The four disparate incidents that Petitioners' expert Dr. Sugrue identifies as racial appeals over more than a decade do not qualify under his own definition of racial appeals. *Id.* at 52, 54–60. And none of those incidents involved a congressional campaign. *Id.*

199. Nor does the criminal conduct of Richard A. Luthmann—who was indicted for election-law violations and other crimes and created a fake social media account—qualify as a racial appeal. Luthmann was an equal-opportunity political impersonator, who impersonated multiple local politicians on social media—and, in any case, his conduct was prosecuted and does not reflect the thoughts, wishes, or views of any politician or political party. *Id.* at 59.

200. Likewise, a campaign ad by Max Rose, which Dr. Sugrue labels a racial appeal, centered on law-enforcement issues and was aimed at creating a political wedge between Rose and moderate Democrats, not to make a racial appeal. Tr.765:9–766:25.

201. Tenth, and finally, Petitioners do not identify any pattern of "a significant lack of responsiveness on the part of [Staten Island's] elected officials" toward Black and Latino residents. N.Y. Elec. Law § 17-206(3)(j). New York's early enactment of the Ives-Quinn Act and the creation of a powerful state anti-discrimination commission, Borelli Rep.25–26, as well as more recent citywide initiatives to provide language assistance, voting-rights protections, and public financing for campaigns, *id.* at 32–33, all demonstrate governmental responsiveness to minority needs.

202. The presence of extensive minority-serving organizations on Staten Island, often supported or facilitated by public institutions, *id.* at 45–47, and the swift condemnation and prosecution of hate-motivated incidents such as Luthmann's conduct, *id.* at 58–59, further indicate that officials are responsive—not indifferent—to the concerns of Black and Latino residents.

203. In sum, Petitioners have not shown, under the totality of the circumstances, that "the ability of" Black and Latino voters in Staten Island "to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(ii).

III. The Equal Protection Clause Bars Petitioners' Lawsuit

204. Petitioners' request to order the redrawing of CD11 to create an "influence" district for Black and Latino voters triggers strict-scrutiny review, because doing so would mandate the placement of voters either within or without CD11 predominantly (and, indeed, solely) to give voters lumped together by race the benefit of a greater chance of electing their preferred candidates

(and, given the zero-sum nature of elections, give citizens grouped together by other races a lesser chance to elect their preferred candidates).

A. Applicable Legal Principles

205. A map-drawer has separated "citizens into different voting districts on the basis of race"—triggering strict-scrutiny review—when "race was the predominant factor motivating the [map-drawer's] decision to place a significant number of voters within or without a particular district." *Cooper*, 581 U.S. at 291 (citation omitted); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995).

206. Adhering to these principles is necessary to ensure that redistricting does not reinforce "impermissible racial stereotypes," *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw I*"), or result in a district "being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group," *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (citation omitted). These principles also apply regardless of whether the map-drawer is a legislature, *Cooper*, 581 U.S. at 291, or a court, *Wis. Legislature*, 595 U.S. at 401.

207. Strict-scrutiny review applies where a map-drawer draws a district based on race because that alone establishes that "race furnished the predominant rationale for that district's redesign." *Cooper*, 581 U.S. at 299–301.

208. That is, a map-drawer can only achieve such a racial goal by moving voters "within or without a particular district" based on race until the goal is met—the definition of racial predominance. *Id.* at 291, 299–300.

209. That conclusion holds even if the district at issue "respects traditional [redistricting] principles" if race was nevertheless the one "criterion that, in the [map-drawers' view], could not be compromised." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citations omitted; alterations omitted).

210. The U.S. Supreme Court has repeatedly reaffirmed these principles, concluding that a map-drawer drawing district lines with race as the "predominant motive for the design of the district as a whole"—that is, redistricting with a specific racial goal—triggers strict scrutiny. *See, e.g.*, *id.* at 192–93; *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03.

211. Specifically, the U.S. Supreme Court's decisions in *Wisconsin Legislature* and *Cooper* show the correct articulation of the predominant-rationale test.

212. In *Wisconsin Legislature*, the Court held that a remedial redistricting map adopted by the Wisconsin Supreme Court for Wisconsin's legislative districts triggered strict-scrutiny review under this test. *See* 595 U.S. at 399–404.

213. The Court reasoned that, under the predominant-rationale test, the "intentional addition of a seventh majority-black district" in the map alone triggered "strict-scrutiny" review, meaning no further showing was necessary for the map to constitute "race-based redistricting" because "race [was] the predominant factor motivating the placement of voters in or out of [that] particular district." *Id.* at 402–03. That was so despite the Wisconsin Governor's arguments that the map did comply with those principles. *See* Resp. To Appl. From Resp't Governor Tony Evers at 19, *Wis. Legislature*, No.21A471 (U.S. Mar. 11, 2022) (asserting that Petitioners did not "identify any specific respect in which its map conflicts with or subordinates traditional redistricting criteria").[5]

214. The Court thus found it unnecessary to decide whether the map, for example, satisfied traditional redistricting principles when determining that it triggered strict-scrutiny review. *Wis. Legislature*, 595 U.S. at 401–04.

[5] Available at https://www.supremecourt.gov/DocketPDF/21/21A471/218427/20220311165107226_21A471%20Wisconsin%20-%20SCOTUS%20Opp%20Final.pdf (last visited December 23, 2025).

215. Similarly, in *Cooper*, the U.S. Supreme Court again held that a state legislative map—this time drawn by the North Carolina General Assembly—triggered strict-scrutiny review under the predominant-rationale test. 581 U.S. at 291, 295–96.

216. As the Court explained, that test permits a party to "make the required showing" that "race was the predominant factor motivating the [map-drawer's] decision to place a significant number of voters within or without a particular district" through one of three evidentiary pathways: "[1] direct evidence of legislative intent, [2] circumstantial evidence of a district's shape and demographics, or [3] a mix of both." *Id.* at 291 (citations omitted). In other words, a party's task "is simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district." *Id.* at 318 (citation omitted).

217. Pursuant to this standard, *Cooper* held that one of the districts at issue triggered strict scrutiny because there was direct evidence that the North Carolina General Assembly had "purposefully established a racial target" in drawing that district—namely ensuring that Black voters "ma[d]e up no less than a majority of the voting-age population" there. *Id.* at 299–301.

