

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

Michael Williams, José Ramirez-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.

Index No. 164002/2025
Hon. Jeffrey H. Pearlman

Mot. Seq. 001, 006, and 007

**BRIEF OF AMICI CURIAE THE NEW YORK CIVIL LIBERTIES UNION,
THE NAACP LEGAL DEFENSE AND EDUCATION FUND, THE ASIAN AMERICAN
LEGAL DEFENSE AND EDUCATION FUND, AND THE CENTER FOR LAW AND
SOCIAL JUSTICE IN SUPPORT OF NO PARTY**

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INTEREST OF AMICI CURIAE

Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims and developing voting rights policy under state and federal laws in New York and around the United States. Amici include groups that were among the principal architects of the John R. Lewis Voting Rights Act of New York (“NYVRA”). Amici and the communities that they serve have a significant interest in ensuring that there are clear and manageable standards for assessing racial vote dilution claims under the constitution and laws of the State of New York. Amici include counsel who litigated many of the precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under the NYVRA (*New York Communities for Change v County of Nassau*, Index No. 602316/2024 [Sup Ct, Nassau County]), which included allegations that the challenged map diluted the electoral influence of Asian voters in the greater New Hyde Park area. Although the case was resolved by a settlement implementing a new map prior to a final judgment on the merits (*id.* NYSCEF Doc No. 370), Amici’s experience developing the law and evidence supporting those influence dilution allegations can be of assistance to the Court here.

INTRODUCTION

New York recognizes two types of racial vote dilution: (1) the traditional dilution of a minority group’s opportunity to elect their candidates of choice and (2) the dilution of a minority

group's electoral influence. Although related, these two racial vote dilution claims address distinct harms and are subject to distinct analyses. An opportunity-to-elect claim addresses a minority group's inability to elect their preferred candidate to office. By contrast, an influence claim addresses the harm to a minority group who cannot necessarily elect their preferred candidate to office, but who has enough votes to make them a consequential member of winning coalitions. In an influence claim, minority groups must show that but for the challenged electoral scheme, the minority group could at least get a "foot in the door" to get the attention of other groups and elected officials. As the State Respondents note, "States are free to adopt greater voting rights protections than provided by federal law" and can decide as a matter of legislative choice to use crossover or influence districts, regardless of whether they are protected by the federal Voting Rights Act ("VRA") (NYSCEF Doc No. 95 at 4-5 [citations omitted]).

Moreover, these racial vote dilution claims are analytically distinct from partisan gerrymandering claims or other claims that seek to maximize partisan advantage. In racial vote dilution cases, the experiences of racial minorities with racial discrimination are central to the legal doctrine. These claims are essential to addressing some of the deepest and most pernicious forms of discrimination (*see e.g. Singleton v Allen*, 782 F Supp 3d 1092, 1270-72 [ND Ala 2025] [describing how a total lack of electoral opportunities for a Black community resulted in it facing "intense poverty" that "is extreme by any measure and so primitive that it often startles people"]). Although racial vote dilution claims sometimes have partisan consequences, racial minorities are not harmed every time minority voters are placed in a district that does not elect a candidate of their preferred political party. Neither the NYVRA nor VRA require the maximization of partisan advantage. To the contrary, efforts to maximize partisan advantage in redistricting have led to racial vote dilution (*see e.g. Pope v County of Albany*, 94 F Supp 3d 302, 317-18, 348-49 [ND NY

2015] [finding that a Democratic-controlled legislature “packed” Black voters into a few districts in order to protect white incumbents]; *Coads v Nassau County*, 86 Misc 3d 627 [Sup Ct, Nassau County 2024] [denying summary judgment to county on claims that redistricting plan enacted by Republican-controlled legislature packed and cracked Black, Latino, and Asian voters in enacting a partisan gerrymander]).

Accordingly, Amici write to address three issues.

First, Amici provide definitions of the different species of opportunity-to-elect claims and influence claims. Amici show that New York law should treat protections against influence dilution as distinct from opportunity-to-elect dilution. Among other things, in an influence claim, fewer people are affected and the quantum of political power at issue is less than in opportunity-to-elect claims. As a result, the threshold showing for demanding a change to a map to satisfy an influence claim must necessarily be different than the showing for demanding a change pursuant to an opportunity-to-elect claim. As a prudential matter, carefully defining influence dilution claims enables mapmakers to honor protections against opportunity-to-elect dilution while balancing those protections with traditional districting concerns.

Second, Amici write to provide the Court with some considerations that could inform a manageable standard for assessing influence dilution claims under New York law in cases where the plaintiff challenges a redistricting scheme *and* proposes another redistricting scheme as a remedy.¹ State Respondents have taken the position that the state constitution protects against racial vote dilution to a greater extent than federal law, and may protect against influence dilution. But the State Respondents have declined to propose a standard for either form of racial vote

¹ As opposed to, for example, a NYVRA case in which a plaintiff challenges a village redistricting scheme and proposes an at-large ranked-choice scheme or other non-districting remedies.

dilution.² Amici, therefore, propose standards for adjudicating both opportunity-to-elect dilution and influence dilution claims. Amici recognize that such standards must provide effective guidance for governments, voters, and courts to assess liability.

