SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

Michael Williams, José Ramirez-Garofalo, Aixa Torres, and Melissa Carty, *Petitioners-Respondent,* -against- Board of Election 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; Peter S. Kosinski, in his official capacity as Co-Chair and 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 New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the New York Sate 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, *Respondent-Respondents,* -and- Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba, *Intervenors-Respondents.*	Appellate Division Index No. 2026-00384 New York County Supreme Court Index No.: 164002/2025

NOTICE OF MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF

PLEASE TAKE NOTICE that, upon the annexed Affirmation of Professor Ruth M. Greenwood, dated February 9, 2026, and the accompanying proposed brief, Professors Ruth Greenwood and Nicholas Stephanopoulos will move this Court at the Appellate Division – First Department Courthouse, located at 27 Madison Avenue, New York, New York, on Tuesday February 17, 2026, or as soon thereafter as counsel may be heard, for an Order granting this motion for

leave to file the accompanying brief as *amici curiae* in support of neither party in the above-entitled appeal, and for such other and further relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR 2214(b), answering papers, if any, are to be served upon the undersigned no later than two (2) days prior to the return date of this Motion.

Dated: February 9, 2026
Cambridge, MA

Respectfully submitted

ELECTION LAW CLINIC
AT HARVARD LAW SCHOOL

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
Attorneys for Proposed Amici Curiae
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

To: All Counsel of Record via NYSCEF

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION FIRST DEPARTMENT

Michael Williams, José Ramirez-Garofalo, Aixa Torres, and Melissa Carty, *Petitioners-Respondent,* -against- Board of Election 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; Peter S. Kosinski, in his official capacity as Co-Chair and 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 New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President Pro Tempore of the New York Sate 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, *Respondent-Respondents,* -and- Nicole Malliotakis; Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba, *Intervenors-Respondents.*	Appellate Division Index No. 2026-00384 New York County Supreme Court Index No.: 164002/2025

AFFIRMATION OF PROFESSOR RUTH GREENWOOD IN SUPPORT OF MOTION FOR LEAVE TO APPEAR AS AMICI CURIAE

I, Ruth M. Greenwood, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirm the following to be true under the penalties of perjury, pursuant to CPLR 2106:

1. I am the Director of the Election Law Clinic at Harvard Law School, and the attorney for Professors Nicholas O. Stephanopoulos and Ruth Greenwood with respect to the above-captioned appeal. I am familiar with the facts set forth in this affirmation. I submit this affirmation in support of proposed amici's motion to appear as amici curiae in support of neither party in the above-captioned appeal.

2. Submitted herewith is a copy of the brief Professors Greenwood and Stephanopoulos wish to submit to the Court.

3. Amici curiae are law professors who research, write about, and litigate using federal and state voting rights acts. They have a longstanding interest in the development and application of vote dilution doctrine. They have each published several law review articles on voting rights law and the mechanics of vote dilution claims under state and federal laws.

4. On Friday, December 12, Amici filed a motion, by order to show cause, for leave to participate in the action at the New York Supreme Court as Amici Curiae in support of neither party on the petition and motions to dismiss, along with a proposed brief. That motion was granted on January 20, 2026, and the amicus brief was filed on NYSCEF on January 21, 2026. In that brief, Amici explained the development of vote dilution doctrine and outlined the academic research relevant to evaluating Petitioners' claim for a "coalition crossover district." Amici also proposed a test we believe, based on nearly forty years of

federal and state jurisprudence, to be a judicially manageable standard for this type of racial vote dilution claim.

5. The Supreme Court applied Amici's definition of a "crossover coalition district" to classify Petitioners' vote dilution claim. The court also announced Amici's test as the standard for creating a remedial crossover district. The briefs filed in the above-captioned appeal discuss the merits of the crossover district test as adopted by the Supreme Court. Amici would, therefore, like the opportunity to be heard on the scope and application of the test we proposed.

6. No party or its counsel contributed content to this brief or otherwise participated in the brief's preparation.

7. No party or its counsel contributed money intended to fund preparation or submission of this brief.

8. No person or entity other than movant or its counsel contributed money intended to fund preparation or submission of this brief.

9. Amici respectfully request permission to appear as amici curiae for the following reasons. First, Nicholas O. Stephanopoulos is the Kirkland & Ellis Professor of Law at Harvard Law School, and 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. They research, write about, and litigate

federal and state voting rights law, and so possess knowledge and expertise that may be of special assistance to the Court. *See Kruger v. Bloomberg*, 1 Misc. 3d 192, 198 (Sup. Ct., N.Y. Cnty. 2003) (amicus brief may be granted when brief would be "of special assistance to the court"); *People by Underwood v. Trump*, 62 Misc.3d 500, 505 & n.1 (Sup. Ct., N.Y. Cnty. 2018) (considering the arguments of three law professors as amici curiae). Second, Judge Pearlman citied Amici's prior brief as providing the basis for his decision on Petitioner's vote dilution claim. Amici believe additional briefing on Petitioners' crossover coalition claim and how the Supreme Court applied its test would prove helpful to this Court in considering this appeal.