218. Consistent with the Court's reasoning in *Wisconsin Legislature*, that decision standing alone was sufficient to trigger strict-scrutiny review without the need for the Court to discuss the district's compliance with traditional redistricting principles. *See id.*

219. These cases taken together firmly establish that a map triggers strict scrutiny under the predominant-rationale test whenever there is evidence that a map-drawer had express race-based purposes in drawing the map. That is, a map-drawer's expressed race-based goal constitutes "direct evidence of [ ] intent" and alone satisfies the predominant-rationale test. *Id.* at 291.

220. In such situations, there is no need for a court to undertake the kind of "holistic analysis," *Bethune-Hill*, 580 U.S. at 192, and consideration of "several essential ingredients," *Bush v. Vera*, 517 U.S. 952, 962 (1996), of the type that the U.S. Supreme Court has discussed in its prior case law. Such analyses refer to additional pathways for satisfying the predominant-rationale test discussed in *Cooper*—demonstrating intent through circumstantial or a mix of direct and circumstantial evidence. *See* 581 U.S. at 291.

B. Petitioners' Requested Remedy Triggers, And Fails, Strict Scrutiny Review

a. Petitioners' Requested Remedy Triggers Strict Scrutiny

221. Petitioners' requested remedy of judicially ordering a change to the boundaries of CD11 so that Black and Latino candidates will win more elections triggers strict-scrutiny review because it mandates placing voters in or out of CD11 based not just predominantly, *Cooper*, 581 U.S. at 299–301; *Bethune-Hill*, 580 U.S. at 192–93, but entirely upon racial considerations. Put another way, Petitioners ask this Court to order the creation of a new district with the express goal of giving Black and Latino voters the benefit of increased electoral "influence" as compared to the current map. Pet.27–28.

222. Petitioners' "predominant motive for the design of the district as a whole" is race-based, *Bethune-Hill*, 580 U.S. at 192–93; *see also Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03, because map-drawers must move new voters into the district and/or take current voters out of the district until Black and Latino voters have enough "influence" to satisfy Petitioners' demands, *see* Pet.28.

223. Such race-based action inflicts the very harms that the Equal Protection Clause prohibits: the use of racial stereotypes, the presumption that individuals of the same race or ethnicity share political preferences, and the signaling that the district exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

224. Indeed, Petitioners' theory threatens to harm the Individual Voters who all live in CD11 and expressly attested that they do not wish to reside in a racially gerrymandered district or be subjected to a racial classification due to reliance on racial criteria in amending CD11's boundaries. *See* Lai Aff. ¶ 11; Medina Aff. ¶ 10; Sisto Aff. ¶ 9; Togba Aff. ¶ 9.

225. Petitioners' request to create an "influence" district here would trigger strict scrutiny even if the adopted map "complie[d] with traditional redistricting criteria," Pet.28, which Petitioners' proposed map plainly does not. That is because moving enough voters either in or out of CD11 with the express goal of giving Black and Latino voters the benefit of more electoral influence—as Petitioners' requested remedy requires—makes race the "predominant motive" for redrawing the district, *see Bethune-Hill*, 580 U.S. at 192, which is all that is required to trigger strict-scrutiny review, *see Wis. Legislature*, 595 U.S. at 401–04; *Cooper*, 581 U.S. at 291.

226. In other words, a minority influence district necessarily uses race or ethnicity as the principle for "the design of the district as a whole." *Bethune-Hill*, 580 U.S. at 192. So, even if other traditional redistricting criteria were considered, race would be the "predominant [motivating] factor" in the redraw. *E.g.*, *Cooper*, 581 U.S. at 291.

227. This same conclusion would hold as to *any* map adopted pursuant to Petitioners' theory, as the "predominant motive," *Bethune-Hill*, 580 U.S. at 192, for any influence district is to give voters in a "protected class"—that is, voters of a certain race or national origin, N.Y. Elec. Law § 17-204(5)—greater electoral success that they would not have otherwise had.

228. All that said, as the expert evidence showed, the specific redraw of CD11 that Petitioners proposed would disregard traditional redistricting principles.

229. Petitioners' proposed redraw of CD10 and CD11—the latter of which combines the physically separated Manhattan and Staten Island boroughs—is not "as compact in form as

practicable," as required under the New York Constitution. N.Y. Const. art. III, § 4(c)(4); *see* Cooper Rep.19–21; Bryan Rep.14–15; Trende Rep.16–17. Mr. Cooper's map cuts CD11's Polsby-Popper score in half and its Reock Score by two thirds. Trende Rep.16–17. Under Mr. Cooper's own compactness calculations, CD11 would have the worst Reock score *in the entire State*. Trende Rep.17. In fact, the populations that Mr. Cooper attempts to connect are five miles apart and are connected to Staten Island only by ferry. Bryan Rep.15.

230. Mr. Cooper's attempt to justify the significant decrease in compactness that results from connecting two communities that have no physical connection is to consider the compactness of the two sub-parts—Staten Island and Lower Manhattan—and largely ignore the large body of water in between them. Cooper Rep.19–21. But, beyond the fact that, even under this approach, both CD10 and CD11 are made less compact, Trende Rep.17, "this approach lacks both precedent and logic." Bryan Rep.43. Indeed, neither Dr. Trende nor Mr. Bryan have ever heard of a district's compactness being judged by breaking it into separate pieces and examining those pieces. Trende Rep.17; Bryan Rep.43. And it would be counterintuitive for a compactness consideration to simply ignore areas that are either unpopulated or consist solely of water to improve compactness measures. Bryan Rep.43.

231. Thus, Petitioners' proposed map is not "as compact in form as practicable," as is required by the New York Constitution. N.Y. Const. Art. III, § 4(c)(4).

232. Petitioners' proposal for CD11 also disregards communities of interest, including because Lower Manhattanites do not have much in common with Staten Islanders, Borelli Rep.15–19, and Petitioners presented no evidence to the contrary.

233. Notably, Mr. Cooper made no attempt at analyzing the community of interest similarities between Lower Manhattan and Staten Island. He explained at trial that he had "hear[d]

something about Chelsea being known for art" and "think[s]" that Chelsea is "maybe predominately White," but otherwise did not "know much at all about Chelsea" and had "not looked into the details of Chelsea." Tr.317:23–318:22; Tr.318:23–319:21 (similar testimony as to the East Village); Tr.323:6–25 (similar testimony as to Greenwich Village); Tr.327:9–13 (similar testimony as to the Lower East Side); Tr.329:24–330:1 (similar testimony as to SoHo); Tr.330:12–331:6 (similar testimony as to Tribeca and the West Village).

