

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

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

Petitioners,

-against-

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

Respondents,

-and-

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

Intervenor-Respondents.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001

RESPONDENTS' PROPOSED FINDINGS OF FACT

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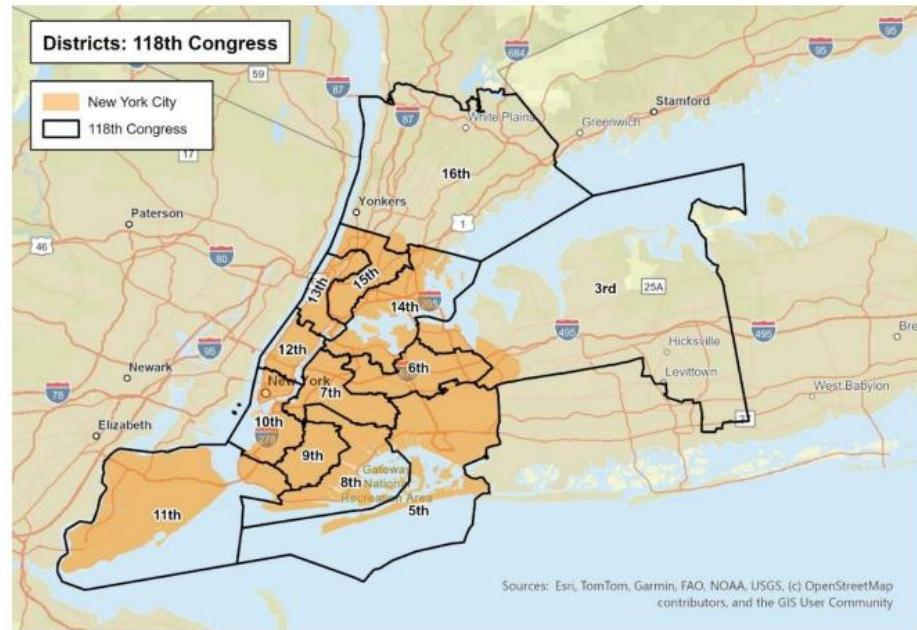
I. Background¹

A. The Existing Plan

1. As Dr. Sean Trende explains in detail, CD-11 has long combined Staten Island with Brooklyn.²

2. Based on the 2020 Census, New York lost one Congressional seat, going from 27 to 26 members of Congress. As a result of a subsequent breakdown in the Independent Redistricting Commission and ensuing litigation, a Special Master was assigned to draw a new map, resulting in the “2021 Plan.”³ The 2021 Plan also joined Staten Island with Brooklyn:

Figure IV.E.1: 2021 Plan: 13 Districts in and Around NYC



Source: U.S. Census TIGER shapefile for 118th Congress

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¹ Respondents adopt and expressly incorporate herein the Intervenor-Respondents’ Proposed Findings of Fact and Conclusions of Law (NYSCEF Doc No. 207).

² VEC Doc. No. 1-39 (Expert Report of Dr. Sean P. Trende) (“Trende Report”) at 19-23.

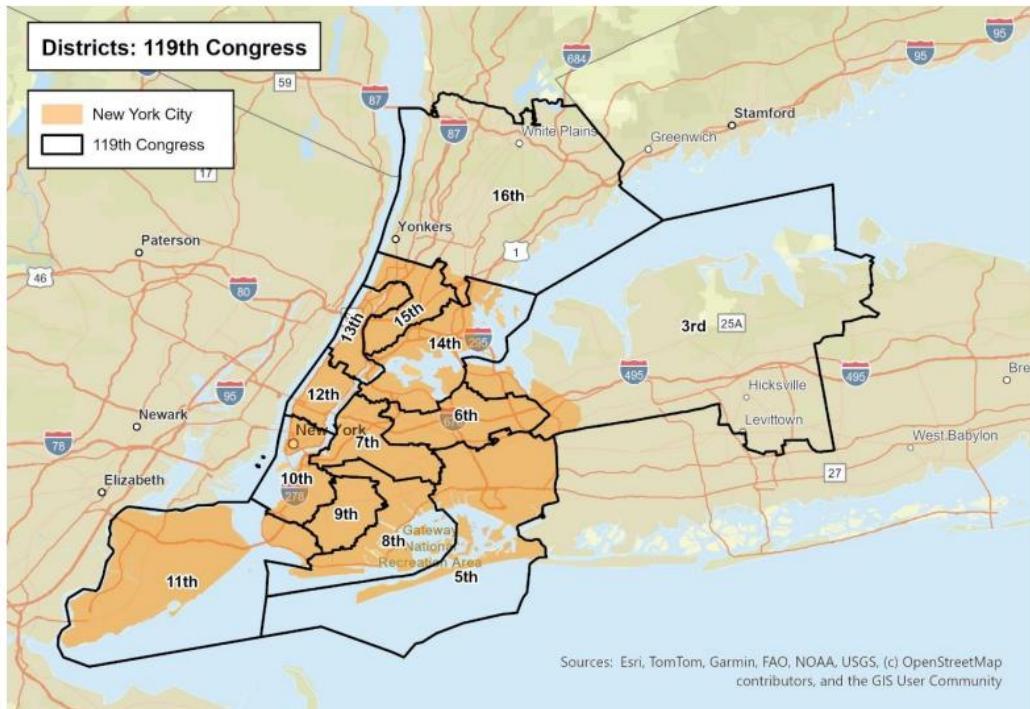
³ VEC Doc. No. 1-43 (Expert Report of Thomas Bryan) (“Bryan Report”) ¶ 96.

⁴ Bryan Report at 27.

3. Following an additional round of litigation, the New York State Legislature enacted a new map, which Governor Hochul signed into law (the “2024 Plan”).⁵ The 2024 Plan is currently in place and is the plan challenged by Petitioners in this proceeding.

4. The 2024 Plan also combines Staten Island with Brooklyn:

Figure IV.G.1: 2024 Plan



Source: U.S. Census TIGER shapefile for 119th Congress

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B. Petition and the relief sought

5. Petitioners commenced this special proceeding challenging the 2024 Plan on the basis that Black and Latino Staten Islanders purportedly have “less opportunity than other members of the electorate to elect a representative of their choice and influence elections” and alleging a violation of Article III, § 4(c)(1) of the New York Constitution.⁷

⁵ Bryan Report ¶ 96.

⁶ Bryan Report ¶ 96.

⁷ NYSCEF Doc. No. 1 (Petition) at ¶ 1.

6. According to Petitioners, the 2024 Plan—which was adopted by a Democratic-controlled Legislature and a Democratic Governor—allegedly “dilutes Black and Latino voting strength in CD-11.”⁸

7. While Petitioners bring their claim under Article III, § 4(c) of the NY Constitution, they invoke the standards of the later-enacted John R. Lewis Voting Rights Act (the “NYVRA”) as the basis for their claim.⁹

8. Petitioners allege that a remedial district may be drawn by pairing Staten Island with lower Manhattan.¹⁰

9. As relief, Petitioners seek a declaration that the 2024 map violates Article III, § 4(c)(1), a permanent injunction barring any future use of the 2024 Plan, and an order directing the Legislature to create a minority-influence district pairing Staten Island with lower Manhattan.¹¹

II. Petitioners' evidence

A. Dr. Maxwell Palmer

10. Petitioners engaged Dr. Maxwell Palmer as an expert in redistricting, political science, and data analysis.¹²

11. Petitioners' attorneys requested that Dr. Palmer offer an opinion on the extent to which voting is racially polarized in CD-11 and to evaluate the ability of Black and Hispanic preferred candidates to win elections in CD-11. Additionally, Petitioners' attorneys requested that Dr. Palmer analyze the extent to which voting is racially polarized in the Illustrative Plan, and to

⁸ Petition ¶ 2.

⁹ Petition ¶¶ 9-13.

¹⁰ Petition ¶ 91.

¹¹ Petition ¶ 13; *see also* Petition, Prayer for Relief, at 27-28.

¹² Tr. 153:11-14.

evaluate the ability of Black and Hispanic preferred candidates to win elections in the Illustrative Plan.¹³

12. In the twenty elections that Dr. Palmer analyzed, he did not consider the race of the candidates.¹⁴

13. Despite being tasked with evaluating racial polarization in CD-11, Dr. Palmer testified that he did not consider causation for any polarization. According to Dr. Palmer, assessing causation of voter polarization is not “the purpose of this analysis or necessarily something we can do here.”¹⁵

14. On cross-examination, Dr. Palmer agreed that Black voters in CD-11 supported Black Democratic candidates at a rate (89.6%) very similar to the rate (90.9%) that Black voters supported non-Hispanic White Democratic candidates.¹⁶

15. Dr. Palmer also agreed that Hispanic voters in CD-11 supported Black Democratic candidates at a rate (86.3%) similar to the rate (88.5%) that Hispanic voters supported non-Hispanic White Democratic candidates.¹⁷

16. Dr. Palmer also acknowledged that White voters in CD-11 support Black Democratic candidates at a rate (24.9%) similar to the rate (27.6%) that White voters support non-Hispanic White Democratic candidates.¹⁸

17. During cross-examination, Dr. Palmer admitted that the improved performance of minority preferred candidates in the Illustrative Plan was driven in part by partisan geography

¹³ VEC Doc. No. 1-45 (“Palmer Report”) ¶ 4.

¹⁴ Tr. 223:14-25.

¹⁵ Tr. 226:9-13.

¹⁶ Tr. 225:10-17.

¹⁷ Tr. 225:18-25

¹⁸ Tr. 226:1-7.

through importing White Democratic voters and that improvement in the Illustrative Plan would not have occurred but for bringing in the White Democratic voters.¹⁹

B. William Cooper

18. Petitioners engaged Mr. William Cooper as a “demographic and redistricting expert.”²⁰

19. Petitioners’ attorneys requested that Mr. Cooper develop an illustrative plan that joins Staten Island with lower Manhattan in a reconfigured CD-11.²¹

20. According to Mr. Cooper, he did not conceive of the Staten Island–Manhattan configuration on his own²² or based on any independent evaluation of alternative remedies.²³

21. Likewise, Mr. Cooper admits that Petitioners’ counsel did not instruct him to consider whether there were other lawful configurations of CD-11 and CD-10.²⁴

22. On cross-examination, Mr. Cooper confirmed that Petitioners’ attorneys specifically asked him to “develop an illustrative plan that would join Staten Island with Manhattan in a reconfigured CD-11.”²⁵

23. Mr. Cooper testified that Petitioners’ counsel asked him to examine Staten Island, Lower Manhattan, and Brooklyn, and that he was not asked to examine the entire 2024 congressional plan.²⁶

24. Mr. Cooper testified that he did not consider adding more of Brooklyn or taking some of Brooklyn away from CD-11 without changing anything about Manhattan.²⁷

¹⁹ Tr. 235: 13-25; 236:1-7.

