

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

AMICUS BRIEF OF PROFESSORS RUTH M. GREENWOOD AND NICHOLAS O. STEPHANOPOULOS IN SUPPORT OF NEITHER PARTY ON THE PETITION AND MOTION TO DISMISS

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INTERESTS OF THE AMICI

Amici curiae are law professors who research, write about, and litigate using federal and state voting rights acts.

Amicus curiae Nicholas O. Stephanopoulos is the Kirkland & Ellis Professor of Law at Harvard Law School. His works on federal and state voting rights acts include *Race, Place, and Power*, 68 Stan. L. Rev. 1323 (2016), *The Race-Blind Future of Voting Rights*, 130 Yale L.J. 862 (2021) (with Jowei Chen), and *Voting Rights Federalism*, 73 Emory L.J. 299 (2023) (with Ruth M. Greenwood).

Amicus curiae Ruth M. Greenwood is an Assistant Clinical Professor of Law at Harvard Law School and the Director of the Election Law Clinic, also at Harvard Law School. Her works on federal and state voting rights acts include *Fair Representation in Local Government*, 5 Ind. J.L. & Soc. Equal. 197 (2017), and *Voting Rights Federalism*, 73 Emory L.J. 299 (2023) (with Nicholas O. Stephanopoulos).

Together, Amici offer this Court a summary of the legal doctrine and academic scholarship that are relevant to evaluating Petitioners' claim for a "coalition crossover district." Amici also outline the contours of a judicially manageable standard, based on nearly forty years of federal and state jurisprudence, for this type of racial vote dilution claim.

INTRODUCTION

Over a period of several decades, courts and scholars have developed a taxonomy of the different kinds of claims and districts that may be available in voting rights cases. This taxonomy is now clear enough in federal litigation. But it continues to confuse litigants in state voting rights suits. Amici thus write with no particular outcome in mind for this case, but rather to elucidate the state of voting rights law and how best to understand Petitioners' claim here.

Amici first describe the federal courts' long and tortuous history grappling with the array of racial vote dilution claims that minority voters may bring. Misunderstandings were common for many years as courts repeatedly conflated "crossover," "coalition," and "influence" districts. By about 2009, however, consensus finally emerged as to a workable taxonomy. Federal courts now distinguish between "minority opportunity" districts in which minority voters have an opportunity to elect their preferred candidates, and "influence" districts in which minority voters have some electoral sway but *not* enough to elect their candidates of choice. In turn, the broad genus of minority opportunity districts includes three species of seats: (1) majority-minority districts in which minority voters comprise an outright majority; (2) crossover districts where minority voters can elect their preferred candidates with support from some majority voters; and (3) coalition districts where minority voters from two or more racial or ethnic groups, together, can elect their mutual candidates of choice.

Amici then address Petitioners' claim in this case. Petitioners' filings do not adhere to the above taxonomy. In a throwback to the pre-2009 era when confusion reigned among federal courts, these materials freely mix the concepts of "opportunity," "crossover," and "influence." Nevertheless, in Amici's view, the crux of Petitioners' grievance is reasonably clear. They contend that New York's Eleventh Congressional District is racially dilutive, in violation of New York's Constitution, because a "coalition crossover" district could have been—but was not—drawn in the area. A coalition crossover district is a minority opportunity district, *not* an influence district. Specifically, it is a minority opportunity district in which minority voters from two or more racial or ethnic groups, in combination with some majority voters, can elect the minority coalition's preferred candidates.

Finally, Amici set forth a legal standard for crossover claims (like Petitioners’) derived from existing case law and scholarship. For a potential district to qualify as a crossover district, minority voters, not majority voters, must effectively determine which candidates prevail. Minority voters hold this level of electoral clout when their candidates of choice are typically nominated in the primary election over majority voters’ preferred candidates (and when minority-favored candidates ultimately win the general election). Whether minority voters outnumber majority voters in the relevant primary election is a proxy for this degree of political strength. If possible, though, it is better to examine voters’ choices (and candidates’ success) than to rely on voters’ raw numbers.

Again, Amici take no position on whether Petitioners can satisfy this standard for crossover claims. Amici merely seek to clarify what Petitioners are arguing and how their suit should be assessed.