234. Mr. Cooper testified that he "was under the assumption there would probably be petitioners here to testify as there usually are in federal court," and was planning "to defer to their testimony" on this point. Tr.329:15–20; *see* Tr.343:13–25. Petitioners presented no such evidence.

235. Rather, the undisputed evidence before the Court is that Staten Island and Lower Manhattan have almost nothing in common. Staten Island has a very high rate of home ownership; while most residents of Lower Manhattan are renters. Tr.739:21–740:4. This affects the issues that matter most to Staten Islanders, such as property tax reform. Tr.742:9–21. The increased rate of car ownership on Staten Island only furthers these distinctions, having Staten Island residents worrying about congestion pricing, Tr.742:22–743:1, and the tolling of the Verrazzano Bridge, Tr.745:1–12, while those in Lower Manhattan seek to break the car culture, Tr.745:1–12.

236. Moreover, with its neighborhoods zoned differently, Manhattan looks different. Lower Manhattan is full of skyscrapers and high-density zoning, while Staten Island largely consists of one- to three-family homes. Tr.745:25–746:25. As Mr. Borelli aptly put it, "if [he] blindfolded someone and opened their eyes right outside of this courtroom in [L]ower Manhattan, nobody would think they were in Staten Island." Tr.776:8–13.

237. Nor do the demographics within Staten Island and Lower Manhattan compare. Lower Manhattan's largely White population lacks Staten Island's diversity. Borelli Rep.15. Even within Lower Manhattan's pockets of diversity, there are major differences between the two boroughs. For example, Puerto Ricans have historically been the most numerous Latino subgroup on Staten Island, but Lower Manhattan's Latino population is predominately Mexican. *Id.* at 11–12. Lower Manhattan also has a greater population with a bachelor's degree or higher. *Id.* at 17.

238. The fact that "the Staten Island ferry carries tens of thousands of people between boroughs every single day," Pet.Opp.23–24 (emphasis omitted), does not change this conclusion. That people choose to travel between New York boroughs every day, as opposed to moving to Staten Island, supports Intervenor-Respondents' contention that it makes "little practical sense" to combine Staten Island's diverse, suburban population with Lower Manhattan's largely White, city dwellers. Int'r.Resp'ts.Br.34.

239. And while those in Lower Manhattan can travel to Staten Island via ferry, Staten Island's more suburban atmosphere and lack of a transit system makes such travel impractical. Borelli Rep.17. If lower-Manhattanites believed that their lifestyle matched those of Staten Islanders, they would not undertake a daily commute, and vice versa.

240. Staten Island has much in common with Brooklyn. *Id.* at 18. Both communities have a more suburban atmosphere. A number of residents from both Staten Island and Brooklyn commute into Manhattan for work, reaping the benefits of working in the City but a house with a yard. Tr.740:24–741:5; 742:1–21. And their demographics parallel each other. Borelli Rep.11–12. These shared characteristics may be why, for generations, countless Brooklynites—particularly those living closest to the Verrazano Bridge—have moved to Staten Island. *Id.* at 18.

241. The only community of interest that Mr. Cooper's map purports to advance is that of the Chinese Americans found in Chinatown, Sunset Park, Bensonhurst, and Bath Beach. Cooper Rep. ¶ 59; *see* Tr.327:18–23; *see also* Bryan Rep.21.

242. But the illustrative map actually *divides* the Chinese-American community of interest in Lower Manhattan by neglecting two of the highest concentrations of Chinese-Americans in Brooklyn (found in Dyker Heights and Gravesend). Bryan Rep.56–57. And Mr. Cooper's map further displaces a large number (46.5%) of Asians. *Id.* at 59.

243. Petitioners contend that "Article III, § 4 does not require new congressional districts to *create* communities of interest," so, "the absence of a community of interest does not mean a map should *fail*." Pet.Opp.24. But it is Petitioners who contend that Article III, Section 4 requires map-drawers to link communities of interest in Staten Island and Lower Manhattan. Pet. ¶ 12. That the two boroughs have little in common is relevant to that question. Borelli Rep.15–19.

244. For all these reasons, strict scrutiny necessarily applies. *Wis. Legislature*, 595 U.S. at 402–03.

245. Petitioners' contrary arguments are meritless.

246. Petitioners admit that, under binding U.S. Supreme Court precedent, a redistricting map triggers strict scrutiny where it is drawn with race as the predominant rationale. Pet.Opp.22–23. They nevertheless attempt to muddy the predominant-rationale test with misplaced quotations of *Bush v. Vera*, 517 U.S. 952 (1996), Pet.Opp.22–23—which Petitioners fail to cite as a plurality opinion, *see* Pet.Opp.18, 22–23, 30—and *Bethune-Hill v. Virginia State Board of Elections*, 580 U.S. 178 (2017), Pet.Opp.22–23.

247. The U.S. Supreme Court's decisions in *Wisconsin Legislature* and *Cooper* articulate the proper formulation of the predominant-rationale test; put Petitioners' misplaced quotations from *Vera* and *Bethune-Hill* in the correct context; and demonstrate that redrawing CD11 for race-based reasons triggers strict-scrutiny review.

248. In *Wisconsin Legislature*, the U.S. Supreme Court applied the predominant-rationale test to hold that a judicially adopted remedial redistricting map for Wisconsin's legislative districts triggered, and failed, strict-scrutiny review. 595 U.S. at 401–04.

249. There, the Wisconsin Supreme Court had adopted a remedial map following the Wisconsin Governor's proposal. *Id.* at 399–400. That map had "intentional[ly] add[ed]" a "seventh majority-black district," *id.* at 402—"one more" than the State's prior map, *id.* at 400.

250. Applying the predominant-rationale test, *id.* at 401, the U.S. Supreme Court concluded that the "intentional addition of a seventh majority-black district" in the remedial map, standing alone, meant that the "strict-scrutiny test must [ ] be satisfied" for the map to comply with the Equal Protection Clause, *id.* at 402–03.