²⁰ VEC Doc. No. 1-5 (“Cooper Report”) ¶ 1.

²¹ Cooper Report ¶ 22

²² Tr. 335:22-23.

²³ Tr. 335:15-17.

²⁴ Tr. 336:4-11

²⁵ Tr. 302:10-14.

²⁶ Tr. 335:9-14.

²⁷ Tr. 337:3-6.

25. Rather, Mr. Cooper “did what [he was] asked to do.”²⁸

26. Mr. Cooper described this as a “mechanical task.”²⁹

27. In drawing the Illustrative Plan, Mr. Cooper communicated with Petitioners’ counsel about the plan during its development.³⁰

28. Mr. Cooper implemented Petitioners’ counsel’s request by retaining Staten Island in CD-11, shifting most of Lower Manhattan into CD-11, and moving the Brooklyn portion of CD-11 to CD-10.³¹

29. Mr. Cooper testified that he presented his plan to Petitioners to confirm that it met the requirements for the district they asked him to draw.³²

30. Mr. Cooper testified that he and Petitioners’ counsel settled on presenting only one illustrative plan despite acknowledging that many different options existed.³³

31. Mr. Cooper acknowledged that he did not discuss other possible plans in his report because they were not “meaningful.”³⁴

32. In fact, Mr. Cooper agreed that, to create a district joining Staten Island with lower Manhattan, he had “very few options.”³⁵

33. Mr. Cooper’s proposed map (the “Illustrative Plan”) is as follows:

²⁸ Tr. 335:21.

²⁹ Tr. at 335:19-22.

³⁰ Tr. 336:1-4.

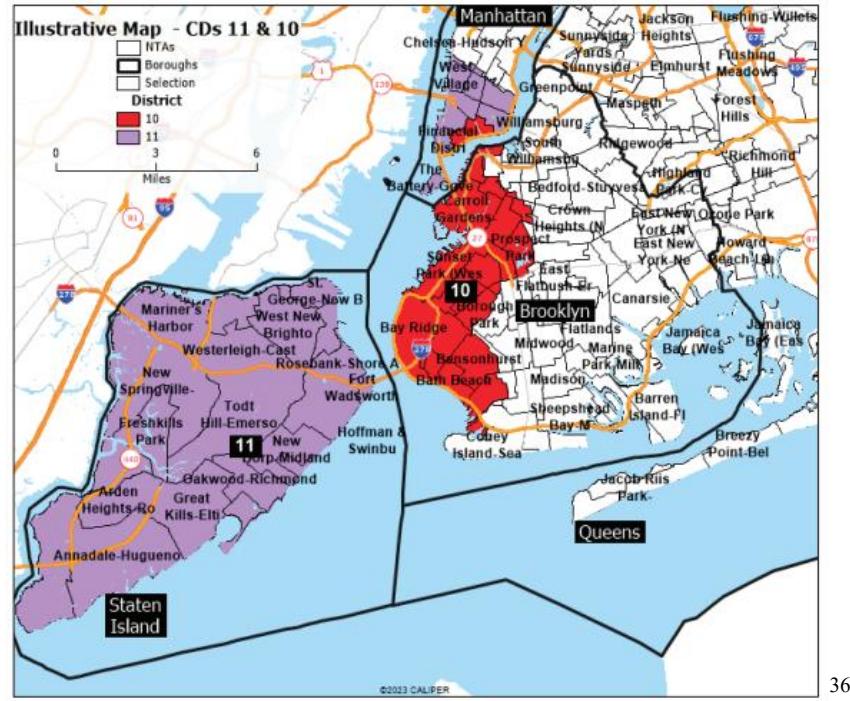
³¹ Cooper Report ¶ 23

³² Tr. 337:11-16.

³³ Tr. 336:4-11.

³⁴ Tr. 302:19-303:1.

³⁵ Tr. 303:21-25.



34. Asians are the largest single minority group in Congressional District 11 (CD-11) under the enacted 2024 plan, with Asian CVAP just under 17% and essentially evenly split between CD-10 and CD-11.³⁷

35. Under Mr. Cooper's Illustrative Plan, Asian CVAP in CD-11 drops materially to 12.4 percent, while Asian CVAP in CD-10 increases to approximately 23.4 percent, reflecting a substantial redistribution of Asian voters away from CD-11 and into CD-10.³⁸

36. Mr. Cooper acknowledged that his Illustrative Plan does not increase Asian representation in CD-11, but reduces Asian CVAP in CD-11 while correspondingly increasing Asian CVAP in CD-10, where Asians become a much stronger bloc than under the enacted plan.³⁹

³⁶ Cooper Report, pg. 16 (Figure 8).

³⁷ Cooper Report ¶ 29 (Figure 2).

³⁸ Cooper Report ¶ 50 (Figure 9); *see also* Tr. 361:14–25; 299:18–25.

³⁹ Tr. 361:6–25.

37. By contrast, the combined Black and Latino CVAP in CD-11 increases only modestly under Mr. Cooper's Illustrative Plan.

38. Under the enacted 2024 plan for CD-11, the Black CVAP is 7.36 percent and the Latino CVAP is 15.35 percent, for a combined Black-and-Latino CVAP of 22.70 percent.⁴⁰

39. Under Mr. Cooper's proposal, Black CVAP is 8.42 percent and Latino CVAP is 16.30 percent.⁴¹ The combined Black and Latino CVAP in CD-11 increases by only 2.01 percentage points from the 2024 Plan.⁴²

40. Even after the change, the combined Black-and-Latino share in the Illustrative Plan remains below one-quarter of CVAP at 24.71%.⁴³

41. The incremental increases for Black and Latino CVAP in the Illustrative Plan are also smaller than the contemporaneous increase in White non-Hispanic CVAP, which rises by approximately 2.6 percentage points.⁴⁴

i. Traditional Redistricting Principles

42. Mr. Cooper asserts that he drafted the Illustrative Plan by applying traditional redistricting principles, including equal population, contiguity, compactness, and preservation of communities of interest.⁴⁵

43. Mr. Cooper also contends that he considered core retention as a "background consideration," but that it did not "preempt traditional redistricting principles."⁴⁶

⁴⁰ Cooper Report ¶ 29.

⁴¹ Cooper Report ¶ 50 (Figure 9).

⁴² Cooper Report ¶ 50 (Figure 9).

⁴³ Cooper Report ¶ 50 (Figure 9).

⁴⁴ Compare Cooper Report ¶ 29 (Figure 2) with Cooper Report ¶ 50 (Figure 9).

⁴⁵ Cooper Report ¶ 26.

⁴⁶ Cooper Report ¶ 27.

a. Compactness

44. Mr. Cooper acknowledges in his own report that, “by the numbers,” his Illustrative Plan is less compact than the 2024 Plan. He attributes the reduction to the water and shoreline features created by joining Staten Island to Lower Manhattan by ferry, noting “[t]here is no population of voters between these two sub-parts of the illustrative CD 11—just Upper New York Bay.”⁴⁷

45. In attempting to mitigate the overall compactness decline, Mr. Cooper advances a novel rationale, asserting that the Staten Island piece of Illustrative CD-11 has the same compactness as under the 2024 Plan and that the lower Manhattan piece of Illustrative CD-11 is “compact” with scores of .48 (Reock) and .33 (Polsby–Popper).⁴⁸

46. Mr. Cooper then averages the separate scores for the Manhattan and Staten Island Components of the Illustrative CD-11 to suggest that it is compact.⁴⁹

b. Communities of Interest

47. Mr. Cooper agrees that “cultural ties are a consideration” for the communities of interest factor.⁵⁰

48. Yet, Mr. Cooper conceded that he lacked knowledge of the cultural attributes of lower Manhattan and Staten Island.⁵¹

49. Incredibly, Mr. Cooper testified that, in terms of culture, he believed the Financial District and Staten Island are similar because he “remember[s] having a very tasty outdoor pizza

⁴⁷ Cooper Report ¶ 54

⁴⁸ Cooper Report ¶¶ 55-57.

⁴⁹ Cooper Report ¶ 58.

⁵⁰ Tr. 317:18-21.

⁵¹ Tr. 317:23-320:3.

in the Financial District" that he "bought . . . from a Spanish-speaking gentleman[] [a]nd there are Spanish speakers in Staten Island."⁵²

50. Mr. Cooper's Illustrative Plan separates Manhattan's Chinatown from the adjacent Lower East Side, placing Chinatown in CD-10 while leaving the Lower East Side in CD-11, notwithstanding New York City Redistricting Commission documentation identifying "Lower East Side/Chinatown" as a single Chinese community of interest.⁵³

51. Mr. Cooper did not interview any community leaders in determining to join Chinatown with Brooklyn.⁵⁴

52. Cooper did not collect or rely upon any survey data with respect to adding Chinatown to Brooklyn.⁵⁵

53. Mr. Cooper did not rely upon the letter of Dr. Wah Lee.⁵⁶

54. Mr. Cooper did not consider that the Asian American Legal Defense and Education Fund treats Chinatown and the Lower East Side as one Asian neighborhood.⁵⁷

55. Mr. Cooper conceded that Exhibit B to his report, a study by the New York City Districting Commission ("NYCDC"), was the "primary source" for his communities of interest analysis.⁵⁸

56. Despite admitting that the NYCDC report was his "primary source," Mr. Cooper was forced to concede that he "did not read it thoroughly."⁵⁹

⁵² Tr. 320:4-6.

⁵³ Cooper Report ¶¶ 24, 59–60; Cooper Report Ex. B at PET-239; Tr. 342:1-346:24.

⁵⁴ Tr. 343:13-19.

⁵⁵ Tr. 343:20-25.

⁵⁶ Tr. 344:1-7.

⁵⁷ Tr. 344:8-18; *see also* Asian American Neighborhood Boundaries and Current Districts, Sup Ct, Steuben County, Index No. E2022-0116CV, [NYSCEF Doc. No. 392](#) at 9

⁵⁸ Tr. 338:9-11.

⁵⁹ Tr. 346:6-11.