ARGUMENT

I. Federal Law Supplies a Specific Taxonomy for Racial Vote Dilution Claims that Should Be Used to Classify Petitioners’ Suit.

A. The *Gingles* Framework Has Governed Racial Vote Dilution Claims Under the Federal Voting Rights Act (“VRA”) Since 1986.

The United States Supreme Court introduced the still-operative framework for assessing whether an electoral system (including a district plan) results in the dilution of the right to vote based on race in the seminal case of *Thornburg v. Gingles*, 478 U.S. 30 (1986). There, the Court was asked to interpret, for the first time, a newly written section of the federal VRA, Section 2, now codified at 52 U.S. § 10301 (hereafter “Section 2”). Section 2 provides that a political subdivision may not apply a voting practice that “results” in “less opportunity” for members of any racial or ethnic group “to elect representatives of their choice” on account of race. This

wording begs two questions. What is the right amount of opportunity that a racial or ethnic group should have to elect a preferred representative? And how does one determine if a voting system does, in fact, abridge that right level of opportunity? The Court initially answered these questions in *Gingles* and courts across the country added nuance to these answers in subsequent cases.

The Court's framework for racial vote dilution claims under Section 2 starts with the three so-called *Gingles* preconditions, followed by a totality of the circumstances analysis. *See, e.g., Allen v. Milligan*, 599 U.S. 1, 18 (2023). The three preconditions, which must be satisfied for a claim to proceed, are as follows: "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) "Second, the minority group must be able to show that it is politically cohesive;" (3) "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 50-51. Once these preconditions are established, the plaintiff "must also show, under the 'totality of circumstances,' that the political process is not 'equally open' to minority voters." *Milligan*, 599 U.S. at 18 (quoting *Gingles*, 478 U.S. at 45-46). The factors relevant to the totality of the circumstances test were laid out in a Senate report that accompanied the amended text of Section 2 in 1982. *See generally* S. Rep. No. 97-417 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177.

The first *Gingles* precondition requires a plaintiff to prove the existence of what has been called a "benchmark undiluted voting practice." *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 28 (2025), *aff'd*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025) (citations and internal quotation marks omitted). Specifically, a plaintiff must show that an additional, reasonably configured district can be drawn in which the identified racial minority "has the potential to elect a representative of its own choice." *Milligan*, 599 U.S. at 18 (quoting *Grove v. Emison*, 507 U.S.

25, 40 (1993)). The implication of this demonstration (when combined with the other *Gingles* preconditions and the totality of the circumstances analysis) is that the electoral system at issue is offering *less opportunity* to voters of the specified racial minority to elect their candidates of choice than they would have under the benchmark policy.

Federal courts have developed a taxonomy of the types of districts that can (and cannot) be used to meet the first *Gingles* precondition's benchmark requirement. We sketch the history of this development in the next section, but to state at the outset, as of the filing of this brief, Supreme Court precedent is clear: a plaintiff must show that the specified racial minority can constitute more than fifty percent of the voting age population of an additional, reasonably configured, single-member district. *Milligan*, 599 U.S. at 20. These districts are called "majority-minority" districts. *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009). The term majority-minority is used in contrast to a district where "a racial minority could elect its candidate of choice [only] with support from crossover majority voters." *Id.* at 6. Since *Bartlett* in 2009, the Court has accepted the "lingo of voting law" such that the term "'crossover' district" means a district "in which members of the majority help a 'large enough' minority to elect its candidate of choice." *Cooper v. Harris*, 581 U.S. 285, 303 (2017) (quoting *Bartlett*, 556 U.S. at 13). And because the Court in *Bartlett* closed the door to plaintiffs offering crossover districts as proof of compliance with the first *Gingles* precondition, the federal courts have not expounded since then on what a "large enough" minority community is for purposes of a crossover district.

Amici next review the case law on how to think about and define districts with sizeable, albeit less than majority, shares of minority voters. We hope to assist the Court in developing a workable definition of a crossover district for racial vote dilution claims under the New York Constitution.