Lastly, Amici identify the ways in which courts have ensured that racial vote dilution claims remain distinct from partisan gerrymandering claims. Courts have long made clear that racial vote dilution should not be an avenue for partisan maximization. Amici's standards for influence and crossover claims seek to address this concern.

Amici's proposed standards for the Court's consideration are consistent with federal constitutional law, focus on the vindication of the rights of minority voters, respect state traditional districting principles in proving *both* the cause of dilution and its remedy. Such a standard is necessary as courts may and will increasingly need to analyze dilutions of political participation for emerging cohesive minority groups under both the NYVRA and the New York State Constitution.

ARGUMENT

I. Influence Dilution and Opportunity-to-Election Dilution are Distinct Forms of Racial Vote Dilution with Distinct Remedies.

Racial vote dilution occurs when a challenged electoral system “operate[s] to minimize or cancel out the voting strength of racial minorities in the voting population” (*Thornburg v Gingles*, 478 US 30, 46-48 [1986] [cleaned up]). “The theoretical basis for this type of impairment is that where minority and majority voters consistently prefer different candidates, the majority, by virtue

² To be clear, Amici do not address whether the state constitution provides a cause of action for influence dilution. Instead, as discussed below, because influence dilution claims are cognizable under the NYVRA and local redistricting statutes, Amici assume such a cause of action exists under the state constitution and propose standards for addressing influence dilution claims under the circumstances common to both constitutional and statutory redistricting claims.

of its numerical superiority, will regularly defeat the choices of minority voters” (*id.* at 48). One way this happens is when states and local governments use district-based methods of representation in which district lines concentrate certain voters into one or more districts, which decreases the power of those constituents’ votes and “packs” their electoral power into too few districts (*id.* at 46 n.11). Another way this happens is by officials separating minority voters in a way that diminishes their voting power because they cannot impact election outcomes in any district, which is known as “cracking” (*id.* at 46). Under either racial vote dilution tactic, minority voters in one district have less power to impact the outcome of an election than non-minority voters do.

A. Opportunity-to-Elect Claims and Remedies.

Federal and state law protect against racial vote dilution. To prove a racial vote dilution claim, plaintiffs typically need to show that the district lines were drawn in a way that resulted in an unequal opportunity for a racial minority group to participate in the political process and elect their preferred candidate (*see Allen v Milligan*, 599 US 1, 25-26 [2023]). These types of claims are known as opportunity-to-elect claims. Plaintiffs seek remedies that redraw district lines so that harmed voters’ ability to elect candidates of their choice is no longer impaired. In this context, the phrase “elect a candidate of choice” refers to minority voters’ ability to elect their preferred candidate, even a member of their group if they so choose (*see Rural W. Tennessee Afr-Am Affairs Council v Sundquist*, 209 F3d 835, 840 [6th Cir 2000] “[T]he Voting Rights Act’s guarantee of equal opportunity is not met when “[c]andidates favored by blacks can win, but only if the candidates are white.” (quotation omitted))). Opportunity-to-elect claims can arise in three types of districts: (1) districts in which a single minority group constitutes a majority of the electorate and are able to elect their candidates of choice; (2) “coalition districts,” in which multiple,

politically cohesive minority groups who together constitute a majority of the electorate are able to elect their candidates of choice; and (3) “crossover districts,” in which a racial minority group is so sufficiently large and politically cohesive, that it is able to elect its candidates of choice with the support of a small but reliable group of voters from the racial majority group.³

B. Influence Dilution Claims and Remedies.

A related but distinct ability-to-elect claim is an influence-dilution claim. Influence dilution occurs when an electoral scheme makes negligible the voting strength of a group who would otherwise be a consequential participant in building competitive electoral coalitions (*see* Engstrom, *supra* note 3, at 2-3). Under that claim, racial minority voters lack the numbers to be able to elect their candidate of choice over the preferences of other groups (*id.*). But when their community is not cracked into disparate districts or overly packed in a single district, the minority group is sufficiently large and politically cohesive, such that candidates and other groups should be interested in appealing to their voters. An influence district is one in which a racial minority group lacks the opportunity to necessarily elect their most preferred candidate, but the racial group does have an opportunity to play an essential role in a competitive general election coalition (*see* Engstrom, *supra* note 3, at 7).

³ See Richard L. Engstrom, *Redistricting: Influence Districts—A Note of Caution and a Better Measure*, at 2, University of California, Berkeley Law School, The Chief Justice Earl Warren Institute on Law and Public Policy [May 2011] [“Engstrom”], <https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-11/c19.-richard-l.-engstrom-redistricting-influence-districts-a-note-of-caution-and-a-better-measure-may-2011.pdf>. Dr. Engstrom’s article is part of the Legislative Record for the NYVRA, which is available on the website of the New York State Senate. *See* New York State Senate, *Legislative Record - John R. Lewis Voting Rights Act of New York (NYVRA)* [June 20, 2022] <https://www.nysenate.gov/newsroom/articles/2022/zellnor-myrie/legislative-record-john-r-lewis-voting-rights-act-new-york>