57. This explains Mr. Cooper's admission that he was "[n]ot aware" of the fact that the NYCDC also considers the Lower East Side as part of the Chinatown Asian community.⁶⁰

58. Mr. Cooper does not dispute that his Illustrative Plan splits the Lower East Side and Chinatown Asian communities.⁶¹

59. Ultimately, Mr. Cooper revealed that he knew nothing about communities of interest in drawing his Illustrative Plan because he believed the Petitioners would testify as fact witnesses:

Well, to be honest, I was under the assumption there would probably be petitioners here to testify as there usually are in federal court. In this case, there are not. So I was going to defer to their testimony, which I can only do now by way of this exhibit. You smile. I must have said something very damaging. I'm sorry.⁶²

60. Thus, Mr. Cooper effectively conceded that he lacks any knowledge as to communities of interest in his Illustrative Plan, and that, other than the NYCDC report, Mr. Cooper's report omits any such information because he believed it would be provided by other witnesses.

61. Mr. Cooper also confirmed he lacks any knowledge of communities of interest with respect to Chinese communities. He admitted that he "[did] not ma[ke] a personal survey of Chinatown to come to a final conclusion as to what they want" and he "did not take a poll."⁶³

62. In fact, Mr. Cooper's sole basis for concluding that the Chinese community in Chinatown desired to be joined in a district with Sunset Park was purportedly a letter that he did not disclose as a basis for his report.⁶⁴

⁶⁰ Tr. 345:3-10.

⁶¹ Tr. 346:18-24.

⁶² Tr. 329:15-20 (emphasis added).

⁶³ Tr. 332:11-13.

⁶⁴ Tr. 331:14-332:4.

c. *Core Retention*

63. Mr. Cooper testified that, in his view, “core retention” is not a traditional redistricting criterion but only a background consideration.⁶⁵

64. Consistent with that approach, Mr. Cooper did not present a quantitative core retention analysis in his report, and his testimony left unclear how, if at all, he materially weighed minimizing change when drawing the Illustrative Plan.

65. As detailed below, Mr. Bryan found that the Illustrative Plan degrades core retention.

66. On cross-examination, Mr. Cooper agreed that “to the extent practicable, election plans should keep the core population in prior districts together in new districts,” but he maintained that in this case he treated core retention as a mere background factor and prioritized other considerations.⁶⁶

ii. Mr. Cooper did not attempt to avoid a partisan gerrymander

67. Mr. Cooper claimed he did not consider party affiliation in drawing his illustrative district.⁶⁷

68. Mr. Cooper testified that the Maptitude software he used “does not include political data,” and he did not attach any political data to it.⁶⁸

69. Mr. Cooper further explained that the New York City Maptitude redistricting file he purchased contains “just the population data” with “nothing attached in terms of political data.”⁶⁹

⁶⁵ Tr. 251:16–252:3

⁶⁶ Tr. 305:21–306:2.

⁶⁷ Tr. 337:18–20.

⁶⁸ Tr. 338:15–21.

⁶⁹ Tr. 339:1–2.

70. Mr. Cooper acknowledged that while he uploaded his plan to Dave's Redistricting and used it to present an interactive map, he "didn't use it for redistricting."⁷⁰

71. The webpage hyperlinked in Mr. Cooper's report brings up the Illustrative Plan on Dave's Redistricting.⁷¹ This interactive webpage allows the user to view the Illustrative Map by "Partisan Lean" on a precinct-by-precinct basis.

72. Nevertheless, Mr. Cooper claims he had "no partisan data" and paid "no attention" to Dave's Redistricting's partisan data.⁷²

73. Mr. Cooper claims he was not aware whether his map made CD-11 more or less competitive for Republicans or Democrats, "only to the extent that [he] listened to Dr. Palmer's testimony."⁷³

74. Mr. Cooper testified that he did not consider the New York Constitution's provision that districts shall not be drawn to discourage competition or to favor or disfavor candidates or political parties, stating "that's up to the lawyers."⁷⁴

75. Mr. Cooper stated that he finalized his map without considering whether it could potentially violate the constitutional prohibition, explaining that he "prepared a map and it was pre-cleared by the attorneys for the petitioners."⁷⁵

76. Mr. Cooper acknowledged he was aware that the New York Constitution contains such language, even though he did not consider it when drawing the map.⁷⁶

⁷⁰ Tr. 339:3-13.

⁷¹ Cooper Report ¶ 45.

⁷² Tr. 364:13-16.

⁷³ Tr. 364:1-6.

⁷⁴ Tr. 364:19-25.

⁷⁵ Tr. 365:1-4.

⁷⁶ Tr. 365:9-13.

III. **Respondents' evidence**

A. **Dr. John Alford**

77. Respondents offered the testimony of Dr. John Alford, an expert in voter dilution and polarization.

i. Qualifications

78. Dr. Alford is a tenured Full Professor of Political Science at Rice University. He has taught courses on redistricting, elections, political representation, voting behavior and statistical methods at both the undergraduate and graduate levels.⁷⁷

79. Dr. Alford has worked for local municipalities and school boards in drawing district plans and has advised municipalities and school boards regarding Voting Rights Act issues.⁷⁸

80. The parties stipulated that Dr. Alford is an expert in his field.

ii. Dr. Alford's Methodology

81. Dr. Alford was asked to assess the voter polarization in Dr. Palmer's report.⁷⁹

82. Dr. Alford accepted Dr. Palmer's methodology and used Dr. Palmer's data and evaluations in forming his own conclusions.⁸⁰

83. Dr. Alford also compared Dr. Palmer's analysis of minority preferred candidates in CD-11 to Dr. Palmer's analysis of minority preferred candidates in the Illustrative Plan.⁸¹

84. Dr. Alford examined the race of the candidates in the elections analyzed by Dr. Palmer.⁸² Dr. Alford testified that the race of candidates is always important in this analysis and,

⁷⁷ [VEC Doc. No. 1-44](#) ("Alford Report") at 3.

⁷⁸ *Id.*; Tr. 675:17-25.

⁷⁹ Tr. 676:6-9.

⁸⁰ Tr. 676:10-19.

⁸¹ Tr. 678:8-18.

⁸² Tr. 681:14-25.

in his forty years of experience, he has never been involved in a case where the race or ethnicity of the candidate was irrelevant.⁸³

iii. Dr. Alford's Conclusions and Opinions

85. Dr. Alford concluded that there is lower cohesion of Black voters and Hispanic voters in the Illustrative Plan as compared to CD-11 without changing the overall minority vote shares in the Illustrative Plan and that non-Hispanic White and Asian voters in the Illustrative Plan are substantially more likely to vote Democratic than in CD-11.⁸⁴

86. Dr. Alford testified that Petitioners' proposed Illustrative Plan would replace a competitive CD-11 district that leans Republican with a district that leans Democratic.⁸⁵

87. Petitioners accomplish this replacement by adding more Democratic leaning White and non-Hispanic Asian voters from lower Manhattan. Dr. Alford describes this as partisan substitution and testified that it reflects a very strong influence of partisanship on the polarization identified by Dr. Palmer in CD-11.⁸⁶

88. Dr. Alford agrees that there is polarization in CD-11 and testified that voter polarization is increasingly common.⁸⁷

89. Dr. Alford opined that, based solely on the empirical evidence in Dr. Palmer's report, the degree of partisan polarization identified by Dr. Palmer in CD-11 matches the overall polarization in that district.⁸⁸

90. Dr. Alford further opined that, based solely on the empirical evidence and analysis in Dr. Palmer's report, the polarization identified by Dr. Palmer in CD-11 is not racial.⁸⁹

⁸³ Tr. 682:2-25; 683:1-7.

⁸⁴ Tr. 678:19-25; 679:1-8.

⁸⁵ Tr. 680:14-23.

⁸⁶ Tr. 680:24-25; 681:1-13.

⁸⁷ Tr. 684:14-20.

⁸⁸ Tr. 684:21-25; 685:1-4.

⁸⁹ Tr. 685:17-25; 686:1-25; 687: 1-13.

91. Dr. Alford concluded that the illustrative district is a partisan gerrymander.⁹⁰

B. Thomas Bryan

92. Respondents offered the testimony of Thomas Bryan, an expert in demography and redistricting.

i. *Qualifications*

93. Thomas M. Bryan is an applied demographer with three decades of experience. He offered his opinions to a reasonable degree of professional certainty.⁹¹

94. Mr. Bryan's background includes service as a statistician at the U.S. Census Bureau, where he worked on the development and transition to the American Community Survey (ACS) from the long-form census questionnaire. He explained that ACS-derived citizen voting-age population (CVAP) is a standard metric for assessing potential voting strength in redistricting analysis.⁹²

95. In 2024, Mr. Bryan was appointed to the Census Bureau's 2030 Census Advisory Committee as one of twenty national experts, serving as an independent, objective adviser on the planning, collection, management, analysis, and publication of 2030 Census data.⁹³

96. Mr. Bryan's scholarly publications include a 2018 Social Science Quarterly article coauthored with M.V. Hood and Peter A. Morrison detailing a practical framework for vote-dilution analysis,⁹⁴ and a 2019 book, "Redistricting: A Manual for Analysts, Practitioners, and Citizens," coauthored with Dr. Morrison, which provides a comprehensive guide to census data and methods for redistricting applications.⁹⁵

⁹⁰ Tr. 701:1-8.

⁹¹ Bryan Report at 6-9.

⁹² Tr. 482:1-23.

⁹³ Bryan Report, section XII, Thomas M. Bryan Vitae; Tr. 484:12-485:4

⁹⁴ Tr. 484:22-485:2.

⁹⁵ Bryan Report ¶ 6.

97. Mr. Bryan's technical expertise spans the design and use of complex databases that integrate decennial census, ACS, and election data for Gingles analyses, risk assessments, and state and federal Voting Rights Act evaluations. He regularly employs ACS, ACS Public Use Microdata (ACS PUMS), the Current Population Survey Voting Supplement (CPS), the Cooperative Election Study (CES), the Election Administration and Voting Survey (EAVS), and spatial data within GIS platforms to conduct precinct- and block-level analysis of population and voting patterns.⁹⁶

98. Mr. Bryan affirmed that his opinions in this matter are offered to a reasonable degree of professional certainty and that his compensation is not contingent on the content of his opinions or the outcome of the litigation, supporting the independence of his analyses.⁹⁷

99. The parties stipulated that Mr. Bryan is qualified as an expert in his field.

ii. Mr. Bryan's analysis of the Illustrative Plan

100. Based on ACS CVAP data, Mr. Bryan found that under the Illustrative Plan, CD-11's White non-Hispanic CVAP increases by 2.6 percentage points, Any-Part-Black by 1.1 points, and Hispanic by 0.9 points, while Asian CVAP decreases by 4.6 points, relative to the 2024 plan.⁹⁸

101. Mr. Bryan attempted multiple exploratory configurations—splitting Staten Island and relaxing compactness—to test whether combined Black and Hispanic CVAP could be meaningfully increased between CDs 10 and 11.⁹⁹

102. Mr. Bryan testified he could not draw any configuration pairing Staten Island with Lower Manhattan that meaningfully increases combined Black and Hispanic CVAP while

⁹⁶ Bruan Report ¶¶ 5-9.