251. In other words, "drawing the seventh majority-black district" into the map, *id.* at 403—without any further showing—constituted "race-based redistricting," *id.* at 402, because that decision alone demonstrated that "race [was] the predominant factor motivating the placement of voters in or out of [that] particular district," *id.* at 401.

252. In holding that strict scrutiny applied, the U.S. Supreme Court saw no need to discuss, for instance, whether the remedial map at issue also failed to satisfy the traditional redistricting principles, *see generally id.* at 401–04, despite arguments from the Wisconsin Governor that the map did comply with those principles, *see* Resp. To Appl. From Resp't Governor Tony Evers, *supra*, at 19.

253. Similarly, in *Cooper*, the U.S. Supreme Court applied the predominant-rational test to hold that two districts within a state legislative map drawn by the North Carolina General Assembly triggered and, again, failed strict scrutiny. *Cooper*, 581 U.S. at 291, 295–96.

254. As the Court explained, under the predominant-rationale test, a party may "make the required showing" that "race was the predominant factor motivating the [map-drawer's] decision to place a significant number of voters within or without a particular district" through three different evidentiary pathways: "[1] direct evidence of legislative intent, [2] circumstantial evidence of a district's shape and demographics, or [3] a mix of both." *Id.* at 291 (citations omitted).

255. A party's "task, in other words, is simply to persuade the trial court—without any special evidentiary prerequisite—that race (not [some other factor]) was the predominant consideration in deciding to place a significant number of voters within or without a particular district." *Id.* at 318; *accord Bethune-Hill*, 580 U.S. at 189 ("the criterion that . . . could not be compromised" (citations omitted)).

256. The *Cooper* Court determined that, under this test, one of the districts at issue triggered strict scrutiny based upon the first pathway ("direct evidence of the [map-drawer's] intent"), given that the North Carolina General Assembly "purposefully established a racial target" with the district—that is, the goal of ensuring that Black voters "ma[d]e up no less than a majority of the voting-age population" in that district. 581 U.S. at 299–301.

257. Like in *Wisconsin Legislature*, that decision alone was sufficient to trigger strict-scrutiny review as to that district, regardless of whether the district complied with traditional redistricting principles. *Compare id.*, *with* Br. For Appellants at 45, *Cooper v. Harris*, No.15-1262, 2016 WL 4771954 (U.S. Sept. 12, 2016) (contending that "a plaintiff must prove—and a

court must find—that the challenged district lines are inconsistent with traditional districting principles").

258. The U.S. Supreme Court's *Wisconsin Legislature* and *Cooper* decisions provide essential context for Petitioners' misplaced quotations of the *Vera* plurality and *Bethune-Hill*. Pet.Opp.22–23.

259. Petitioners quote the *Vera* plurality's statement that the decision "to create a majority-minority district" in the map there was "merely one of several essential ingredients" to the plurality's conclusion that strict scrutiny applied under the predominant-rationale test. *Vera*, 517 U.S. at 962 (lead plurality of O'Connor, J.); Pet.Opp.22–23. Petitioners then cite *Bethune-Hill*, contending that it holds that the predominant-rationale test requires a "'holistic analysis'" and the consideration of multiple "factor[s]." Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192). Then, based on these two citations, Petitioners claim that their own map-drawing "goal of giving Black and Latino voters the benefit of increased electoral 'influence' than under the prior map" cannot by itself trigger strict scrutiny under the predominant-rationale test. Pet.Opp.22 (citing Int'r.Resp't.Br.33).

260. *Wisconsin Legislature* and *Cooper* definitively refute that argument. Both of these decisions concluded that the maps at issue trigged strict scrutiny under the predominant-rationale test solely because the map-drawers had express race-based purposes when drawing the maps. *See supra* pp.109–11.

261. That is because a map-drawer's express race-based goal is itself "direct evidence of [ ] intent," which alone is sufficient to require strict scrutiny under the predominant-rationale test. *Cooper*, 581 U.S. at 291.

262. The *Vera* plurality and *Bethune-Hill* do not conflict with *Wisconsin Legislature* and *Cooper* in this respect. Rather, both refer to the *additional* pathways of establishing a map-drawer's predominant racial motive expressly recognized in *Cooper*—that is, such intent through "circumstantial evidence" or a mix of "direct" and "circumstantial evidence," *see id.*, which does require consideration of "several essential ingredients," *Vera*, 517 U.S. at 962, and a "holistic analysis," *Bethune-Hill*, 580 U.S. at 192.

263. But here, as in *Wisconsin Legislature* and *Cooper*, Petitioners' requested remedy triggers strict scrutiny because race is the *only* (and thus necessarily the predominant) rationale for redrawing of CD11. That is because Petitioners' requested remedy requires either this Court or the Legislature to move voters in or out of CD11 until there are sufficient Black and Latino voters within the redrawn district to give those voters enough electoral "influence." *Supra* pp.103–05.

264. This intentional and purposeful redrawing of a district to give more electoral benefit to voters lumped together by race is itself "direct evidence of [the] intent" that "race was the predominant factor" in redistricting. *Cooper*, 581 U.S. at 291.

265. Such "race-based redistricting" requires strict-scrutiny review under the predominant-rationale test, *Wis. Legislature*, 595 U.S. at 401–02, and no further evidentiary showing of race-based intent is necessary, *Cooper*, 581 U.S. at 291, 319.

266. Petitioners' related argument that their proposed map avoids strict-scrutiny review because it "respects the other redistricting criteria" fails for the same reasons. As the U.S. Supreme Court explained in *Wisconsin Legislature* and *Cooper*, when a map-drawer's explicit intent in drawing a map is based on race, race is necessarily the predominant rationale, regardless of whether the proposed map adheres to traditional redistricting criteria. *Supra* pp.109–11.

267. "[S]howing a deviation from, or conflict with, traditional redistricting principles is *not* a necessary prerequisite to establishing racial predominance," *Bethune-Hill*, 580 U.S. at 191, as "[r]ace may predominate even when a reapportionment plan respects traditional principles . . . if race was the criterion that, in the [map-drawer's] view, could not be compromised, and race-neutral considerations came into play only after the race-based decision had been made," *id.* at 189 (citations omitted; brackets in original).

268. In any event, Petitioners' proposed map does not comply with traditional redistricting principles, and instead disregards communities of interest in multiple ways; *supra* pp.106–08, and is not as compact as practicable; *supra* pp.105–06.