Influence districts are a recognized and legitimate method of protecting against racial vote dilution (*id.*). The government’s refusal to draw an influence district can result in an “unfair disadvantage to [minority] voters in the exercise of the most important right in our democracy, and the purpose of the VRA is to prevent discrimination in the exercise of the right to vote” (*Metts v Murphy*, 347 F3d 346, 361 [1st Cir 2003], *on reh’g en banc*, 363 F3d 8 [1st Cir 2004]). New York courts have recognized the viability of these claims (*see, e.g., Coads v Nassau County*, 86 Misc 3d 627, 655 [Sup Ct, Nassau County 2024] [finding that the plaintiffs claim of vote dilution alleging that district lines concentrated a group of voters into only a few districts so that they could not ultimately influence the outcome of an election was a material factual issue]; *Clarke v Town of Newburgh*, 2025 WL 3235042 [2025] [affirming that the NYVRA specifically allows for remedies that might allow for minorities to influence the outcome of elections without their constituting a majority in a single-member district]; *Serratto v Town of Mount Pleasant*, 86 Misc 3d 1167 [Sup Ct, Westchester County 2025] [recognizing the inability to influence the outcome of an election as within the zone of interests protected by the NYVRA]). As the State Respondents note, the State Constitution may provide a cause of action against influence dilution (NYSCEF Doc No. 95 at 2-3).

II. New York’s Protections Against Influence Dilution in Redistricting Must Be Reconciled with Protections Against Opportunity-to-Elect Dilution and Other Redistricting Criteria.

New York’s state constitutional standards for statewide redistricting, as well as statutory standards for local redistricting, contain protections against racial vote dilution and offer other important criteria for drawing maps that provide fair legislative representation (*see* NY Const art III, § 4 [providing standards for statewide redistricting plans]; *see e.g.* Municipal Home Rule Law [MHRL] § 34[4] [providing standards for county legislature redistricting plans]). New York’s

redistricting criteria generally align with those that federal courts have identified as “traditional districting criteria” (*Milligan*, 599 US at 20 [referring to compactness, contiguity, and respect for existing political subdivisions]), with New York’s notable addition of prohibitions on partisan gerrymandering, incumbency protection, and discouraging competition (*see* NY Const art III, § 4[c][5]). Redistricting plans under the state constitution balance all of these considerations and resolve the tensions among them to give wide berth to avoiding racial predominance, which occurs when “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district” (*Alabama Legislative Black gero v Alabama*, 575 US 254, 272 [2015] [citation omitted]).

In addition to balancing protections against racial vote dilution and other traditional districting principles, mapmakers must also balance the tension between protections against the dilution of minority groups’ opportunities to elect their candidates of choice and protections against influence dilution. This tension animated the 2006 amendment to the federal VRA that effectively overruled the holding of *Georgia v Ashcroft*, which raised concerns that jurisdictions would seek to break down effective opportunity-to-elect districts into more districts with low probabilities of electing minority candidates of choice.⁴ New York law and prudential concerns favor resolving any such tension in its redistricting criteria by treating influence dilution as a secondary consideration to compliance with protections against opportunity-to-elect dilution.

First, the text of both the state constitutional and statutory redistricting standards for protecting against racial vote dilution expressly protect against the dilution of minority voters’ opportunity “to elect representatives of their choice” (NY Const art III, § 4[c][1]; *see e.g.* MHRL

⁴ 539 US 461, 480 (2003), *superseded by* Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006, Pub L No. 109-246 § 5, codified as amended at 52 USC § 10304[b].

§ 34[4][b]). As the State Respondents’ brief explains, this provision of the state constitution may protect against influence dilution (NYSCEF Doc No. 95 at 3), but regardless, this express language should give primacy to protections against opportunity-to-elect dilution over implicit protections against influence dilution.

Like the state constitution, reconciliation of the NYVRA’s protections in redistricting cases also requires prioritizing protections against the opportunity-to-elect dilution over influence dilution and providing distinct standards for each. The text of the NYVRA makes clear that the law protects against the impairment of members of a protected class’s “ability . . . to elect their candidates of choice” and, distinctly, their ability “to influence the outcome of elections” (Election Law § 17-206[2]).⁵ To bring a successful claim for either, a plaintiff must show that the harm is the “result of vote dilution” (*Id.*). The statutory text expressly provides some common framework for both types of vote dilution claims—that is, proof of inequity of electoral opportunities under a totality of the circumstances inquiry, which, where practicable, includes evidence that racially polarized voting usually defeats the protected class’s candidate (Election Law § 17-206[2][a] & [b]). This proof of systemic racial inequity in elections is required regardless of whether a vote dilution plaintiff is challenging an at-large method of election or a single-member districting scheme.

The NYVRA’s legislative record shows the law leaves space for the courts to develop manageable standards for inflation dilution claims, in particular, anticipating that the California

⁵ Due to the diversity of election practices in the thousands of local governments in New York State and the breadth of the statute’s applicability, from both a liability and remedial perspective, the NYVRA does not explicitly address the applicability of other districting principles. Instead, the NYVRA’s protections against racial vote dilution were drafted to strike a balance between providing state courts guidance in a complex field and adapting New York law in a way that can be applied to the wide variety of local government election practices across the state.