⁹⁷ Bryan Report ¶ 13; Tr. 487:6-9.

⁹⁸ Bryan Report ¶¶ 40, 74, 197.

⁹⁹ Tr. 488:1-22; 494:10-496:12.

achieving population equality, even when splitting Staten Island and “threading the needle” around White non-Hispanic areas.¹⁰⁰

103. Mr. Bryan explained that the geographic distribution of Black and Hispanic CVAP—a compact North Shore Staten Island cluster and a small Lower East Side pocket—are separated by intervening areas with high White non-Hispanic concentrations, which constrains the ability to materially increase Black and Hispanic voters in CD-11.¹⁰¹

104. The record contains no contrary draw or feasibility analysis demonstrating that a Staten Island–Lower Manhattan district can meaningfully increase combined Black and Hispanic CVAP while meeting equal-population requirements, meaning Mr. Bryan’s testimony on the feasibility of drawing such a district is unrebutted.

105. Mr. Bryan concluded that Asians are the largest single minority CVAP in enacted CD-11 and would be substantially reduced under the Illustrative CD-11.¹⁰²

iii. Traditional Redistricting Criteria

106. Mr. Bryan agreed with Mr. Cooper that traditional redistricting criteria should apply in this case.¹⁰³

a. Compactness

107. It is undisputed that the Illustrative Plan is inferior on compactness when measured using quantitative tests.

108. Mr. Bryan further testified that the qualitative “eyeball” test is an additional, appropriate measure of compactness.¹⁰⁴

¹⁰⁰ Tr. 488:17–22; 495:1–25; 496:4–11.

¹⁰¹ Tr. 505:22–506:18.

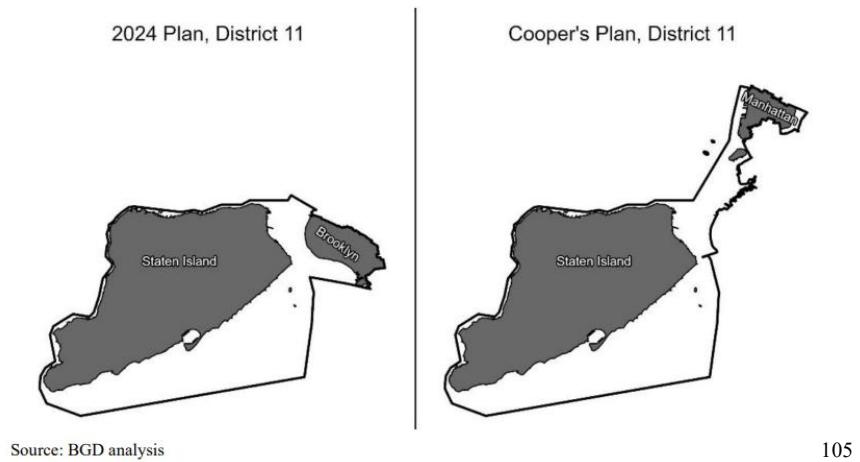
¹⁰² Bryan Report ¶¶ 38, 40, 74.

¹⁰³ Tr. 347:16–18.

¹⁰⁴ Tr. 509:10.

109. Using the following figure, Mr. Bryan opined that the Illustrative Plan fails to satisfy the eyeball test for compactness:

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



110. Mr. Bryan explained that the Illustrative Plan does not satisfy the eyeball test because there is an “appendage or tentacle that reaches out to grab a piece of population.”¹⁰⁵

b. Communities of Interest

111. Using current precinct files, Mr. Bryan found that the 2021 and 2024 plans split no current precincts, whereas the Illustrative Plan splits 12.¹⁰⁶

112. Mr. Bryan also concluded that the Illustrative Plan fragments cohesive Asian neighborhoods and substantially reduces Asian CVAP in CD-11 while increasing Asian CVAP in CD-10, thereby significantly altering representation for the largest minority in CD-11.¹⁰⁸

113. In Mr. Bryan’s expert opinion, the Illustrative Plan does not satisfy the communities of interest principle because it splits contiguous Chinese American populations in Lower

¹⁰⁵ Bryan Report ¶ 144 (Figure V.C.1).

¹⁰⁶ Tr. 510:15-18.

¹⁰⁷ Bryan Report ¶¶ 155–159, Table VI.A.1.

¹⁰⁸ Bryan Report at 38; 56–59; 74; ¶ 197.

Manhattan and purports to connect Chinatown with distant, demographically dissimilar Brooklyn neighborhoods.¹⁰⁹

114. Mr. Bryan explained that, although Petitioners keep the formal Chinatown NTA in CD-10, their line “structurally separates large numbers of contiguous Chinese population” in Lower Manhattan and then links Chinatown to Sunset Park and Bensonhurst across multiple intervening non-Asian neighborhoods (Brooklyn Heights, Carroll Gardens, Park Slope).¹¹⁰

115. Mr. Bryan rebutted Petitioners’ claim that uniting Chinatown with Sunset Park, Bensonhurst, and Bath Beach “advances” Chinese American communities of interest by showing material socioeconomic and demographic differences among those Brooklyn neighborhoods and Chinatown, as well as their geographic separation from Lower Manhattan.¹¹¹ He opined that Bensonhurst’s median income is significantly higher than Sunset Park’s and Chinatown’s, that Bensonhurst is majority White while Sunset Park is majority Hispanic, and that the Asian sub-groups differ across these areas—facts inconsistent with a single, cohesive community of interest spanning the East River.¹¹²

116. Mr. Bryan further established that the Illustrative Plan splits Asian communities who are “literally across the street from each other.”¹¹³

117. This is demonstrated by the following figure in Mr. Bryan’s report:

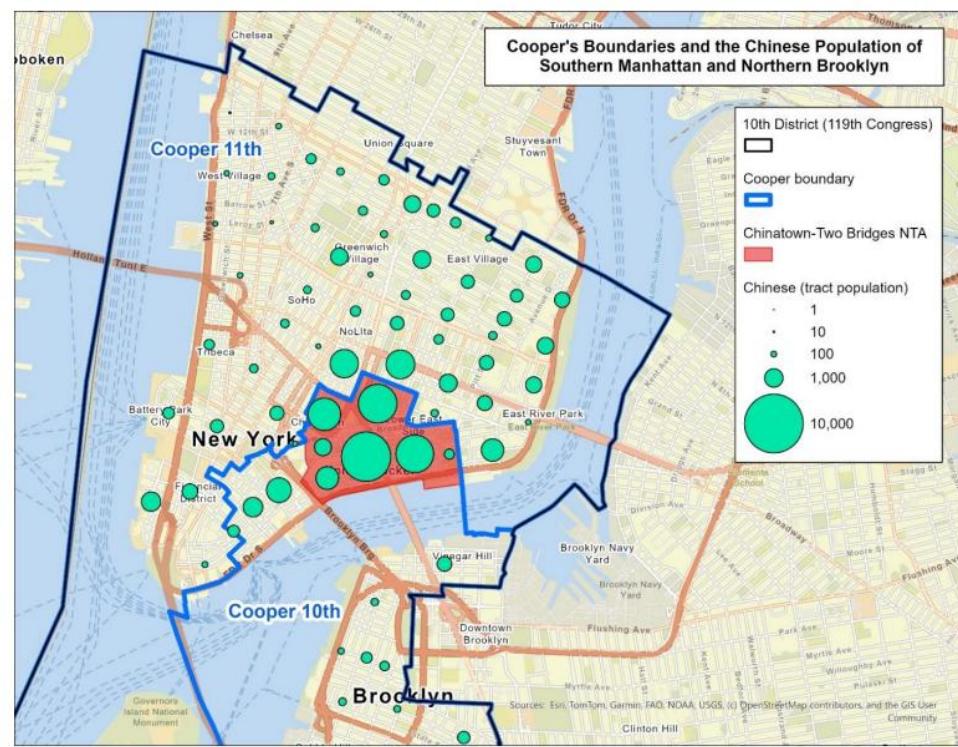
¹⁰⁹ Bryan Report ¶ 53.

¹¹⁰ Bryan Report ¶ 53.

¹¹¹ Bryan Report ¶ 170.

¹¹² Bryan Report ¶ 170.

¹¹³ Tr. 515:21-22.

Figure VI.C.2 Chinese Population

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118. The green circles represent Chinese population by size, and the blue line shows the boundary of the Illustrative Plan. As Mr. Bryan explained, the Illustrative Plan draws a line separating substantial numbers of Chinese population who live in close proximity to each other.¹¹⁵

119. Mr. Bryan testified it is not possible to connect Staten Island to Lower Manhattan without splitting Asian communities.¹¹⁶

120. Mr. Bryan also rebutted Petitioners' contention that commuters from Staten Island to Manhattan form a unique community of interest.

121. Contrary to Petitioners' presentation, Mr. Bryan testified that nearly half of Staten Island workers work in Staten Island itself and that a substantial number work in Brooklyn—about 43,000—so more Staten Islanders work in Staten Island and Brooklyn than in Manhattan.¹¹⁷

¹¹⁴ Bryan Report at 58 (Figure VI.C.2).

¹¹⁵ Tr. 516:3-17.

¹¹⁶ Tr. 517:6-24.

¹¹⁷ Tr. 528:4-529:5; 529:18-530:8.

c. Core Retention

122. Mr. Bryan concluded that the Illustrative Plan does not satisfy the principle of core retention.¹¹⁸

123. Under the Illustrative Plan, Bryan found significant movement of CVAP. In CD-11, 31.5% of CVAP would move overall, including 12.9% of Black CVAP and 57.1% of Asian CVAP, compared to 27.6% of White non-Hispanic and 26.5% of Hispanic CVAP.¹¹⁹

124. Significantly, Mr. Bryan found that nearly 60% of the Asian population was moved out of CD-11.¹²⁰

125. Bryan testified that moving roughly a third of the district's population produces only about two percentage points of combined change for Black and Hispanic CVAP in CD-11.¹²¹

d. Political Performance

126. Mr. Bryan also analyzed political performance under the Illustrative Plan.

127. To do so, Mr. Bryan evaluated the political performance of the precise precincts Mr. Cooper moves between CDs 10 and 11 and aggregated those precinct-level results to Mr. Cooper's proposed districts.¹²² Mr. Bryan's testimony on this point is unrebutted.