B. For Two Decades, Federal Courts Inconsistently Used the Terms “Crossover District,” “Coalition District,” and “Influence District.”

The Court in *Gingles* introduced the term “crossover” to describe white voters who vote with minority voters to support their preferred candidates—while most white voters vote as a bloc that “normally . . . defeat[s] the combined strength of minority support plus white ‘crossover’ votes.” *Gingles*, 478 U.S. at 56. This statement remains a helpful guide to what courts today consider to be “crossover districts.” Between 1986 and 2009, however, federal (and state) courts meandered between the terms “crossover,” “coalitional,” and “influence” as they sought to understand which kinds of potential districts could give rise to claims under Section 2.

The California Supreme Court considered this issue in 1992, in the context of reviewing congressional and state legislative plans drawn by three special masters following a legislative impasse. That court “recognized the propriety of forming minority influence districts to maximize the voting potential of geographically compact minority groups of appreciable size . . . even though the individual minority groups . . . were of insufficient size to constitute a majority in their voting districts.” *Wilson v. Eu*, 823 P.2d 545, 550 (Cal. 1992) (citations omitted). The U.S. Supreme Court proceeded similarly in 1993, describing as “influence districts” those where “[B]lack voters would not constitute a majority but in which they could, with the help of a predictable number of cross-over votes from white voters, elect their candidates of choice.” *Voinovich v. Quilter*, 507 U.S. 146, 150 (1993). A year later, in 1994, the Court referred to a “so-called influence district” as one where “members of a minority group are a minority of the voters, but a potentially influential one.” *Johnson v. De Grandy*, 512 U.S. 997, 1009 (1994). The Court added that it would “assume without deciding that even if Hispanics are not an absolute majority of the relevant population in the additional districts, the first *Gingles* condition has been satisfied.” *Id.*

Soon after, in 1997, the U.S. District Court for Massachusetts used the term “influence district” in a new way. The court characterized such a district as one where “no viable candidate can ignore minority interests, because of the minority’s strong influence at the ballot box.” *Vecinos de Barrio Uno v. City of Holyoke*, 960 F. Supp. 515, 523 (D. Mass. 1997). The court noted that the district in question was 28% Hispanic (by voting age population), but that the Hispanic-preferred candidate got “just under 50%” of the total vote. *Id.* at 527. This conception of an influence district began to distinguish it from a crossover district (rather than to conflate them as courts had done to this point). The idea started to emerge that, while minority voters in a crossover district *can* elect their candidates of choice (with the help of some white voters), minority voters in an influence district must settle for mere influence (not control) over who is elected.

The lingering confusion over the terminology for districts with minority shares below fifty percent reached its apex in the Supreme Court’s opinions in *Georgia v. Ashcroft*, 539 U.S. 461 (2003). While *Georgia* dealt with claims under Section 5, not Section 2, of the federal VRA, the Justices were analyzing minority voting power at the district level and questioning which metrics to use to determine whether minority voting power increased, decreased, or stayed the same. Their comments thus naturally helped shape the developing jurisprudence under Section 2 of the VRA. At various times, Justice O’Connor, writing for the Court in *Georgia*, referred to districts where a racial minority had some power but did not make up a majority as “influence districts.” Early in the opinion, she suggested that “so-called ‘influence’ districts [are] where [B]lack voters would be able to exert a significant—if not decisive—force in the election process.” *Id.* at 470. Justice O’Connor later defined “influence districts” as those “where minority voters may not be able to elect a candidate of choice but can play a substantial, if not

decisive, role in the electoral process.” *Id.* at 482. In these statements, she seemed to say that an influence district is something *less than* a district where minority voters have an opportunity to elect candidates of their choice.