Supreme Court might provide such a standard in the then-forthcoming case of *Pico Neighborhood Assn. v City of Santa Monica*, 15 Cal 5th 292 [Cal 2023].⁶ Although the *Pico* Court did “not decide the scope of the CVRA’s ability-to-influence prong in this case,” it recognized the prospect of “an influence [dilution] theory distinct from” and “broader than” a claim that a method of election dilutes a group’s “ability to elect their candidates of choice” (*id.* at 323-24). The distinction is that in an influence dilution claim—as compared to an opportunity-to-elect claim—the communities affected are smaller, the quantum of political power at stake is lesser, and the occasions for grouping or dividing those communities are more frequent. Treating protections against influence dilution as a secondary inquiry to compliance with protections against opportunity-to-elect dilution properly and manageably gives effect to all applicable redistricting criteria, whether as a constitutional or statutory matter. This approach is both consistent with New York’s canons of interpretation (*see* Statutes § 221) and has the salutary effect of ensuring that the proposed remedial plan includes reasonably configured districts that adhere to New York’s districting principles without race predominating (*Robinson v Ardoin*, 86 F4th 574, 595 [5th Cir 2023] [“The Supreme Court has implemented a high bar to racial gerrymander challenges, requiring a showing of racial predominance such that traditional redistricting criteria are subordinate to the racial consideration.”]). Moreover, as a prudential matter, this prioritization provides clear guidance to mapmakers, who are always faced with the task of reconciling a set of criteria in tension. And to the extent the protection of minority opportunity-to-elect and minority political influence are in tension, the conflict should be resolved in favor of avoiding the greater injury.

⁶ Legal Defense Fund & New York Civil Liberties Union, *Memorandum on Key Provisions of the John R. Lewis Voting Rights Act of New York (S.1046/A.6678)* [May 31, 2022] at 10-12, <https://www.nysenate.gov/sites/default/files/admin/structure/media/manage/filefile/a/2024-11/nyvra-provisions-memo-ldf-nyclu-5-31-22.pdf>.

III. Amici Propose a Standard Applicable to Claims Alleging That a Redistricting Plan Dilutes Minority Electoral Influence.

At present, there is no clear definition of influence claims in New York law. In this case, the Petition is unclear as to whether Petitioners are seeking to prove an influence claim or a “coalition crossover” claim (*see generally* Proposed Amicus Brief of Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos, NYSCEF Doc No. 135 (“Professors Amicus”). Amici take no position on the viability of Petitioners’ claim here.

To the extent the Court views this case as involving an influence claim, however, Amici believe that providing clear standards for influence claims prevents the concept of influence districts from being misapplied by courts and plaintiffs, or abused by elected officials (*see* Engstrom, *supra* note 3, at 7). For that reason, Amici propose that the Court adopt the following standard for identifying and proving racial vote dilution for an influence claim.

Like all racial vote dilution plaintiffs, regardless of the challenged scheme or injury, a plaintiff in an influence dilution case must prove that (a) under the totality of circumstances, the protected class has less electoral opportunity than the rest of the electorate and (b) a “reasonable alternative policy” would effectively remedy the electoral impairment of the protected class.

To satisfy the reasonable alternative policy prong, a plaintiff alleging the dilution of their group’s opportunity to elect a candidate of choice need only show—without reference to the challenged map—that it is possible to draw a reasonably configured majority-minority district or crossover district in which the minority group could usually (that is, more often than not) elect their candidate of choice. By contrast, for an influence claim, a plaintiff must propose a remedial plan that reasonably respects those principles comparably to the challenged plan. The plaintiff’s illustrative plan for an influence claim must reveal that the challenged plan *unreasonably* fragments or concentrates a politically cohesive minority community in a way that is inconsistent

with objective districting principles like compactness, contiguity, and respect for municipal boundaries. The plaintiff would also have to show that their illustrative plan would remedy the deviation from New York’s established districting principles as well as the dilution of actual electoral influence by demonstrating some material net change in electoral outcomes.

Under Amici’s proposed framework, New York courts can set a single standard for influence dilution claims where the plaintiff challenges a redistricting plan *and* proposes a redistricting plan as a remedy, which can be applicable for claims of this type brought under the state constitution, statutes setting local redistricting criteria, or the NYVRA.

A. The Totality of Circumstances Inquiry for Influence Dilution Plaintiffs Challenging Redistricting Plans is the Same as for Other Racial Vote Dilution Claims.

The State Constitution, the NYVRA, and other state redistricting laws each invite a totality of the circumstances inquiry into determining whether a protected minority group has unequal opportunities to participate in the political process and achieve electoral efficacy. The text of the State Constitution provides no other route to proving this element of racial vote dilution (*see* NY Const art III, § 4[c][1]). The totality of the circumstances inquiry need not be any different for influence dilution plaintiffs in redistricting cases like these than for any other racial vote dilution case, regardless of whether applying the federal VRA’s “Senate Factors” (*Gingles*, 478 US at 44-45), or the NYVRA’s closely related version (Election Law § 17-206[3]). Both sets of factors are “non-exhaustive and non-exclusive” (*Wright v Sumter County Bd. of Elections & Registration*, 301 F Supp 3d 1297, 1312 [MD Ga 2018], *aff’d*, 979 F3d 1282 [11th Cir 2020]; *see* Election Law § 17-206[3] [“Nothing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred.”]).