128. Mr. Bryan found that the precincts moved from CD-10 into CD-11 were "almost uniformly, extremely high performing Democratic districts," while precincts moved from CD-11 into CD-10 were approximately 42% Democratic in the 2024 Presidential and House races and about 47% Democratic in the 2024 U.S. Senate race.¹²³

¹¹⁸ Tr. 534:4-6.

¹¹⁹ Bryan Report at 63 (Table VII.B.1).

¹²⁰ Tr. 533:9-11.

¹²¹ Tr. 533:20-534:6.

¹²² Bryan Report ¶¶ 191-193; Tr. 534:20-535:5.

¹²³ Tr. 537:2-20; Bryan Report ¶¶ 192-193, Table VIII.E.1.

129. Mr. Bryan's Table VIII.E.1 reports that moved-in precincts averaged 80.2% Democratic (Presidential), 81.4% Democratic (U.S. Senate), and 80.5% Democratic (U.S. House), whereas moved-out precincts averaged 41.5%, 47.0%, and 41.9% Democratic, respectively.¹²⁴

130. Mr. Bryan concluded that this asymmetric precinct movement evidences a political intent, making it "difficult to arrive at the conclusion that Mr. Cooper's draw is intended to somehow benefit the two smaller minority populations in and around the district."¹²⁵

Dated: January 16, 2026
Albany, New York

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¹²⁴ Bryan Report ¶ 192–193; Table VIII.E.1.

¹²⁵ Bryan Report ¶ 194–197.

CERTIFICATE OF COMPLIANCE

I certify that no generative artificial intelligence program was used in the drafting of this submission.

Dated: January 16, 2026
Albany, New York

/s/ *Nicholas J. Faso*

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

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

Petitioners,

-against-

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

Respondents,

-and-

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

Intervenor-Respondents.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001

RESPONDENTS' PROPOSED CONCLUSIONS OF LAW

[Counsel for Respondents are listed on the following page]

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PROPOSED CONCLUSIONS OF LAW¹

I. Petitioners must overcome a strong presumption of constitutionality

1. The 2024 Plan, as a statutory enactment, enjoys a strong presumption of constitutionality. Courts “strike [redistricting plans] down only as a last unavoidable result” (*White v Cuomo*, 38 NY3d 209, 216 [2022] [internal citation and punctuation omitted], quoting *Matter of Van Berkel v Power*, 16 NY2d 37, 40 [1965]).

2. In order to overcome this strong presumption, Petitioners “bear the heavy burden of proving *beyond a reasonable doubt* that the statute is in conflict with the Constitution” (*People v Viviani*, 36 NY3d 564, 576 [2021] [internal citations and punctuation omitted] [emphasis added]). In addition, Petitioners “bear the substantial burden of demonstrating that in any degree and in every conceivable application, the law suffers wholesale constitutional impairment” (*White*, 38 NY3d at 216 [2022] [internal citation and punctuation omitted]).

3. Petitioners cannot satisfy this heavy burden because they have not demonstrated that the 2024 Plan violates Article III, § 4(c) beyond a reasonable doubt. On this basis alone, the Petition must be dismissed (see e.g. *Cohen v Cuomo*, 35 Misc 3d 478, 484 [Sup Ct, New York County 2012], affd, 19 NY3d 196 [2012] [dismissing challenge to redistricting plan because the petitioners failed to rebut presumption of constitutionality]).

II. Petitioners must also overcome the presumption of regularity

4. All acts of official duty, including the creation of a redistricting plan, are presumed to be in accordance with law and officials are presumed to have not done “anything contrary to

¹ Respondents adopt and expressly incorporate herein the arguments made by Respondents in connection with their pending motion to dismiss (NYSCEF Doc. No. 116). Furthermore, Respondents adopt and expressly incorporate herein the Intervenor-Respondents’ Proposed Findings of Fact and Conclusions of Law (NYSCEF Doc No. 207).

[their] official duty, or omit anything which [their] official duty requires to be done" (*People v Dominique*, 90 NY2d 880, 881 [1997]; *see also Matter of Steinberg*, 137 AD2d 110, 114 [1st Dept 1988]).

5. This presumption of regularity can only be overcome by "substantial evidence" rebutting the presumption, which Petitioners have failed to present here (*Dominique*, 90 NY2d at 881).

III. Article III, § 4(c)(1) mirrors Section 2 and does not mandate "influence" districts

A. Text and structure

6. "When language of a constitutional provision is plain and unambiguous, full effect should be given to the intention of the framers as indicated by the language employed and approved by the People" (*King v Cuomo*, 81 NY2d 247, 253 [1993] [cleaned up]). "Effect must be given to the intent as indicated by the language employed. Especially should this be so in the interpretation of a written Constitution, *an instrument framed deliberately and with care, and adopted by the people as the organic law of the State*" (*Settle v Van Evrea*, 49 NY 280, 281 [1872] [emphasis added]).

7. Here, Article III, § 4(c) expressly directs that it be applied "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements" (emphasis added). Thus, on its face, the provision is governed by federal law and the NY Constitution—not by New York statutes—and it says nothing of the NYVRA.²

8. The words "subject to" are unambiguous and, as "used in their ordinary sense, mean subordinate to, subservient to or limited by" (*Peters v Smolian*, 49 Misc 3d 408, 423 [Sup Ct,

² Nor could it have referenced the NYVRA, much less could the framers or the people have contemplated that it would be subject to the NYVRA's standards, since the NYVRA was enacted eight years later.

Suffolk County 2015], *affd* 154 AD3d 980 [2d Dept 2017]; *see also* *Auburn & S. Electric R. Co. v Hoadley*, 119 Misc 94, 97 [Sup Ct 1922], *affd* 206 AD 653 [4th Dept 1923] [“the term means ‘charged with,’ or ‘subservient to’”]; *Raw Silk Trading Co. v Katz*, 201 AD 713, 716 [1st Dept 1922] [“The words ‘subject to’ have a well-defined meaning by legal interpretation.”]).

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

10. The plain meaning of “subject to” is controlling. New York law gives full effect to unambiguous constitutional text and does not permit interpretive gloss that expands or alters the people’s chosen language. As the Court of Appeals has emphasized, “[c]ourts do not have the leeway to construe their way around a self-evident constitutional provision” (*King v Cuomo*, 81 NY2d, 247, 253 [1993]; *see also* *Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [“[O]ur starting point must be the text”]). Rather, “[i]n construing the language of the Constitution as in construing the language of a statute, [the Court of Appeals] look[s] for the intention of the People and give to the language used its ordinary meaning” (*Harkenrider*, 38 NY3d at 509 [internal citation and punctuation omitted]). Thus, this Court cannot, as Petitioners’ request, read into Article III, § 4(c) the standards of the subsequently enacted NYVRA.

11. The text of Article III, § 4(c) draws two deliberate lines. *First*, it subjects redistricting to federal constraints—“the requirements of the federal constitution and statutes”—

thereby incorporating federal equal protection and Voting Rights Act obligations (see *Schneider v Rockefeller*, 31 NY2d 420, 427 [1972] [“The Federal constitutional requirement of substantial equality of population among legislative districts is pre-eminent and our State constitutional requirements must be harmonized with the Federal standard.”]). The Parties do not dispute that federal law constrains redistricting. As the Court of Appeals observed in *Harkenrider*, the NY Constitution not only embodies “longstanding constitutional constraints on redistricting” but also “those required by federal law — such as conformity with the ‘one person, one vote’ principle . . . and with the federal Voting Rights Act” (*Harkenrider*, 38 NY3d at 519 n 13 [internal citations and punctuation omitted]).

12. *Second*, at the state level, Article III, § 4(c) is subject to “state constitutional requirements,” not the requirements of state “statutes,” such as the subsequently enacted NYVRA. The juxtaposition is dispositive. Where the framers and the voters intended to incorporate statutes, they said so—at the federal level only. Where they intended state constraints, they specified “constitutional” requirements, but omitted statutes.

13. Reading Article III, § 4(c) to import state statutory standards would rewrite the clause, collapse the voters’ textually distinct references to “federal . . . statutes” and “state constitutional requirements,” and violate the canon that a constitutional provision must be given effect rather than rendered surplusage (*Hoffman v New York State Independent Redistricting Comm.*, 41 NY3d 341, 359 [2023] [“Indeed, our well-settled doctrine requires us to give effect to each component of the [constitutional] provision or statute to avoid a construction that treats a word or phrase as superfluous”] [citations and internal quotations omitted]).

14. Redistricting jurisprudence confirms that, under Article III, § 4(c)’s “subject to” clause, federal law controls where it applies, and state constitutional requirements govern beyond

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

15. The Court must also reject Petitioners’ interpretation of “subject to” under well-settled principles of statutory interpretation. The interpretive maxim *expressio unius est exclusion alterius* means “the expression of one is the exclusion of others” (Statutes § 240; *see also Matter of 1605 Book Ctr., Inc. v Tax Appeals Trib. of State of N.Y.*, 83 NY2d 240, 245-46 [1994]). Under this canon of construction, “where a law expressly describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded” (*People v Page*, 35 NY3d 199, 206-07 [2020]). Courts apply this maxim where, as is the case with Article III, § 4(c) and the NYVRA, the words of the constitution or statute “are free from ambiguity and express plainly, clearly and distinctively the legislative intent” so that “the intent of the Legislature [may] be discerned from the language of the statute . . . without resort to extrinsic materials such as legislative history or memoranda” (*Matter of Rochester Community Sav. Bank v Bd. of Assessors of City of Rochester*, 248 AD2d 949,

950 [4th Dept 1998], *lv. denied*, 92 NY2d 811 [1998]; *Silver v Pataki*, 3 AD3d 101, 107 [1st Dept 2003] [applying maxim to Article VII, § 4 of the New York State Constitution]).

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

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

18. Since the Legislature did not, this Court must infer that the Legislature intended to omit or exclude congressional, assembly, and senate elections from the NYVRA and its analytical framework (*Golden v Koch*, 49 NY2d 690 [1980] [holding that restrictions on the New York City Mayor's power to vote on budget modifications "is limited only in the specific instances delineated" in the New York City Charter]).