269. Petitioners also try to avoid strict-scrutiny review by claiming that their request to redraw CD11 to give Black and Latino voters more "influence" does not "rely on 'the use of an express racial target.'" Pet.Opp.23 (citing *Bethune-Hill*, 580 U.S. at 192).

270. But Petitioners' requested relief requires either this Court or the Legislature to move voters in and out of CD11 until Petitioners' express goal of giving Black and Latino voters within the district enough electoral "influence" is met. *See* Pet.28; Int'r.Resp't.Br.33–34.

271. The choice to use a qualitative racial target still makes race the explicit—and, indeed, sole—"rationale" for the "design" of the redrawn CD11 that Petitioners have proposed, which necessarily means that race is the "predominant" factor here, *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 401–04, for all the reasons already discussed above, *supra* pp.103–13. Strict scrutiny therefore applies.

272. Petitioners' reliance on *Bartlett v. Strickland*, 556 U.S. 1 (2009), *see* Pet.Opp.23, is also misplaced. In *Bartlett*, the U.S. Supreme Court stated (in a controlling plurality by Justice Kennedy) that, although Section 2 of the VRA does not require the creation of "cross-over

districts," such districts may "diminish the significance and influence of race by encouraging minority and majority voters to work together toward a common goal." *Bartlett*, 556 U.S. at 23 (plurality op.). Thus, the Court continued, "States that wish to draw crossover districts are free to do so where no other prohibition exists." *Id.* at 24.

273. These statements do not help Petitioners because they do not water down the controlling racial-predominance inquiry applicable here. "[T]here is a difference between being aware of racial considerations and being motivated by them." *Allen v. Milligan*, 599 U.S. 1, 30 (2023) (citation omitted). "The former is permissible; the latter is usually not," given that it triggers exacting, strict-scrutiny review. *Id.*

274. Under *Bartlett*, a State is permitted to draw a district that happens to be a cross-over district even if the State has "aware[ness] of racial considerations" or "racial demographics," *id.*, but the State is not allowed to draw such districts where "the overriding reason for choosing [them]" is "race for its own sake," unless it satisfies strict scrutiny, *id.* at 31.

275. Petitioners' overriding reason for redrawing CD11 here—to increase the "influence" of Black and Latino voters—is race for its own sake, *supra* pp.103–05, and *Bartlett* does not insulate such race-based redistricting decisions from strict-scrutiny review.

b. Petitioners Defaulted On Their Burden To Show That Racially Reconfiguring CD11 Is Narrowly Tailored To Achieving Any Compelling State Interest

276. When a law allocates benefits or burdens based on race, it violates the Equal Protection Clause unless it can pass strict scrutiny by showing that it is "narrowly tailored to achieving a compelling state interest." *Wis. Legislature*, 595 U.S. at 401.

277. The party seeking to apply or defend the law bears the burden of establishing that the law is narrowly tailored to achieving a compelling state interest. *See Bethune-Hill*, 580 U.S. at 180 ("Where a challenger succeeds in establishing racial predominance, the burden shifts to the

State to 'demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.'" (citation omitted)).

278. Only two relevant compelling interests can justify race-based government action.

279. First, the State has a compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *SFFA*, 600 U.S. at 207; *see Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). "[G]eneralized assertion[s] of past discrimination" are insufficient to constitute a compelling interest. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*").

280. Second, the U.S. Supreme Court has "long assumed" that, in the redistricting context, attempted compliance with Section 2 of the VRA is a "compelling interest" that could justify drawing district lines with predominately racial motives. *Cooper*, 581 U.S. at 292; *see also Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02. That is because Section 2 is the rare race-based law that satisfies strict scrutiny due to its "exacting requirements" and safeguards that narrowly tailor its application. *Allen*, 599 U.S. at 30.

281. Petitioners failed to meet their burden of showing that mandating the creation of a minority influence district would further a compelling government interest.

282. Petitioners did not present any evidentiary basis—let alone the requisite "strong" evidentiary basis—to conclude that race-based action is "necessary" to remediate "*identified* discrimination." *Shaw II*, 517 U.S. at 909–10 (emphasis added; citation omitted). Petitioners have pointed only to isolated and "generalized," *id.*, instances of past discrimination against Black and Latino populations on Staten Island generally, having nothing to do with voting, *see* Pet. ¶¶ 67–95; *see also* Tr.73:17–76:20 (Dr. Sugrue using stop-and-frisk practices and racial appeals as the "most significant" examples of the "history of discriminatory treatment").

283. For example, Petitioners have asserted that "remnants" of redlining and discriminatory housing practices still exist on Staten Island, *see* Pet. ¶¶ 75–77, without explaining how the ability to influence an election will remedy that alleged discrimination, *see* Tr.60:2–64:4 (Dr. Sugrue discussing redlining and voting practices without any reference to voting or explanation of how it supports adopting the illustrative map); *see also* Tr.123:5–18 (Dr. Sugrue stating that "redlining existed around the country" and was not "unique to State Island"). That is not a compelling interest that satisfies strict scrutiny. *SFFA*, 600 U.S. at 207.

284. The States also lack Congress' constitutional entitlement to use voting-rights laws to remedy societal discrimination, which further shows that mandating influence districts advances no compelling *state* interest.

285. The Fourteenth Amendment bars the *States* from using "race as a criterion for legislative action," including "benign racial classifications," *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 490–91, 495 (1989) (citation omitted). This prevents States from undertaking the "odious" exercise of "pick[ing] winners and losers based on the color of their skin," *SFFA*, 600 U.S. at 208, 229 (citation omitted).

286. While "Congress may identify and redress the effects of society-wide discrimination[, this] does not mean that, *a fortiori*, the States and their political subdivisions are free to decide that such remedies are appropriate." *City of Richmond*, 488 U.S. at 490 (plurality op.); *accord Trump v. Anderson*, 601 U.S. 100, 112 (2024).

287. And although the U.S. Supreme Court has in the past assumed that ensuring compliance with the federal VRA is a compelling interest, *see Cooper*, 581 U.S. at 292, that interest is not available here because the federal VRA does not require influence districts, *supra* pp.61–63, nor have Petitioners brought a claim under the federal VRA.

288. Petitioners have argued that redrawing CD11 furthers a compelling interest in complying with a *state* constitutional provision, Article III, Section 4. Pet.Opp.24–25.