However, in other parts of the opinion, Justice O’Connor referenced studies that “have suggested that the most effective way to maximize minority voting strength may be to create influence or coalitional districts.” *Id.*¹ This implies that an influence district is one where a racial minority has the opportunity to elect candidates of choice. Similarly, Justice O’Connor discussed how “[t]he 34 districts in the proposed plan with a [B]lack voting age population of above 20% consist almost entirely of districts that have an overall percentage of Democratic votes of above 50%.” *Id.* at 489. The inference is that an influence district entails minority voters being able to elect their candidates of choice (most likely, Democrats). But a moment later, Justice O’Connor stated that, even though one of the thirty-four districts she identified would not elect a Democrat, the Black voters in that district still “will constitute an effective voting bloc, even if they cannot always elect the candidate of their choice.” *Id.* Here, Justice O’Connor thus seemed to return to defining influence districts as *less than* districts where minority voters can usually elect their candidates of choice. In his dissent, Justice Souter lambasted the majority for its flip-flopping use of the term “influence,” and argued that “‘influence’ must mean an opportunity to exercise power effectively.” *Id.* at 494 (Souter J, dissenting). But even Justice Souter changed his mind in the next case to come to the Court.

In that case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), Justice Kennedy endorsed one of *Georgia*’s notions of an influence district: namely, “‘where minority voters may not be able to elect a candidate of choice but can play a substantial,

¹ Justice O’Connor’s use of the term “coalitional” as a synonym for “influence” here is at odds with the settled federal definition of a “coalition district” today. *See infra* Section I.D.

if not decisive, role in the electoral process.” *Id.* at 446 (quoting *Georgia*, 539 U.S. at 482).

Helpfully, Justice Kennedy contrasted this concept of an “influence district” with what we now call a “crossover district,” which he explained is a district where minority voters “constitute ‘a sufficiently large minority to elect their candidate of choice with the assistance of cross-over votes.’” *Id.* at 443 (quoting *Voinovich*, 507 U.S. at 158). And so appears the clear distinction by federal courts between “crossover districts” where minority voters have an opportunity to elect their preferred candidates and “influence districts,” which are a different species altogether.

In *LULAC*, Chief Justice Roberts further used the term “minority opportunity districts” to describe districts where there is a “sufficiently large minority population to elect candidates of its choice.” *Id.* at 496 (Roberts, C.J., concurring in part and dissenting in part). This term serves as an umbrella for majority-minority and crossover districts—but it excludes influence districts, in which minority voters are unable to elect their top-choice candidates. In his opinion, lastly, Justice Souter offered a useful framework for determining if there are sufficient crossover votes to ensure that voters from the relevant racial minority have an opportunity to elect their preferred candidates. A district should qualify as a crossover district, according to Justice Souter, if “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.” *Id.* at 485-86 (Souter, J., concurring in part and dissenting in part).

C. In 2009, the Supreme Court Finally Made a Bright-Line Distinction Between “Majority-Minority Districts” and “Crossover Districts.”

Finally, in *Bartlett*, the Supreme Court clarified that there are two types of “minority opportunity” districts: “majority-minority districts” on the one hand, and “crossover districts” on the other. The Court thus reaffirmed the terminology that Chief Justice Roberts had used in *LULAC*, noting that, “[i]n majority-minority districts, a minority group composes a numerical,

working majority of the voting-age population.” *Bartlett*, 556 U.S. at 13. The Court added that “[a]t the other end of the spectrum are influence districts, in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected.” *Id.* And the Court offered a similar definition of crossover districts to that suggested by Justice Souter in *LULAC*: “Like an influence district, a crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate.” *Id.*

Since *Bartlett* barred crossover claims under Section 2, the term “crossover district” has been referenced only briefly by the Supreme Court. The Court has continued to adhere, though, to *Bartlett*’s clear definition of a crossover district as one where minority voters make up less than a majority but nonetheless have the opportunity to elect their candidates of choice. For example, in a dissent, Justice Scalia distinguished between briefing that identified “a potential crossover district” and his view that there was insufficient evidence with respect to “majority-minority districts.” *Ala. Leg. Black Caucus v. Ala.*, 575 U.S. 254, 290-291 (2015) (Scalia, J., dissenting); *see also Harris*, 581 U.S. at 303 (describing the term crossover district as part of “the lingo of voting law.”)