19. There is no risk that this may result in inconsistent application of voter dilution standards because the NYVRA applies only to municipal and local elections, which further confirms that this is a purely legislative matter. This is an issue that the courts cannot address, let alone remedy—only the Legislature may do so (*Davis v State*, 54 AD2d 126, 129 [3d Dept 1976] ["[I]f the legislature had intended the statute to include the matter in question, it would have been easy for them to have said so and to have expressly included it"] [quoting *Statutes* § 74]; *see also Rodriguez v Pataki*, 308 F Supp 2d 346, 352 [SDNY 2004], *affd*, 543 US 997 [2004] ["New York's . . . redistricting laws are well within the purview and political prerogative of the State Legislature"], *affd* 543 US 997 [2004]). If the Legislature wishes to extend the NYVRA to congressional, assembly, and senate elections it must first persuade the People to amend the NY Constitution and it also must amend the NYVRA. Until then, voter dilution claims under Article III, § 4(c) are subject to the federal VRA and the *Gingles* standard.³

20. As a fallback, Petitioners have previously argued that federal law is a "floor" and "states may go further."⁴ However, the relevant question here is not whether a state could choose

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

⁴ Petitioners' Reply Mem. at 8.

to do more as a policy matter, but whether New York actually did so in its Constitution. In 2014, the People did not constitutionalize influence or crossover districts, did not abandon the first *Gingles* precondition, and did not make Article III § 4(c) subject to state statutes or legislative interpretation. If the People intended to depart from federal redistricting standards, they would have said so, and they certainly would not have made the provision expressly subject to “federal . . . statutes.”

21. Nor would reading Article III as written render it a “redundancy” or “read [it] out of the State Constitution.”⁵ As a statute, the VRA is subject to repeal. By enshrining materially identical voting rights into the NY Constitution, the People ensured its protections would survive in the event the federal government repeals the VRA.

22. The People have ratified other amendments that enshrine federal rights in the NY Constitution (*see e.g.* Senate Introducer’s Mem in Support of 2023 NY Senate Bill S108A [Equal Rights Amendment] [“If, for example, the protections of Lawrence v. Texas were overturned by the federal courts, this amendment would prohibit the adoption of laws, policies, or practices in New York that target people for discrimination or criminal prosecution based on their sexual orientation or gender identity.”]; Senate Introducer’s Mem in Support of 2021 NY Senate Bill S528 [Green Amendment] [amending Constitution to “ensure that clean air and water are treated as fundamental rights for New Yorkers”]).

23. In addition to constitutionalizing federal statutes, the NY Constitution also embodies protections found in the US Constitution, such as an equal protection clause. But any redundancy does not compel the conclusion that New York’s provisions must “sweep more broadly

⁵ *Id.* at 6 (quoting State Respondents’ Letter at 3).

than federal law.”⁶ For example, New York’s equal protection clause “is no more broad in coverage than its Federal prototype” (*Dorsey v Stuyvesant Town Corp.*, 299 NY 512, 530 [1949]).

24. Rather, New York enacted an equal protection clause “to make it clear that this State, like the Federal Government, is affirmatively committed to equal protection” and not due to “any perceived inadequacy in the Supreme Court’s delineation of the right” (*Esler v Walters*, 56 NY2d 306, 314 [1982]). The same is true of the 2014 amendment.

B. Article III, § 4(c) is modeled after Section 2 of the federal VRA and does not mandate the creation of influence districts

25. On its face, Article III, § 4(c) was modeled on Section 2 of the federal VRA. The operative constitutional text mirrors the federal statute’s focus on whether, “based on the totality of the circumstances,” racial or language minority groups have “less opportunity . . . to participate in the political process and to elect representatives of their choice” (*compare* 52 USC § 10301 [b] *with* NY Const art. III, § 4 [c]).

26. The text and structure of Article III, § 4(c) is materially identical to Section 2 and there is absolutely no textual basis to infer that it goes beyond Section 2. The provision (a) includes an identical “totality of circumstances” inquiry; (b) identically provides for an “opportunity . . . to elect representatives of their choice”; and, (c) like its federal counterpart, sits alongside traditional, race-neutral redistricting criteria (contiguity, compactness, equal population, core retention, and communities of interest), reflecting the same balance between minority electoral opportunity and the traditional principles that federal law requires.

27. While the Legislature chose to expressly include “influence” in the subsequently enacted NYVRA, there is nothing in the NY Constitution that includes “influence.”

⁶ Petitioners’ Reply Mem at 3, 6; *see also* State Respondents’ Letter at 3-4.

28. Critically, it is the “policy” of New York courts to “adopt, whenever reasonable and practical,” the federal construction of similar state laws (*Marx v Bragolini*, 6 NY2d 322, 333 [1959] [adopting federal construction of “similar tax provisions”]).

29. As the Court of Appeals has explained, where state and federal law is similar, the state law “should generally be construed in light of Federal precedent and given a different interpretation only where State policy, differences in the statutory language or the legislative history justify such a result” (*Matter of Anheuser-Busch, Inc. v Abrams*, 71 NY2d 327, 335 [1988]; *Weiner v City of New York*, 190 AD3d 517, 518 [1st Dept 2021] [when a state law is “modeled after its federal counterpart, it is appropriate to look to federal jurisprudence for guidance”]).

30. Here, since Article III, § 4(c) is not just modeled after Section 2, but materially identical to it, this Court will interpret it consistently with federal precedent.

31. The Supreme Court has expressly held that Section 2 does not mandate the creation of influence districts (*League of United Latin Am. Citizens v Perry*, 548 US 399, 446 [2006] [“The failure to create an influence district . . . thus does not run afoul of § 2 of the Voting Rights Act.”]; *see also Anne Harding v County of Dallas, Texas*, 948 F3d 302, 311 [5th Cir 2020] [“We are pointed to no case in which the ability to create an influence district was considered sufficient to establish a § 2 vote dilution claim.”]; *Rodriguez v Pataki*, 308 F Supp 2d 346, 378 [SDNY 2004], *affd*, 543 US 997 [2004] [“ We agree with the nearly universal opinion of federal courts that section 2 of the VRA does not require the creation of influence districts where minority voters will not be able to elect candidates of choice”]).

32. Section 2 law also does not mandate “crossover” districts (where less than a majority can prevail with white crossover support). In *Bartlett v Strickland*, the Supreme Court squarely held that Section 2 does not require drawing crossover districts and reaffirmed that the

first *Gingles* precondition demands that the protected group be sufficiently large and geographically compact to form a numerical majority in a reasonably configured single-member district (*Bartlett v Strickland*, 556 US 1, 17 [2009]).

33. The *Gingles* framework controls Section 2 vote dilution claims. To proceed past the threshold, plaintiffs must establish: (1) the minority group is sufficiently large and geographically compact to comprise a majority in a reasonably configured single-member district; (2) the minority group is politically cohesive; and (3) the majority votes sufficiently as a bloc to usually defeat the minority's preferred candidate. It is well settled that failure to satisfy any one precondition is fatal to a Section 2 claim.

34. Since Article III, § 4(c) was modeled on Section 2 and uses the same operative terms, the *Gingles* framework should guide this Court's analysis of Petitioners' state constitutional claim. Construing the NY Constitution consistently with federal law ensures administrable, well-settled standards and avoids the prospect of endless counter-litigation that follows when "influence" alone suffices without the limiting majority-minority threshold established by *Gingles*.⁷

IV. The NYVRA does not govern congressional redistricting and cannot be read into the NY Constitution

A. Statutory scope

35. Any argument concerning "textual differences" between Article III, § 4(c) and Section 2 of the VRA is unavailing and ignores the clear *similarities* between the two provisions. Indeed, Article III, § 4(c) deliberately tracks the operative language of Section 2 of the VRA and should be construed in harmony with it. Like Section 2(a), Article III, § 4(c)(1) prohibits district lines that "result in" the "denial or abridgement" of racial or minority voting rights. And, like

⁷ VEC Doc. No. 1-44 ("Alford Report") at 15; VEC Doc. No. 1-43 ("Bryan Report") ¶¶ 202-204.

Section 2, it defines that prohibition through a “totality of the circumstances” standard and the same “less opportunity” formulation, requiring that minority groups not have “less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.” Those parallel phrases—“denial or abridgement,” “totality of the circumstances,” and “less opportunity . . . to participate . . . and to elect representatives of their choice”—are borrowed directly from Section 2 and embedded in the State Constitution “subject to the requirements of the federal constitution and statutes,” confirming that Article III, § 4(c)(1) was meant to constitutionalize a Section 2–equivalent protection, not to create a novel vote dilution regime far broader than federal law.

36. There can be no avoidance of the first *Gingles* precondition on the basis that it purportedly “captures the statutory language in Section 2” that protects a singular “class of citizens.”⁸ The Supreme Court’s requirement that a minority group be “sufficiently large and geographically compact to constitute a majority in a single-member district” has nothing to do with the VRA’s reference to a “class of citizens.” Rather, the first precondition goes to whether a minority group can show an injury from a voting structure or practice. The Supreme Court specifically explained its rationale for the first precondition with no reference to the “class of citizens” language. As the Court explained,

The reason that a minority group making such a challenge must show, as a threshold matter, that it is sufficiently large and geographically compact to constitute a majority in a single-member district is this: **Unless minority voters possess the potential to elect representatives in the absence of the challenged structure or practice, they cannot claim to have been injured by that structure or practice.** The single-member district is generally the appropriate standard against which to measure minority group potential to elect because it is the smallest political unit from which representatives are elected. **Thus, if the minority group is spread evenly throughout a multimember district, or if, although geographically compact, the minority group is so small in relation**

⁸ Petitioners’ Reply Mem. at 6.

to the surrounding white population that it could not constitute a majority in a single-member district, these minority voters cannot maintain that they would have been able to elect representatives of their choice in the absence of the multimember electoral structure.

(*Gingles*, 478 US at 51 n 17 [italics in original, bold added]).

37. Thus, the Supreme Court did not develop the first *Gingles* precondition on the basis of the VRA's text, but rather, the fundamental principle that a minority group cannot claim an injury flowing from an electoral practice where the group is so small or dispersed that it cannot achieve electoral success for reasons independent of discriminatory voting practices (see *United States v City of Eastpointe*, 378 F Supp 3d 589, 602 [ED Mich 2019] [“The reasoning behind this precondition is that unless it can be shown that minority voters have the *potential* to elect representatives of their choice absent the challenged political structure, they cannot claim to have been injured by that structure.”]).