289. But the U.S. Supreme Court has never recognized compliance with *state* law to be a compelling state interest for purposes of the Fourteenth Amendment's strict-scrutiny test. *See Cooper*, 581 U.S. at 292; *SFFA*, 600 U.S. at 207–08. That makes good sense. The Fourteenth Amendment is a prohibition on *the States* engaging in racial discrimination, such that States are not "free to decide" when race-based "remedies are appropriate." *City of Richmond*, 488 U.S. at 490 (plurality op.).

290. More broadly, the U.S. Supreme Court has expressed deep skepticism of recognizing new compelling state interests in this context, as it is only the "rare" and "extraordinary case" where a State's race-based action serves a *compelling* interest. *SFFA*, 600 U.S. at 208.

291. None of the caselaw that Petitioners cite supports their position. For instance, *Bartlett* merely recognized that a State may "appropriate[ly]" create a crossover district "where no other prohibition exists," 556 U.S. at 24 (plurality op.). A State pursuing an "appropriate" state policy is a far cry from a *compelling* state interest.

292. Even if there were some compelling interest here, Petitioners did not even attempt to show that their requested remedy—the intentional redrawing of district lines based upon racial considerations—is narrowly tailored to achieving that interest.

293. A law is "narrowly tailored" when its use of race is "necessary" to "achiev[ing] [the law's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted; emphasis added).

294. This is an exceedingly demanding standard that is only satisfied where "the means chosen to accomplish the government's asserted purpose [are] specifically and narrowly framed

to accomplish that purpose." *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013) (citations omitted).

295. For instance, if the State has a compelling interest in remediating a specific instance of past intentional discrimination, its chosen remedy must be "necessary to cure [the] effects" of that particular discrimination. *See City of Richmond*, 488 U.S. at 510 (plurality op.); *accord SFFA*, 600 U.S. at 249 (Thomas, J., concurring).

296. It is Petitioners' burden to show that a race-based remedy is "necessary" in order to satisfy the narrow-tailoring prong. *SFFA*, 600 U.S. at 206–07 (citations omitted).

297. Petitioners did not even try to submit evidence that could satisfy narrow tailoring here. Petitioners have at most showed that—using their own experts' hand-picked elections—a district can be drawn where the Black and Latino population that comprises less than 30% of the district wins roughly 90% of elections—as compared to the far more proportionate 25% of elections in CD11's current configuration. *See supra* pp.20–21.

298. But that does not show that race-based redistricting is *necessary* to achieve a compelling governmental interest. Petitioners have not attempted to explain why a race-neutral remedy would fail to sufficiently increase Black and Latino voters' electoral influence in CD11 from its current baseline (winning 25% of elections with less than 30% of the population), including the race-neutral remedies listed in the NYVRA itself. *See supra* pp.117–19.

299. Petitioners' remedy is also unconstitutional because it is not "narrowly tailored—meaning *necessary*—to" alleviate demonstrated past discrimination by the political subdivision. *SFFA*, 600 U.S. at 206–07 (citation omitted; emphasis added); *see Fisher*, 570 U.S. at 311.

300. Petitioners' theory lacks *any* tailoring to the remediation of any past instances of racial discrimination in CD11. Petitioners made no attempt to tie Article III, Section 4's supposed

mandate to redraw CD11 into an influence district under the NYVRA's standards to any showing that the State engaged in racially discriminatory conduct in the past or that there are ongoing consequences of such discrimination either generally or with respect to CD11, in particular. *Supra* pp.116–17.

301. The remedies offered in the NYVRA further highlight Petitioners' failure to show that the race-based redrawing of CD11 into an influence district is "necessary." *SFFA*, 600 U.S. at 206–07.

302. The NYVRA offers multiple remedies to "ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process." N.Y. Elec. Law § 17-206(5). For instance, a jurisdiction could mandate "additional voting hours or days," or "additional polling locations." *Id.* § 17-206(5)(viii), (ix). A jurisdiction could also "requir[e] expanded opportunities for voter registration," or "requir[e] additional voter education." *Id.* § 17-206(xii), (xiii).

303. Importantly, the Appellate Division has acknowledged that these other "possible remedies under the NYVRA"—unlike "race-based [re]districting"—are not "race-based" and "do not sort voters based on race." *Clarke*, 237 A.D.3d at 36; *see Clarke v. Town of Newburgh*, __ N.E.3d ___, 2025 WL 3235042, at *4 (N.Y. Nov. 20, 2025) (noting that "several of the potential remedies mentioned by the NYVRA," such as "longer polling hours or enhanced voter education," do not require "alterations of an [existing] election system").

304. These remedies are all potentially ones that could further Petitioners' asserted interest without requiring a race-based redrawing of CD11, yet Petitioners made no effort to show that these alternative, non-race-based remedies would fail to provide Black and Latino voters in CD11 a greater opportunity to "influence" the outcome of elections there.

305. This is especially so because, under their own expert's numbers, Black and Latino voters' electoral success in CD11 already is almost at near proportionality to their population, and it may well be possible for modest, race-neutral measures to bring it to complete proportionality.

306. For this reason as well, Petitioners have failed to show that it is "necessary" to redraw CD11 into an influence district.

307. Petitioners' contrary arguments lack merit.

308. Even if this Court were to conclude that "the current boundaries of CD-11 result in unlawful vote dilution of Black and Latino voters" under Article III, Section 4 and that remedying that state-constitutional violation were a compelling state interest under the Fourteenth Amendment's Equal Protection Clause, Pet.Opp.25, that conclusion would not "necessarily demonstrate[ ]" that *a race-based remedy* for that violation is narrowly tailored for purposes of the strict-scrutiny analysis, *contra* Pet.Opp.25.

309. It was Petitioners' burden to show that a *race-based remedy,* as opposed to a race-neutral remedy, is "*necessary*." *SFFA,* 600 U.S. at 206–07 (citations omitted; emphasis added). But Petitioners did not present any evidence or argument suggesting that a race-neutral remedy (such as some remedies listed in the NYVRA itself) would fail to increase sufficiently the electoral "influence" of Black and Latino voters.

310. Petitioners further contend that the NYVRA itself does not facially violate the Equal Protection Clause, *see* Int'r.Resp't.Br.25–31, but that is irrelevant here.