In contrast to the (now) relatively stable definition of a crossover district, the term “influence district” has not been given any further texture by the federal courts since *Bartlett*. The only hint of judicial elaboration on what an influence, as opposed to a crossover, district might be came from the California Supreme Court—but in an opinion *declining* to decide what constitutes an influence district. According to that court, “a protected class’s ability to influence

the outcome of an election could include, for example, ‘forming a coalition with another group to elect a candidate acceptable to each’ or ‘blocking an unacceptable candidate.’” *Pico Neighborhood Ass’n. v. City of Santa Monica*, 534 P.3d 54, 71 (Cal. 2023). But the court made clear that this was only speculation. “We need not decide the scope of the CVRA’s ability-to influence prong in this case, however.” *Id.* Beyond *Pico*, plaintiffs in a New York Voting Rights Act (NYVRA) case made allegations about minority influence. But the consent order entered in that case did not mention influence claims or influence districts. *See* Consent Judgment and Decree, *Coads v. Nassau County Legislature* (N.Y. Sup. Ct., Nassau Cnty., No. 611872/2023), NYSCEF Doc. No. 370 (Jan. 23, 2025).

D. “Coalition Districts” Are Defined as Districts in Which Two or More Protected Classes Are Jointly Able to Elect Mutually Preferred Candidates.

The definition of the last remaining category of districts, “coalition districts,” is relatively uncontroversial under federal law. A coalition district is one where two or more minority racial or ethnic groups, together, have an opportunity to elect mutually preferred candidates. In the past, this term was often conflated by federal courts with “crossover districts,” which feature a minority group achieving electoral success only with support from majority-group voters who “cross over” to support the same candidates. Justice Kennedy effectively clarified this distinction in *Bartlett*:

“[A] crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority’s preferred candidate. . . . This Court has referred sometimes to crossover districts as ‘coalitional’ districts, in recognition of the necessary coalition between minority and crossover majority voters. *See Georgia v. Ashcroft*, 539 U.S. 461, 483 (2003) . . . But that term risks confusion with coalition-district claims in which two minority groups form a coalition to elect the candidate of the coalition’s choice. *See, e.g., Nixon v. Kent County*, 76 F.3d 1381, 1393 (C.A.6 1996) (en banc).”

Bartlett, 556 U.S. at 13.

While federal appellate courts are split as to whether Section 2 authorizes coalition claims, they agree on what a coalition claim is—two or more racial or ethnic minority groups uniting to obtain a minority opportunity district in which the coalition can elect candidates of that coalition’s choice—without any crossover support from majority voters. *See Petteway v. Galveston Cnty.*, 111 F.4th 596, 601-03 (5th Cir. 2024) (concluding that coalition claims, which allow minority groups to “aggregate their populations,” are unavailable under Section 2); *Clerveaux v. East Ramapo Centr. Sch. Dist.*, 984 F.3d 213, 332–233 (2d Cir. 2021) (holding that the second and third *Gingles* preconditions were met where “[B]lack and Latino residents were politically cohesive and . . . white residents voted as a bloc.”); *Nixon v. Kent Cnty.*, 76 F.3d 1381, 1389-92 (6th Cir. 1996) (ruling that Congress did not intend to cover minority coalition claims when it enacted the VRA because coalitions are not homogenous); *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*, 906 F.2d 524, 527 (11th Cir. 1990) (analyzing whether Black and Hispanic populations formed a political coalition). These courts’ specific discussions of coalition districts reveal a federal consensus as to what these districts are (though not whether coalition claims are available under Section 2).

Additionally, the definitions of coalition and crossover districts can be combined to yield “coalition crossover districts.” These are districts in which voters from two or more racial or ethnic groups join with some number of voters from the majority racial or ethnic group in the jurisdiction (who cross over to vote with the coalition voters) to elect candidates of the coalition’s choice. Coalition crossover districts can be contrasted with “coalition majority-minority districts,” in which voters from two or more racial or ethnic groups constitute an outright majority of the population.

II. Petitioners' Claim, Properly Understood Using "Voting Rights Lingo," Is a Claim for a "Coalition Crossover District."