38. Justice Kennedy elaborated on this point in *Bartlett*, explaining that “the majority-minority rule has its foundation in principles of democratic governance” (*Bartlett*, 556 US at 19). Those principles include “[t]he special significance, in the democratic process, of a majority” because “it is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district” (*id.*).

39. In other words, majority rule is fundamental to the democratic process. Where a minority group—or even, assuming *arguendo*, a coalition of minority groups—cannot sustain a majority in a reasonably compact district, there is no cognizable vote dilution injury because any inability to elect its preferred candidates flows from underlying demographic and political realities, not from a “standard, practice, or procedure” that denies or abridges the right to vote. Neither

Section 2 nor Article III, § 4(c) confers a right to have such groups furnished with an “influence” or “crossover” district that overcomes those basic facts of political geography.

40. Any reliance on the Sixth Circuit’s decision in *Nixon v Kent County* (76 F3d 1381 [6th Cir 1996]) fares no better. *Nixon* addressed whether Section 2 authorizes coalition suits and reasoned that, had Congress intended to permit them, it would have referred to “the classes of citizens,” rather than “a class of citizens.” (*id.* at 1386). Petitioners have contended “[t]hat language . . . is precisely the language the People of New York adopted when they voted in favor of Article III, Section 4(c)(1).”⁹ But that is not “precisely the language” of Article III, § 4(c)(1). The language Petitioners cite does not refer to “classes” of citizens, let alone “coalitions.” It tracks Section 2’s “results test” language almost verbatim (*Gingles*, 478 US at 35), including the requirement that groups “do not have less opportunity . . . to elect representatives of their choice.” (NY Const art. III, § 4 [c] [1]).

41. Petitioners have argued that the provision’s use of the pronoun “their” reflects “New York’s decision to meaningfully vary from the federal VRA’s purportedly narrower scope compels likewise departing from the correspondingly narrower *Gingles* preconditions that come with it.”¹⁰ But Section 2 uses that same “their choice” phrasing (52 USC § 10301 [b]), and the Supreme Court still imposed the first precondition. Petitioners have offered no explanation why the identical phrase in Article III, § 4(c) suddenly does different work. The antecedent “racial or minority language groups” merely identifies who is protected, while the possessive “their” refers back to that antecedent. This grammar cannot be read to imply a rejection of the first *Gingles* precondition.

⁹ Respondents’ Mem. at 6.

¹⁰ Petitioners’ Reply Mem. at 6.

42. Petitioners argue that the “best approach” for interpreting Article III, § 4(c) is to ignore long-settled federal law to which Article III, § 4(c) is subject and instead apply the vote dilution framework set forth in NYVRA. This argument is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law. By its express terms, the NYVRA applies only to local elections, not congressional elections, and was enacted eight years *after* the People adopted Article III, § 4(c). Petitioners make this argument, despite expressly admitting the NYVRA “does not, by its terms, directly regulate congressional redistricting.”¹¹

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

43. New York law also bars the Legislature from altering or enlarging constitutional standards by statute. “The Constitution is the supreme law of the state” (*Browne v City of New York*, 213 AD 206, 211 [1st Dept 1925], *affd* 241 NY 96 [1925]). As such, the Constitution: is higher in authority than any law, direction, or order made by any body or any officer assuming to act under it, since such body or officer must exercise a delegated authority, and one that must necessarily be subservient to the instrument by which the delegation is made. In any case of conflict, the fundamental law must govern, and the act in conflict with it must be treated as of no legal validity” (*id.*, quoting Cooley, Constitutional Limitations [7th Ed., pg. 76]).

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

¹¹ Petitioners’ Memorandum of Law in Support of Petition dated November 19, 2025 (NYSCEF No. 63) (“Petitioners’ Mem.”) at 2.

45. This Court cannot effectively engraft the NYVRA into Article III, § 4(c) as this would clearly violate these principles. In effect, this would require the Court to make a substantive change to the Constitution's framework that may be made only by constitutional amendment. Petitioners' theory would invert that hierarchy by allowing a 2022 statute to supply controlling standards for a 2014 constitutional amendment that carefully delineates the bodies of law to which it is subject.

46. In support of their strained theory, Petitioners relied solely on *People v Harris* (77 NY2d 434 [1991]) for the proposition that “[t]he Court of Appeals has held that when interpreting the scope of a state constitutional provision, courts may look to ‘[s]tate statutory or common law defining the scope of the individual right in question’”¹² (*id.* at 438). The Court of Appeals, however, expressly limited the Harris decision to “*any preexisting*” state statutory or common law in assessing the scope of the right (*id.* [emphasis added]).

47. Petitioners have cited no authority for their novel proposition that courts may use a *subsequently* enacted statute to discern the intent of the People as embodied in a previously adopted constitutional provision, nor could they (*see generally Nassau Ins. Co. v Guarascio*, 82 AD2d 505, 515 [2d Dept 1981] [noting that subsequent amendments generally cannot be considered as indicating the intention of the Legislature in adopting earlier statutes]).¹³

¹² Petitioners' Mem. at 15.

¹³ Petitioners have never offered any authority for the proposition that, because a statute and constitutional provision are supposedly similar in scope, the subsequently enacted statute's specific analytical framework must be applied to the earlier adopted constitutional provision. Nor is there any basis to use the NYRVA as an interpretive guide, since Petitioners do not dispute that Article III, § 4(c) is plain and unambiguous. Thus, the Court may discern the People's intent without resort to extrinsic aids, including subsequently enacted statutes (*Statutes* § 76; *Roth v Michelson*, 55 NY2d 278, 283 [1982] [“[A] primary principle of statutory interpretation is that legislative intent, when unobscured by ambiguity or inconsistency, is to be determined by taking the legislative language literally”]).

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

V. Petitioners Fail on the merits under any plausible standard

A. The “Usually Defeated” threshold is not satisfied

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

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

“dictionary definitions as useful guideposts in determining the meaning of a word or phrase”

(*Yaniveth R. ex rel. Ramona S. v LTD Realty Co.*, 27 NY3d 186, 192 [2016]).

51. “Usually” should be construed in accordance with its common usage. “Usually” is defined as (1) “[o]rdinary; customary” and “[e]xpected based on previous experience, or on a pattern or course of conduct to” by Black’s Law Dictionary, (2) “in the way that most often happens” by the Cambridge Dictionary, and (3) “according to the usual or ordinary course of things : most often: as a rule” in the Merriam-Webster Dictionary (Black’s Law Dictionary, usual [12th ed. 2024]; Merriam-Webster Online Dictionary, usually [<https://www.merriam-webster.com/dictionary/usually>]; Cambridge Online Dictionary, usually [<https://dictionary.cambridge.org/dictionary/english/usually>]). In other words, “usually” refers to events that occur customarily, normally, or with consistent frequency.

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

53. Additionally, in the context of a district-based system, the Court should consider whether the preferred candidates are “usually” defeated across the entirety of the district, not just the particular district being challenged. Section 2(b)(ii) is directed at vote dilution in a “district-based election system,” which, by definition, is a method of election implemented through a multi-

district plan. In this context, the threshold question whether minority-preferred candidates “would usually be defeated” should be evaluated across the plan as a whole, not confined to outcomes in a single electoral district. A single-district snapshot cannot capture whether the districting scheme systematically impairs the protected class’s electoral opportunity—it speaks only to local partisan lean or candidate-specific dynamics. A plan-wide assessment, by contrast, asks the right question: whether, in the ordinary course, the design and interaction of districts result in the recurring defeat of the protected class’s candidates of choice.

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

55. Here, looking at New York’s congressional map as a whole, the preferred candidates of Black and Latino voters are not “usually defeated.” In the 2018 election, under the pre-2020 census map, every one of the thirteen House seats in and around New York City elected a Democrat, including CD-11.¹⁴ The 2020 election was also a “landslide” for Democrats across the state, except that CD-11 swung to the Republican candidate.¹⁵ In 2022, under the newly drawn

¹⁴ Bryan Report ¶ 118.

¹⁵ *Id.* at ¶ 178.

maps, all but two House seats in and around New York City elected a Democrat.¹⁶ And in 2024, under the second set of new maps, all but CD-11 elected Democrats.¹⁷ In total, from 2018 to 2024, the congressional map has largely favored Democrat candidates: of fifty-two House races in and around New York City, Democrats won forty-eight.¹⁸

B. “Totality of the Circumstances”

56. Petitioners’ claim fails under Article III § 4(c)(1) because they failed to demonstrate racially polarized voting in CD-11. Courts should evaluate totality of circumstances under the federal Section 2 framework.

57. In evaluating the totality of circumstances under the Section 2 framework, the Court should consider the cause of divergent voting preferences (*Uno v City of Holyoke*, 72 F3d 973, 982 [1st Cir 1995] [holding that § 2 “does not require courts to ignore evidence that factors other than race are the real obstacles to the political success of a minority group”]; *Lewis v Alamance County*, N.C., 99 F3d 600, 615, n. 12 [4th Cir 1996] [noting that causation “is relevant in the totality of circumstances inquiry”]; *United States v Charleston County*, S.C., 365 F3d 341, 349 [4th Cir 2004] [“Certainly the reason for polarized voting is a critical factor in the totality analysis”]; *cf. Gingles*, 478 U.S. at 100-101 [O’Connor, J., concurring in judgment] [noting that causation evidence is part of the “overall vote dilution inquiry”]).

58. As part of this causation analysis, courts consider evidence that partisanship is the cause of the racially divergent voting (*Charleston County*, 365 F3d at 349; *Pierce v N. Carolina State Bd. of Elections*, 97 F.4th 194, 222-23 [4th Cir 2024] [evaluating “whether partisanship, rather than race, drove polarization in North Carolina”]; *League of United Latin Am. Citizens*,

¹⁶ *Id.* at ¶ 179.

¹⁷ *Id.* at ¶ 181.

¹⁸ *Id.* at ¶ 190.

Council No. 4434 v Clements, 999 F2d 831, 855 [1993] [holding that, under Section 2 of the Voting Rights Act, plaintiffs must prove race, not partisan affiliation, is the predominant determinant of political preference to establish legally significant racial bloc voting].