311. The question is whether redrawing *of CD11* into an "influence" district, per the NYVRA's influence-district mandate, is necessary to achieve any compelling state interest. Petitioners have entirely defaulted on their burden to make this showing.

IV. The Elections Clause Prohibits Petitioners' Requested Remedy

312. Granting Petitioners any remedy here would require adopting the theory that Article III, Section 4 incorporates the NYVRA's standards. *Supra* pp.68–75. That would make this Court the first to read language identical to Section 2 of the federal VRA as including an influence-district mandate (or, indeed, read later-enacted statutory language into any provision of the New York Constitution).

313. Reading Article III, Section 4 in this manner would impermissibly "add[ ] words" to the New York Constitution, *Am. Transit Ins. Co.*, 3 N.Y.3d at 76, by judicially creating an atextual requirement to redraw a legislatively adopted congressional map.

314. Such an interpretation would plainly exceed "the ordinary bounds of judicial review" and violate the Elections Clause of the U.S. Constitution. *Moore*, 600 U.S. at 36–37.

A. Applicable Legal Principles

315. Pursuant to the Elections Clause, "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*." U.S. Const. art. I, § 4 (emphasis added).

316. The Elections Clause therefore "expressly vests power to carry out its provisions in '*the Legislature'* of each State," which is "a deliberate choice that [courts] must respect." *Moore*, 600 U.S. at 34 (citation omitted; emphasis added).

317. When "state court[s] interpret[ ] [ ] state law in cases implicating the Elections Clause"—such as cases adjudicating state law challenges to congressional maps—those courts must take care to "not transgress the ordinary bounds of judicial review," thereby "arrogat[ing] to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

318. Recently, in *Moore*, the U.S. Supreme Court provided guidance on state courts' proper role in adjudicating state-law challenges to congressional redistricting maps. There, North Carolina voters and voting-rights organizations challenged North Carolina's congressional map as a partisan gerrymander in violation of that State's constitution. *Id.* at 11.

319. The legislative defendants in *Moore* argued that the Elections Clause "insulates state legislatures [drawing congressional maps] from review by state courts for compliance with state law," *id.* at 19, while other parties argued that state courts have plenary authority to review congressional maps and "free rein" to say what state law is, *id.* at 34.

320. These arguments presented the Court with two extreme theories: one that would undermine state courts' authority to ensure that redistricting maps comply with state law, and another that would effectively nullify the Elections Clause's protections for state Legislatures' constitutional role in redistricting. *See id.* at 34–37.

321. The Court chose a middle path, instructing state courts not to use novel or strained interpretations of state law to exert too much authority over the congressional-redistricting process. *See id.* Although "the Elections Clause does not exempt state legislatures from the ordinary constraints imposed by state law," it also does not mean that "state courts . . . have free rein" when deciding whether a congressional map satisfies state law. *Id.* at 34.

322. Specifically, state courts must "ensure that [their] interpretations of [state] law do not evade federal law," *id.*, by "read[ing] state law in such a manner as to circumvent federal constitutional provisions," *id.* at 34–35. Otherwise, state courts would "transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

323. If a state court does "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution," the U.S. Supreme Court stands ready "to exercise judicial review." *Id.* at 37.

324. In his *Moore* concurrence, Justice Kavanaugh directly addressed the question of the "standard a federal court should employ to review a state court's interpretation of state law in a case implicating the Elections Clause" to determine whether such an interpretation exceeds the bounds of "ordinary state court review." *Id.* at 38 (Kavanaugh, J., concurring).

325. Justice Kavanaugh considered three possible standards, each of which "convey[ed] essentially the same point: Federal court review of a state court's interpretation of state law in a federal election case should be deferential, but deference is not abdication." *Id.* at 39 & n.1.

326. He urged the Court to "adopt Chief Justice Rehnquist's straightforward standard" from *Bush v. Gore*. *Id.* at 39–40. This standard provides that state courts must not "'impermissibly distort[ ]' state law 'beyond what a fair reading required.'" *Id.* at 38 (citation omitted).

327. In articulating that standard, Chief Justice Rehnquist explained that it "does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*," because giving "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate [the Court's] responsibility to enforce the explicit requirements of [the federal Constitution]." *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring).

328. Justice Kavanaugh clarified that this standard "should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions," and that, in reviewing state-court interpretations of state law, courts "necessarily must examine the law

of the State as it existed prior to the action of the state court." *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted). Applying this "straightforward standard," *id.* at 39, will "ensure that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op.).

B. Adopting Petitioners' Theory Would Violate The Elections Clause

329. Adopting Petitioners' Article-III-Section 4-Equals-NYVRA theory (or, indeed, any theory that inserts an influence-district mandate into Article III, Section 4) to invalidate and require the redrawing of a legislatively adopted congressional map mid-decade is precisely the kind of "impermissibl[e] distort[ion]" of state law "in a federal election case," *id.* at 38 & n.1 (Kavanaugh, J., concurring), that would "[dis]respect [ ] the constitutionally prescribed role of state *legislatures*," *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring), and violate the Elections Clause under *Moore*.

330. Petitioners invite this Court to jettison a legislatively adopted congressional map based on a radical departure from established New York principles of constitutional interpretation. *Supra* pp.58–73. As discussed, nothing in Article III, Section 4 references a right to "influence" elections like the NYVRA does. *Supra* pp.68–73. Rather, Article III, Section 4 uses nearly identical language to Section 2 of the VRA—which the U.S. Supreme Court has held does not require influence districts—and longstanding rules of interpretation therefore require that the Court give that identical language the same meaning. *Supra* pp.61–64.

331. To adopt Petitioners' theory, the Court would need to both disregard the Legislature's clear intention, as indicated through its use of identical language as Section 2, and unlawfully amend Article III, Section 4's text to adopt standards from the NYVRA, *Am. Transit Ins. Co*, 3 N.Y.3d at 76—which was enacted eight years after Article III, Section 4. It would also need to erroneously read the NYVRA's express inclusion of "influence" as superfluous. *Columbia*

Mem'l Hosp., 38 N.Y.3d at 271; *supra* pp.69–70. This unprecedented bit of judicial redrafting with no analogue in any prior New York case would "transgress the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, and "'impermissibly distort[ ]' state law 'beyond what a fair reading required,'" *id.* at 38 (Kavanaugh, J., concurring) (citation omitted), in a federal election case.