Turning from the taxonomy of different districts to Petitioners' claim in this case, their filings are ambiguous with respect to their exact grievance. *See generally* Petition, NYSCEF Doc. 1; Memorandum of Law in Support of Petition (hereafter "Petitioners' Br."), NYSCEF Doc. 63. In Amici's view, Petitioners' materials are best understood as stating a claim for a "coalition crossover district." Amici recommend that the Court adopt this terminology and recognize Petitioners' claim as such. Of course, New York courts may treat coalition crossover claims differently from federal law. To avoid linguistic and conceptual confusion, though, the Court should use the vocabulary of federal law even if the Court diverges substantively from it.

Petitioners begin their petition by suggesting that the terms "crossover district" and "influence district" are interchangeable. Petition ¶ 8, NYSCEF Doc. 1. Later, Petitioners assert that the NYVRA requires plaintiffs to show that a protected class has a "lack of electoral influence." *Id.* ¶ 46 ("A plaintiff need only show that the current district map is responsible for the protected class's lack of electoral *influence* based on the existence of racially polarized voting or the totality of the circumstances.") Yet, in the very same paragraph, Petitioners offer a citation to a case—*Clarke*—about a vote dilution claim seeking electoral *opportunity* for the identified protected classes under the NYVRA. Petitioners cite a portion of *Clarke* that explains that the NYVRA allows for remedies where "minorities [can] elect their candidates of choice" (despite being less than a majority in a single-member district). *Id.* (quoting *Clarke*, 237 A.D.3d at 38, and N.Y. Elec. Law § 17-206(c)). This passage in *Clarke* assesses whether a protected class (or classes) have electoral *opportunity*, not whether they merely have electoral *influence* short of opportunity. Petitioners then seemingly confirm that their claim is one for a crossover district in paragraph 47 of the Petition, where they abandon any mention of influence districts and state that

“the voters of New York . . . made the choice to go beyond the scope of the federal Voting Rights Act and protect coalition and crossover districts.” *Id.* ¶ 47.

That Petitioners are best understood as pursuing a coalition crossover (not an influence) district is further shown by their brief in support of their petition. NYSCEF Doc. 63. Throughout the brief, Petitioners refer to the ability of minority voters “to elect candidates of their choice and influence elections” as a unitary concept, rather than two separate types of power. *Id.* at 8, 10, 15, 19, 21, 26. In each case, Petitioners use the term “influence” in conjunction with the ability or opportunity to elect candidates of choice. Petitioners give no other dimension to the term “influence.” They do not write of “gratuitous cracking of a large, compact, politically cohesive” minority community, as did the plaintiffs in a recent NYVRA case. *See* Complaint, ¶ 46, *New York Communities for Change v. County of Nassau*, No. 602316/2024 (Sup. Ct., Nassau Cnty, Feb. 7, 2024). Nor do they mention “blocking an unacceptable candidate,” as the California Supreme Court alluded in its opinion in *Pico*, 534 P.3d at 71.

Accordingly, while Petitioners sometimes use ambiguous language in their filings, the thrust of their complaint is clearly that a new minority opportunity district (specifically, a coalition crossover district) should be drawn. Amici urge the Court to construe Petitioners’ claim this way—and thus not as a claim for an influence district.

III. The Court Should Assess Petitioners’ Claim for a Coalition Crossover District Using the Standard Developed in Federal Law and Academic Literature.

Unsurprisingly given the Supreme Court’s rejection of crossover claims under Section 2 in *Bartlett*, a majority of the Court has never endorsed a standard for these suits. However, as explained earlier, Justice Souter did propose a definition for crossover districts in *LULAC*, and Justice Kennedy relied on this definition in *Bartlett* (even while precluding relief on this basis). Since *Bartlett*, scholars including one of us have also used essentially this definition to identify

crossover districts. Amici therefore recommend that the Court follow these doctrinal and academic leads in evaluating Petitioners' claim for a coalition crossover district.

In *LULAC*, to reiterate, Justice Souter argued that a crossover district exists where “minority voters . . . constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election.” 548 U.S. at 485-86 (Souter, J., concurring in part and dissenting in part). Justice Souter thereby recognized that minority voters must effectively control a crossover district and that the primary election is often the key to wielding (and ascertaining) control. In *Bartlett*, Justice Kennedy cited this passage from Justice Souter's opinion in *LULAC* and confirmed that “some have suggested using minority voters' strength within a particular party as the proper yardstick.” 556 U.S. at 22. Consideration of both the primary and general elections is also implied by Justice Kennedy's understanding of a crossover district as one where the minority population “is large enough” (despite not comprising a majority) “to elect the candidate of its choice.” *Id.* at 13. A minority population is sufficiently large when it can both nominate its preferred candidate in the primary and see this candidate take office after the general election.