59. Dr. Alford testified that there is no evidence in Dr. Palmer's report showing that CD-11 voters' preferences change based on the race of the candidate and that Black voters support Black Democratic and White Candidates at "almost exactly the same percentage."¹⁹ Based upon his analysis of Dr. Palmer's data, including the race of the candidates in the elections considered by Dr. Palmer, Dr. Alford concluded that the polarization in CD-11 was partisan and that there was no empirical evidence in Dr. Palmer's analysis demonstrating racial polarization.²⁰

60. Neither Petitioners nor Dr. Palmer rebutted Dr. Alford's determination that there is partisan polarization in CD-11 and Dr. Palmer ultimately admitted during cross-examination that partisan polarization exists in CD-11.²¹

61. Petitioners only contend that Dr. Alford's analysis is irrelevant because the causation (*i.e.*, the "why") for polarization does not matter.²² That is incorrect. In *Pierce v North Carolina Board of Elections*, Dr. Alford, as he did here, used the analysis of the plaintiffs' expert and concluded that it "demonstrates that the party affiliation of the candidates is sufficient to fully explain the divergent voting preferences of Black and White voters in the 2020 and 2022 North Carolina elections" (*Pierce v N. Carolina State Bd. of Elections*, 713 F Supp 3d 195, 238 [EDNC 2024] [finding that "Dr. Alford persuasively shows that black North Carolinians are not more likely to support black Democratic candidates than white Democratic candidates"]).

¹⁹ Tr. 686.

²⁰ Tr. 684:21-687:14.

²¹ Tr. 235:13-25; 236:1-7.

²² Tr. 185:13-23.

62. On appeal, the Fourth Circuit rejected the plaintiffs' argument that Dr. Alford's analysis is irrelevant and held that “[a]lthough caselaw does not require the minority-preferred candidate to be a member of the minority group, a model that accounts for the candidate's race can provide probative evidence about causation” (*Pierce v N. Carolina State Bd. of Elections*, 97 F.4th 194, 223 [4th Cir 2024]).

63. Here, the only probative trial evidence of the causation for polarization in CD-11 is Dr. Alford's analysis of the race of the candidates in the elections included in Dr. Palmer's report and Petitioners failed to challenge that evidence. Accordingly, the trial evidence demonstrates that the divergent voting patterns in CD-11 among White and Black and Hispanic voters “are best explained by partisan affiliation” (*League of United Latin American Citizens, Council No. 4434*, 999 F2d at 861). Petitioners, therefore, cannot demonstrate vote dilution under Section 2 or Article III, § 4(c)(1) (*Pierce*, 97 F4th at 223).

VI. **Petitioners' requested remedy is an unconstitutional partisan gerrymander**

64. Petitioners' map is not a neutral adjustment to better reflect demographic realities. It is a surgical political project that transforms the only Republican-held congressional district into one that unmistakably favors Democratic candidates.

65. Bryan's analysis of Cooper's Illustrative Plan confirms this point. Under the 2024 map, CD-11 is geographically coherent and electorally stable, and its minority CVAP profile has been steady across the post-census cycles.

66. Cooper's wholesale reconfiguration, by contrast, targets electoral performance through two coordinated moves: exporting a large set of Republican-performing precincts out of CD-11 and importing heavily Democratic precincts from Lower Manhattan across five miles of

open water.²³ In 2024, the precincts Cooper removes voted approximately 80% Republican across federal contests, while the precincts he imports from CD-10 voted about 58% Democratic.²⁴

67. Bryan's precinct-level analysis shows that, under Cooper's plan, CD-11 shifts from a 64.1% Republican result in 2024 to an inorganically engineered "dead heat."²⁵ That is partisan line-drawing by any meaningful measure. Petitioners' suggestion that this "competitiveness" is a virtue ignores that Article III forbids drawing districts to discourage competition or disfavor incumbents (NY Const. art. III, § [c] [5] ["Districts shall not be drawn to *discourage competition* or for the purpose of *favoring or disfavoring* incumbents or other particular candidates or political parties"] [emphasis added]).

68. Moreover, Petitioners' asserted "remedy" does not improve minority opportunity. Alford confirms that, in both the enacted 2024 CD-11 and Cooper's illustrative map, the combined Black-and-Latino CVAP remains under one-quarter of the district and changes only marginally under Petitioners' plan.²⁶

69. At the same time, Cooper's plan increases White non-Hispanic CVAP by about 2.6 percentage points, yields only small upticks for Black and Hispanic CVAP, and sharply reduces Asian CVAP—the largest single minority group in CD-11—by roughly 4.6 percentage points (from about 17.0% to 12.4%).²⁷

70. Bryan's core retention analysis shows who is actually being moved to effect Petitioners' design. Between the enacted plan and Cooper's plan, approximately 31.5% of CD-11 CVAP is relocated overall—but 57.1% of Asian CVAP is moved out of CD-11, compared to only

²³ Bryan Report ¶¶ 63, 192

²⁴ *Id.* ¶ 193.

²⁵ *Id.* ¶¶ 62, 189, 194.

²⁶ Alford Report at 7.

²⁷ Bryan Report ¶¶ 197, 199.

12.9% of Any-Part-Black CVAP and roughly 26–28% of White non-Hispanic CVAP. The targeted removal of the largest minority group from CD-11, coupled with only fractional changes to Petitioners’ preferred coalition components, further aligns with partisan engineering.

71. The nakedly partisan goal of Petitioners’ proposal is confirmed by its electoral effects. As Alford and Bryan explain, Petitioners’ plan accomplishes its supposed minority remedy by shipping out heavily Republican-performing precincts from CD-11 for substantially more Democratic precincts, converting a 2024 Republican margin of about 64.1% into a contrived near-tie. That is not minority-rights remediation; it is partisan gerrymandering dressed in civil-rights rhetoric.

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

i. Cooper’s map flunks compactness

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

74. Compactness refers to the geographical shape of a district. “Bizarrely shaped” districts are not compact (*Bush v Vera*, 517 US 952, 979 [1996]). While districts “need not be drawn in the form of geometric figures or perfect circles,” they should “be as compact as practicable” (*Matter of Bay Ridge Community Council, Inc. v Carey*, 103 AD2d 280, 282 [2d Dept

1984], *affd*, 66 NY2d 657 [1985]). The constitutional requirement for compactness gives the Legislature discretion to account for “existing political subdivision lines, topography, means of transportation and lines of communication,” but it “forbid[s] a complete departure” (*Schneider*, 31 NY2d at 429).

75. Petitioners’ proposed CD-11 radically departs from an otherwise compact district. The enacted CD-11 joins Staten Island and adjacent Brooklyn via the Verrazzano Bridge—an alignment that is geographically coherent, functionally contiguous, and reflective of long-standing travel, commuting and service corridors.

76. Cooper’s map violates these principles. It stretches a tentacle across approximately five miles of Upper New York Bay to annex Lower Manhattan, which is reachable only by ferry. On all standard metrics, this destroys CD-11’s compactness. Bryan’s analysis reflects a Reock score drop from approximately 0.52 to 0.30 and a Polsby-Popper decline from about 0.57 to 0.28.²⁸ Moreover, the “eyeball test for irregularities” confirms what the numbers show—an elongated, irregular district that reaches across open water to grab distant, dense electorates for partisan gain (*Alpha Phi Alpha Fraternity Inc. v Raffensperger*, 700 F Supp 3d 1136, 1255 [ND Ga 2023]).²⁹

77. Incredibly, Cooper tries to salvage this by averaging compactness scores for the separate land pieces he stitches together. This approach “lacks both precedent and logic” and is not accepted in the scientific community as valid.³⁰ As Bryan explains:

To defend his creative manipulation of conventional compactness measurements, Cooper relies on a novel and counterintuitive narrative that the compactness of his Illustrative Plan should be considered as two separate pieces. This is illogical - since a necessary criterion for all redistricting endeavors is contiguity of geographic

²⁸ Bryan Report ¶ 141, Table V.C.2.

²⁹ *Id.* ¶¶ 145-147.

³⁰ *Id.* at ¶ 109.

space. One cannot simply ignore areas that are either unpopulated or consist solely of water to improve compactness measures.³¹

78. In other words, compactness is assessed for the district as drawn, not, as Cooper suggests, by disaggregating land patches and ignoring the open space between them. Bryan further explains that Cooper's novel approach to compactness results in absurdities:

If Cooper's logic is held, what are the practical limits? Could Staten Island potentially be connected to the Bronx via the East River? Going further, what about the highly compact Poughkeepsie City (nearly 90 miles up the Hudson), which has a 35.4% Black population and 22.5% Hispanic population?⁴³ Or perhaps Hudson City (130 miles up the Hudson), with 16.5% Black population and 10.4% Hispanic Population?⁴⁴ Those are connected to Staten Island by water? The actual compactness scores of those combinations would be effectively zero – but by Cooper's logic, the compactness would be acceptable – because each distant individual piece is compact.³²

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

ii. Cooper's plan fractures political geography and communities of interest

80. The NY Constitution also directs map-drawers to “consider the maintenance of existing districts, of preexisting political subdivisions, . . . and of communities of interest” (NY Const. art. III, § 4 [c] [5]). Core retention “is simply a demographic accounting of the movement of persons from one district to another brought about by redistricting. A CRA is a way of quantifying precisely how a realignment affects the continuity of representation among a district's residents.”³³

81. The enacted 2024 plan satisfies core retention requirements. Using current precincts, it splits none. Cooper's Illustrative map, however, jettisons twelve current precincts

³¹ *Id.* at ¶ 109.

³² *Id.* at ¶ 136.

³³ *Id.* at ¶ 146.

without any population-equality necessity.³⁴ Petitioners thus cannot claim any improvement on this measure.

82. Petitioners' map also disserves the Asian community, which is the largest minority community of interest in CD-11.³⁵ Bryan demonstrates that Asians are the single largest minority CVAP in both CD-10 and CD-11 under the enacted map and are nearly evenly distributed between the two.³⁶ Cooper's plan radically disrupts this balance, ballooning the Asian population in CD-10 to roughly 224,000 and slashing it in CD-11 to about 105,000, while physically severing contiguous concentrations of Chinese residents in Lower Manhattan and reattaching Chinatown to distant, demographically dissimilar Brooklyn neighborhoods.³⁷

83. Cognizant of this major flaw, Petitioners assert that their plan "unite[s]" Chinese-American communities, but the data show the opposite: it relocates and dilutes Asian CVAP in CD-11 and stitches disparate neighborhoods across non-Asian corridors.³⁸

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

VII. CONCLUSION

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

³⁴ *Id.* at ¶ 132.

³⁵ *Id.* at ¶ 55

³⁶ *Id.* at ¶ 28.

³⁷ *Id.* at ¶ 28.

³⁸ *Id.* at ¶ 145.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that no generative artificial intelligence program was used in the drafting of this submission.

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