The totality of circumstances in this context requires evidence that racially polarized voting usually defeats the preferred candidates of a politically cohesive minority group, which is the “linchpin of a vote dilution claim”⁷ (*see Elizondo v Spring Branch Indep. Sch. Dist.*, 782 F Supp 3d 488, 551 [SD Tex 2025] [quoting *Westwego Citizens for Better Government v City of Westwego*, 872 F2d 1201, 1207 [5th Cir 1989]). The totality of circumstances inquiry is well-suited to interrogating whether minority voters have been deprived of political influence for reasons primarily attributable to past or present discrimination (*see e.g. Clerveaux*, 984 F3d at 237-43 [using these factors to prove the salience of race in the jurisdiction]).⁸

Part of why influence districts are meaningful as a tool to measure fair and equal political participation is that the concept acknowledges that politically cohesive and geographically compact communities, even if they do not make up a majority, may have a substantial impact on how their community’s policies and politics are decided. Courts can and should consider data on

⁷ Although the NYVRA states as an element in racial vote dilution claims against redistricting plans proof of the totality of circumstances in the disjunctive with proof of racially polarized voting (Election Law § 17-206[2][b][ii]), the State Constitution expressly references only “based on the totality of circumstances” in its racial vote dilution protections (NY Const. art III, § 4[c][1]). The NYVRA was designed to address racial vote dilution and suppression in local government elections in this state—including villages, towns, and special purpose districts—where many jurisdictions have only one election district, which would make proof of racial voting patterns all but impossible and effectively immunize those jurisdictions against liability for racial vote dilution. That concern is inapplicable to statewide elections where there are thousands of election districts. Regardless, the NYVRA’s totality of circumstances inquiry is sufficiently capacious to incorporate proof of racially polarized voting that usually defeats the preferred candidate of the minority groups of interest wherever feasible.

⁸ Importantly, and consistent with longstanding Second Circuit precedent, a finding of liability for racial vote dilution under New York law does not require a plaintiff to prove that racial motivations are the cause of divergent racial voting patterns, as opposed to partisanship or other reasons (*see id.* at 232 [citing *Goosby v Town Bd. of Town of Hempstead*, 180 F3d 476, 493 [2d Cir 1999]; Election Law § 17-206[2][c][vi] [“evidence that voting patterns and election outcomes could be explained by factors other than racially polarized voting, including but not limited to partisanship, shall not be considered”]).

what proportion the minority group makes up of the legislator's electoral constituency and whether the legislator's voting record provides evidence that he or she is responsive to the minority group. Among other relevant legislative behavior, unresponsiveness might involve a lack of events or meetings held with the minority community and the failure to sponsor bills or policies on issues that are of particular importance to the relevant minority community (*see e.g. Clerveaux*, 984 F3d at 238-39; *Goosby*, 180 F3d at 495).

B. The Reasonable Alternative Policy Element for an Influence Claim Requires a Showing that the Dilution is Attributable to the Challenged Map's Deviation from Traditional Districting Principles and that a Remedial Plan Would Repair the Deviation while Remediating the Dilution.

Whether under the New York Constitution, the NYVRA, or similar local legislative redistricting criteria, a plaintiff alleging an influence dilution claim under New York law should show that the challenged redistricting plan deviates from the applicable redistricting criteria in a way that *unreasonably* fragments or concentrates a politically cohesive minority group in a way that impairs their ability to exert actual electoral influence. A plaintiff makes this showing by presenting a reasonable alternative illustrative map that would remedy the dilution of influence by repairing the deviation from traditional principles, while otherwise respecting the state's "objective" redistricting criteria of "compactness, contiguity, and respect for political subdivisions" (*Shaw v Reno*, 509 US 630, 647 [1993]). The focus is on these objective factors because traditional redistricting criteria can be "surprisingly ethereal and admit of degrees" (*Bethune-Hill v State Bd. of Elections*, 580 US 178, 190 [2017] [cleaned up]). The Court should focus on only measurable factors to prevent the state or its localities from inventing or elevating bespoke redistricting principles, like core retention (*Milligan*, 599 US at 21-22), incumbent protection (*League of United Latin American Citizens v Perry* ["LULAC"] 548 US 399, 422 [2006]), or preferences for certain

communities (*Singleton*, 782 F Supp 3d at 1344), as a means of justifying or perpetuating electoral systems that result in racial vote dilution.