In the academy, scholars, including one of us, have repeatedly assessed whether districts qualify as crossover districts using very similar approaches. In one article, Jowei Chen and amicus Nicholas Stephanopoulos relied on the following working definition of a minority opportunity district: “one where (1) the minority-preferred candidate wins the general election, and (2) minority voters who support the minority-preferred candidate outnumber white voters backing that candidate, provided that (3) minority voters of different racial groups are aggregated only if each group favors the same candidate.” Jowei Chen & Nicholas O. Stephanopoulos, *The Race-Blind Future of Voting Rights*, 130 *Yale L.J.* 862, 899 (2021). Any minority opportunity

district must satisfy the first element. The second element is the one that ensures that minority voters in a crossover district effectively control the district—because their votes outnumber white voters’ votes for the minority-preferred candidate. *See also, e.g.*, Nicholas O.

Stephanopoulos, Eric McGhee & Christopher Warshaw, *Non-Retrogression Without Law*, 2023 U. Chi. Legal. F. 267, 269 (using the same definition).

Because these studies sought to make comparisons across states and lacked data from primary elections, they had to approximate control of the primary by asking if more minority voters than white voters backed the minority-preferred candidate in the general election. Studies of a single state, however, do not face this limitation and do explicitly analyze both primary and general elections. For example, a team of prominent scholars defined a successful outcome for the voters of a minority group in Texas as “one in which the minority-preferred candidate in the primary prevailed in both” that election and the general election. Amariah Becker, Moon Duchin, Dara Gold & Sam Hirsch, *Computational Redistricting and the Voting Rights Act*, 20 Election L.J. 407, 420 (2021). By “*link[ing] the primary . . . to the general election,*” the authors addressed their “main concern here,” which was “whether minority-preferred candidates are ultimately elected to office.” *Id.* at 416.

As this case involves a single state (indeed, a single congressional district within that state), the Court should expect to see data from both primary and general elections. Again, a proposed district should count as a crossover district if minority voters (including from two or more racial or ethnic groups) are able to nominate candidates of their choice in the primary election and if these candidates are ultimately victorious in the general election. If this were a case under the NYVRA (which it is not), a showing that a crossover district could be drawn is insufficient to create liability on its own. This showing indicates only that a reasonable

alternative practice would improve minority voters' representation. The existence of racially polarized voting must also be proven, and it must further be demonstrated that minority voters are currently underrepresented. *See* Plaintiffs-Respondents' Br. at 18-22, *Clarke v. Newburgh*, ___ N.Y.3d ___, 2025 WL 3235042 (Nov. 20, 2025) (No. 84). Amici take no position on whether these additional elements have been (or need to be) established here.

CONCLUSION

Amici support the development of racial vote dilution claims under the New York Constitution but advise the Court to be as clear as possible about the terminology it uses to describe these claims. It took decades to develop a widely accepted taxonomy for these claims, and the confusion that formerly reigned should not be reintroduced. Here, amici read Petitioners' filings as requesting what has been dubbed a "coalition crossover" district according to federal, and some state, jurisprudence. The casual use of the term "influence district" in Petitioners' papers risks muddying the issue before the Court and should not be treated as a claim for the creation of such a district. Under the relatively well-established standard for crossover claims, a key question is whether a district can be drawn in which minority voters, despite not comprising a majority, can control both the primary and general elections. Amici take no stance on the merits of this question, or any other, in the case.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Memorandum complies with the word count limitations set forth in Uniform Rule 202.8-b for the Supreme Court. This Memorandum uses Times New Roman 12-point typeface and contains 5,247 words, excluding parts of the document exempted by Rule 202.8-b. As permitted, the undersigned has relied on the word count feature of this word processing program.

Dated: Cambridge, Massachusetts
January 21, 2026

By: 

Ruth M. Greenwood