332. Indeed, judicially injecting a textually baseless "minority influence district" requirement into Article III, Section 4 is more than an "[un]fair reading," of state law. *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted). It is a complete redrafting of the New York Constitution that would impermissibly allow New York state courts to "arrogate to themselves the power vested *in state legislatures* to regulate federal elections." *Id.* at 36 (majority op.) (emphasis added).

333. Distorting New York law in this way would "unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution" and undoubtedly violate the Elections Clause. *Id.* at 36–37 (majority op.). That is especially true given that Petitioners make this request in a clear effort to further an unlawful partisan gerrymander. *Id.* at 36.

V. Laches Bars The Petition

334. The equitable doctrine of laches requires this Court to dismiss a petition where the petitioner has engaged in a "lengthy neglect or omission to assert a right" that results in "prejudice to an adverse party." *Saratoga Cnty. Chamber of Com., Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003); *see* CPLR 103(a); *Sheerin v. N.Y. Fire Dep't Articles 1 & 1B Pension Funds*, 46 N.Y.2d 488, 496–97 (1979).

335. Applying laches is appropriate where the delay was "entirely avoidable and undertaken without any reasonable explanation," and this is especially true in "time sensitive" "election matters." *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1228–30 (3d Dep't 2022); *see Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't 2022).

336. Notably, New York courts routinely dismiss elections-related claims as untimely for relatively short delays. *See, e.g.*, *MacDonald v. County of Monroe*, 191 N.Y.S.3d 578, 571–72 (Sup. Ct. Monroe Cnty. 2023) (two-month delay); *Nichols v. Hochul*, 76 Misc.3d 379, 384–85 (Sup. Ct. N.Y. Cnty. 2022), *aff'd as modified*, 206 A.D.3d 463 (three-and-a-half-month delay); *League of Women Voters*, 206 A.D.3d at 1228 (same); *Amedure v. State*, 210 A.D.3d 1134, 1138–39 (3d Dep't 2022) (nine-month delay).

337. Here, laches bars the Petition because Petitioners inexplicably waited until late October 2025 to challenge CD11's boundaries, which boundaries "have remained static since 1980," Pet.15, under a legal theory that allegedly existed the moment New York ratified the 2014 Amendments, *see id.* ¶¶ 99–101; *see* N.Y. Const. art. III, § 4(c) (effective January 1, 2015).

338. At minimum, Petitioners could have brought their claim immediately after the *Harkenrider* Map was adopted on May 20, 2022, or after the 2024 Congressional Map was adopted on February 28, 2024, as neither map altered the District's boundaries. *See* Pet. ¶¶ 58–59.

339. Yet, Petitioners offer no explanation—let alone a reasonable one—for their "entirely avoidable" delay, *League of Women Voters*, 206 A.D.3d at 1230, which "prejudice[s] [ ] voters[,] candidates," and the Legislature, *id.*

340. Petitioners assert that it was not unreasonable to wait eighteen months after the 2024 Congressional Map's enactment to sue, Pet.Opp.33, but they fail to explain how their claim

was not ripe in 2014, when the 2014 Amendments' enactment (under their theory) required a minority influence district to prevent vote-dilution in a nearly identical CD11, Pet. ¶¶ 96–102.

341. Petitioners also claim that "voting has become increasingly racially polarized," Pet.Opp.34, but their own experts claim a "consistent pattern of racially polarized voting" going back to 2017, Palmer Rep.4.

342. At the absolute latest, Petitioners could have brought their claim right after the enactment of the 2024 Congressional Map on February 28, 2024. Yet, they delayed in doing so for another year and a half.

343. Such a delay is unreasonable in any context, and is especially unreasonable in the election context, as New York courts have repeatedly recognized. *See MacDonald*, 191 N.Y.S.3d at 571–72 (dismissing petition filed two months after enactment); *Nichols*, 76 Misc.3d at 384–85 (dismissing petition filed three and a half months after adopting map); *Amedure*, 210 A.D.3d at 1137–39 (dismissing petition filed nine months after adoption of election process).

344. Petitioners' claim that laches should not apply here because their delay caused no prejudice, Pet.Opp.33, is wrong. Petitioners' inexcusable and entirely avoidable delay causes "significant and immeasurable prejudice to voters[,] candidates," and the Legislature. *League of Women Voters of N.Y. State*, 206 A.D.3d at 1230.

345. Further, Petitioners' delay also prejudices Intervenor-Respondents, who have invested significant time and resources campaigning in CD11 based upon the understanding that the 2024 Congressional Map would govern until the next Census in 2030—not just one election cycle. *See* Malliotakis Aff. ¶¶ 5–6; Lai Aff. ¶¶ 2–10; Medina Aff. ¶¶ 2–10; Reeves Aff. ¶¶ 2–9; Sisto Aff. ¶¶ 2–8; Togba Aff. ¶¶ 2–8. Congresswoman Malliotakis has spent substantial time getting to know and developing "a significant relationship with [her] constituents." Malliotakis

Aff. ¶ 5. And the Individual Voters have spent countless hours supporting her. *See* Lai Aff. ¶¶ 7–10; Medina Aff. ¶¶ 2–10; Reeves Aff. ¶¶ 2–9; Sisto Aff. ¶¶ 2–8; Togba Aff. ¶¶ 2–8.

CONCLUSION

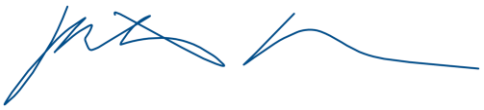
346. ORDERED that JUDGMENT is entered in Respondents' favor and Petitioners' Petition is dismissed.

Dated: January ____, 2025

By_____
Hon. Jeffrey Pearlman, J.S.C.

Dated: New York, New York
January 16, 2026

TROUTMAN PEPPER LOCKE LLP

By: 

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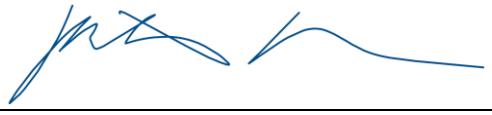
CERTIFICATION

I certify pursuant to Rule 18 of the Part 44 Rules that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within this submission.

Dated: New York, New York
January 16, 2026

TROUTMAN PEPPER LOCKE LLP

By: 

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