Deviations from a state’s districting principles can be circumstantial evidence of racial discrimination in redistricting (*see Connor v Finch*, 431 US 407, 422-26 [1977] [concluding that “unexplained departures from the results that might have been expected to flow from . . . neutral guidelines can lead . . . to a charge that the departures are explicable only in terms of a purpose to minimize the voting strength of a minority group.”]). A plaintiff can demonstrate this deviation by, for example, showing that a challenged plan’s cracking or packing of a minority community is attributable to ill-compact districts; unnecessary division of political subdivisions, or other clearly cognizable communities of interest; or a map’s extreme partisan favoritism, efforts to advantage incumbents, or discouragement of competition. Traditional redistricting principles have always sought to keep communities of interest intact and Amici’s proposed standard focusing on these principles for influence dilution will ensure that emerging minority groups are not gratuitously denied the opportunity to “pull, haul, and trade to find common political ground” (*Johnson v DeGrandy*, 512 US 997, 1020 [1994]).

Construing the reasonable policy alternative requirement in the context of influence districts resolves potential conflicts between influence and opportunity-to-elect dilution claims. The proposed standard for the Court to consider defuses concerns about racial predominance by focusing on the vindication of traditional districting principles in assessing both the cause of the influence dilution and its remedy.

C. An Illustrative Map Is an Effective Remedy for Influence Dilution when a Comparison to the Challenged Map Shows a Material Change in Election Outcomes That Reveals a Deprivation of Actual Electoral Influence.

An influence dilution claim must consider whether the protected class members can *actually* “influence the outcome of elections” for their community under a remedial map (Election Law § 17-206[2][a]). Amici propose that there must be some comparison of the electoral impact the protected class of voters stand to have under a remedial districting plan as compared to the challenged plan. A group does not have “electoral influence,” after all, unless there are “real potential electoral consequences” to the ballots they cast.⁹ Satisfying this prong of the proposed standard shows that the electoral harm caused by the gratuitous cracking or packing at issue is concrete and significant.

1. Material Net Change in Electoral Efficacy

A diluted minority group must be able to demonstrate an increase in electoral efficacy under a proposed remedial influence district. “[P]otential influence is relevant to a determination of whether the group lacks a meaningful opportunity to participate in the electoral system” (*Uno v City of Holyoke*, 72 F3d 973, 991 [1st Cir 1995]). Thus, making an inquiry into electoral efficacy important to determining if a protected class’s voting participation has been deprived of meaning, and thus their influence diluted. A plaintiff should demonstrate that the proposed remedial district results in a net positive change in the protected group’s actual effect on electoral outcomes, compared to a challenged plan that gratuitously cracks or packs their community in a way that makes their influence negligible.

⁹ Bernard Grofman, *Operationalizing the Section 5 Retrogression Standard of the Voting Rights Act in the Light of Georgia v. Ashcroft: Social Science Perspectives on Minority Influence, Opportunity and Control*, 5 Election L Journal 250, 260 (2006).

Therefore, the plaintiff must “demonstrate a net gain in the protected class’s potential to elect candidates under an alternative system,” otherwise “it has not shown the [challenged] method of election ‘impairs’ the ability of the protected class to elect its preferred candidates” (*Pico Neighborhood Assn.*, 15 Cal 5th at 322).

2. *Ensuring Actual Influence*

A standard for what qualifies as an effective remedial district prevents the abuse of voting rights laws for partisan ends and instead preserves them for protecting against racial discrimination. Further, an effectiveness inquiry protects against both frivolous claims and discourages mapmakers attempting to hide voter suppression in the form of purported “influence districts” by packing or cracking minority voters into districts in which they have no electoral efficacy, then claiming that raw population percentages create the safe haven of an influence district (*see Engstrom* at 5 [“Relying on a percentage threshold, in isolation, is an invitation to misapply, and perhaps even abuse, the concept of influence districts.”]).¹⁰

The reasonable alternative plan must offer an *effective* remedy. That is, the illustrative plan must remedy an unjustifiable deprivation of actual electoral influence in the challenged map. In the opportunity-to-elect context, an effective remedy is one where the illustrative remedial district would “usually” elect the protected class’s preferred candidate (*cf. Abbott v Perez*, 585 US 579 [2018] [finding that the plaintiffs’ illustrative district was an ineffective remedy because the minority-preferred candidate won only “7 out of the 35 relevant elections”]; *Abrams v Johnson*, 521 US 74, 94 [1997] [concluding that the VRA required a majority-minority district to ensure

¹⁰ To achieve the gain in electoral efficacy that signifies a true influence dilution remedy, some judges have suggested that a remedial influence district should have at least a 25% minority population (*see Rural W. Tennessee Afr-Am Affairs Council*, 209 F3d 835, 846-47 [6th Cir 2000] [N.R. Jones, J., concurring]).

that the probability of electing minority candidates remained above 50%]). By contrast, in an influence claim, plaintiffs could succeed even if their illustrative district was not majority-minority *and* the minority-preferred candidate usually lost so long as their illustrative district materially increased the chances of minority-preferred candidates as compared to trivial success under the challenged map. For example, if under the challenged map, the minority-preferred candidates won 0% of elections but such candidates won 25% of elections in the plaintiffs' illustrative district that evidence demonstrates that minority voters could have a consequential "influence" as a part of a competitive coalition.

This principle applies both to potential districts where the protected class tends to vote for, or against, the winning candidate in the general election but has no ability to cast consequential votes in the outcome of a general election, let alone a primary. There is no change in actual influence when, for example, a claim would simply convert a challenged district dominated by white Republicans to a remedial district dominated by white Democrats if the votes of people of color would remain negligible in either case.

D. A Recent New York Case Illustrates How Influence Dilution Claims and Influence District Remedies Work in Practice.

In Nassau County, no Asian candidate has ever been elected to the 19-member county legislature even though Asian residents constitute over 12% of the population and 10% of eligible voters.¹¹ Asian residents are the fastest growing demographic group in the county and primarily

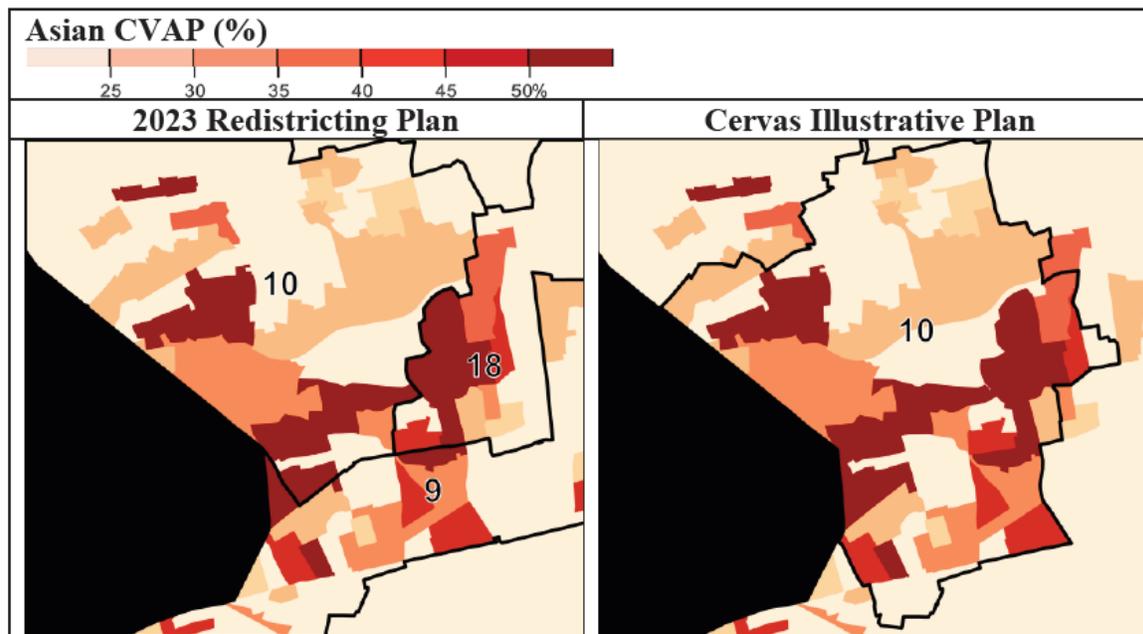
¹¹ See Expert Report of Dr. Jonathan Cervas, *New York Communities for Change v. County of Nassau*, Index No. 602316/2024, NYSCEF Doc No. 300 at ¶ 24, tbl. 2; ¶ 84 (Sup Ct, Nassau County Dec. 9, 2024) ("Cervas NYCC Report"); Plaintiffs' Consolidated Proposed Findings of Fact and Conclusions of Law, *New York Communities for Change v. County of Nassau*, Index No. 602316/2024, NYSCEF Doc No. 336 at ¶¶ 306, 662, (Sup Ct, Nassau County Dec. 9, 2024) ("NYCC PFOFCOL").

concentrated in two areas—the Hicksville area in the eastern part of the county and the greater New Hyde Park area in the western part of the County (*see* Cervas *NYCC* Report ¶ 20, tbl. 1; ¶ 82). But neither community was large enough to form a majority of the electorate in a district (*see id.* ¶ 83). In 2023, Nassau County enacted a redistricting plan for the county legislature that divided the Asian community in the New Hyde Park area into three districts—two of which were oddly shaped (*see NYCC PFOFCOL* ¶ 313; Cervas *NYCC* Report ¶¶ 84, 91). Asian residents did not exceed 23% of eligible voters in any of these three districts (*see id.*).

Plaintiffs challenged that redistricting plan, alleging that the map’s deviations from traditional districting principles cracked a recognizable community of interest with a concentrated Asian population and impaired Asian voters’ ability to influence electoral outcomes (*see NYCC PFOFCOL* ¶¶ 827-839). The plaintiffs’ redistricting expert in that case was Dr. Jonathan Cervas, the special master who drew the 2022 congressional redistricting plan that underlies the district challenged in this case. Dr. Cervas created an illustrative remedial map that adhered to each of the statutory redistricting criteria applicable to county legislatures as well or better than the challenged map (*see* Cervas Report ¶ 2c). This resulted in an illustrative remedial district where Asian residents were over 34% of eligible voters (*see* Cervas *NYCC* Report ¶ 84).

Dr. Cervas was able to show, visually and statistically, that the challenged map’s cracking of the Asian community was the product of deviation from the applicable principles of keeping districts as compact as practicable and preserving communities of interest (*see* Cervas Report ¶¶ 84-86; *NYCC PFOFCOL* ¶¶ 837-39; *see below* Cervas *NYCC* Report ¶ 86, Fig. 7).

Figure 7 Greater New Hyde Park Communities of Interest



In addition to evidence of recent and historical discrimination, plaintiffs presented evidence of racial voting patterns and reconstructed precinct-level election results to show that the challenged map’s cracking impaired Asian electoral influence. Both Asian political cohesion and white bloc voting against minority-preferred candidates in the area had been increasing as the population of Asian residents grew (*NYCC PFOFCOL* ¶ 366). For the most recent (and most probative) set of election data available, plaintiffs showed that in the three cracked districts in the challenged map, candidates preferred by Asian voters were successful in 0% of the time; whereas in a compact remedial district that kept the greater New Hyde Park area whole, Asian preferred candidates were successful 25% of the time (*see Cervas NYCC Report* ¶¶ 93-97). Although Asian voters are not yet numerous enough to achieve the kind of results expected from an opportunity-to-elect district, this example shows what an influence dilution claim can yield: a remedial district that comports with traditional principles and provides a realistic opportunity for a significant, politically cohesive community to compete in the “pull, haul, and trade” with other groups instead of an electoral

scheme that made their voices and votes negligible (*Perez v Abbott*, 250 F Supp 3d 123, 139 [WD Tex 2017] [citation omitted]).

IV. Setting a Proper Standard for Racial Vote Dilution Claims Seeking Either Influence or Crossover Remedial Districts Will Help Avoid their Distortion Into “Partisan Maximization” Claims.

Causes of action in which race is central to the legal doctrine are essential in addressing some of the most egregious forms of discrimination. Unfortunately, at times, litigants whose primary concerns are partisan have attempted to misuse racial vote dilution claims for their own ends (*see e.g. Harding v County of Dallas*, 948 F3d 302, 306 [5th Cir 2020] [describing a federal VRA claim brought by “Anglo Republicans”]). A properly structured cause of action for racial vote dilution claims—whether involving influence or opportunity-to-elect claims—can help courts better distinguish and channel claims down the appropriate litigation paths. This approach helps to avoid unwelcome doctrinal distortion while providing full redress for racial vote dilution in all its forms.

Racial discrimination is morally, historically, and legally distinct from partisan subordination. Yet partisan impulses have repeatedly provided disturbing incentives for officials of both major parties to draw districts that disadvantage minority voters (*see e.g. LULAC*, 548 US at 440-41 [finding that a Republican legislature cracked Latinos to protect an incumbent]; *Black Political Task Force v Galvin*, 300 F Supp 2d 291, 313-15 [D Mass 2004] [finding that a Democratic-controlled legislature intentionally packed Black voters to protect white incumbents]).

This requires courts to be vigilant to ensure that racial vote dilution jurisprudence is not distorted or otherwise misused by anyone as a way to maximize partisan advantage.

Whether Petitioners are pursuing a crossover or influence claim (*see generally* Professors Amicus), Petitioners in this case¹² should be required to prove that racial minorities will have the opportunity to elect their preferred candidates in the primary elections of the dominant party in the illustrative remedial district. One potential way to satisfy this “gatekeeping condition” would be to require Petitioners to “show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election” (*LULAC*, 548 US at 485-86 [Breyer, J., dissenting in part] [proposing standards for adjudicating a crossover claim]). Alternatively, Petitioners could show that the minority-preferred candidate can win *both* contested primary *and* general elections in the illustrative district (*cf. id.* at 444 [rejecting a crossover claim where the plaintiffs could not show that a white Democrat was the Black-preferred candidate in both primary and general elections]).

In the absence of such evidence, influence or crossover claims can easily be distorted for partisan maximization. For example, without this requirement, a plaintiff could argue for the creation of new crossover or influence districts where white Democrats hold majorities in the primary and general elections as “remedies” for racial vote dilution even in places where white bloc voting usually defeats minority-preferred candidates in primary and general elections (*cf. e.g., Gingles*, 478 US at 59; *Pope*, 94 F Supp 3d at 336-37). Justice Souter recognized this problem in his dissent in *Georgia v Ashcroft* (539 US 461, 508 [2003]). There, Georgia Democrats had created “influence” districts by breaking up opportunity-to-elect districts (*id.* at 470). Justice Souter noted that, although this approach might maximize partisan advantage for Democrats, it would do so at the expense of minority voters’ ability to elect their preferred candidates: “if the proportion of

¹² Cases involving nonpartisan races should not be held to this standard.

[white] Democrats is high enough, the minority group may well have no impact whatever on which Democratic candidate is selected to run and ultimately elected” (*id.* at 508 [Souter, J., dissenting]).

Thus, whether the Court considers the issue to be influence or crossover claims, the Court should establish a standard that prevents the distortion of racial vote dilution claims purely for partisan electoral gain. Such a standard would benefit the law, the courts, and voters of all races and parties.

CONCLUSION

Amici respectfully request that the Court consider the arguments above in adjudicating the Petitioners’ claim.

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

Dated: New York, New York
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Respectfully submitted,

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