10. Additionally, Amici respectfully request permission to participate in the case because the unusual circumstances of this case create a need for Amici's experience and qualifications in voting rights law. This is the first vote dilution claim brought under the New York Constitution's redistricting amendments. As Petitioners' filings have demonstrated, vote dilution and redistricting doctrines are conceptually challenging. The briefing in this case has presented conflicting definitions of the kinds of vote dilution remedies requested, enhancing the difficulty of deciphering the elements of the claim and the appropriate relief.

11. Counsel for Amici emailed counsel for all parties on February 3, 2026 seeking their position on Amici's motion for leave to file an amicus brief, and all parties took no position on the motion.

WHEREFORE, I respectfully request that the Court grant the Amici leave to file the *amici curiae* brief, attached as Exhibit A.

I affirm this 9th day of February, 2026, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: February 9, 2026
Cambridge, MA

Respectfully submitted

ELECTION LAW CLINIC
AT HARVARD LAW SCHOOL

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
Attorneys for Proposed Amici Curiae
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

Exhibit A

Appellate Division – First Department Index No. 2026-00384
On Appeal from the New York Supreme Court, Index No. 164002/2025

Supreme Court of the State of New York
Appellate Division – First Department

MICHAEL WILLIAMS, ET AL.,

Petitioners-Respondents,

-against-

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, ET AL.,

Respondents,

and

PETER S. KOSINSKI, ANTHONY J. CASALE, AND RAYMOND J. RILEY III,

Respondent-Appellants,

and

REPRESENTATIVE NICOLE MALLIOTAKIS, ET AL.,

Intervenor-Appellants.

PROPOSED BRIEF OF RUTH GREENWOOD AND NICHOLAS STEPHANOPOULOS AS *AMICI CURIAE* IN SUPPORT OF NEITHER PARTY

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

Counsel for Proposed Amici Curiae

Dated February 9, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases (cont'd) **Page(s)**

Constitutional Provisions

Statutes

Other Authorities

STATEMENT OF INTEREST

Amici curiae are law professors who research, write about, and litigate using federal and state voting rights acts. They have a longstanding interest in the development and application of vote dilution doctrine.

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 make two points about the Supreme Court's decision in this case. First, the court correctly construed Petitioners' claim as a claim for a coalition crossover district and set forth the proper standard for this kind of allegation. Second, however, the court failed to apply the standard it laid out because it

believed this analysis could be deferred to the remedial stage of the litigation. In fact, before *liability* may be imposed in a vote dilution suit, it must be clear that a reasonable alternative policy exists that would cure the plaintiffs' harm.

INTRODUCTION

The Supreme Court was confronted with a complex and novel case. Petitioners are the first to assert a vote dilution claim under Article III, Section 4(c)(1) of the New York Constitution. Their presentation of this claim was also ambiguous. At times, their filings seemed to seek the creation of a coalition crossover district: a district in which a coalition of minority groups, together comprising less than fifty percent of the district's population, would in fact be able to elect the groups' mutually preferred candidate. At other times, Petitioners' filings appeared to ask for an influence district: a district in which minority voters are able to exert substantial influence over electoral outcomes but *not* to elect their candidate of choice.

In the face of this uncertainty, the Supreme Court correctly construed Petitioners' claim as a coalition crossover claim. *See* NYSCEF Doc. 217 at 14. Not only is this type of claim more consistent with the language of Article III, Section 4(c)(1), most of Petitioners' materials emphasized minority voters' potential opportunity to elect their preferred candidate in a reshaped district. This

opportunity to elect is a hallmark of a coalition crossover district—and its absence is the defining characteristic of an influence district. The Court also set forth the proper standard for a coalition crossover claim. A hypothetical district qualifies as a coalition crossover district only if (1) a coalition of minority groups, amounting to less than fifty percent of the district's population, would usually be able to nominate the groups' mutual candidate of choice in the primary election; and (2) this candidate would usually prevail in the general election. *See id.* at 15.

The Supreme Court went astray, however, when it thought this standard had been satisfied. The court believed that vote dilution liability could be proven *solely* based on racially polarized voting, historical and ongoing discrimination, and a lack of current representation for minority voters—*without* determining whether a coalition crossover district could actually be drawn. In the court's view, this determination should be made at the remedial, not the liability, stage. But this position is at odds with both the concept of, and the case law on, vote dilution. A group's representation can be deemed diluted only if a showing has been made that a reasonable alternative policy would improve the group's representation. As the California Supreme Court recently put it, "what is required to establish 'dilution' . . . is proof that, under some lawful alternative electoral system, the protected class would have the potential . . . to elect its preferred candidate." *Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 60 (Cal. 2023).

True, district configuration and performance must *also* be evaluated at the remedial stage. The Supreme Court was not wrong about that. But this remedial evaluation cannot substitute for the earlier assessment at the liability stage because they serve different functions. The question at the liability stage is whether a reasonable alternative district exists that could bolster the plaintiffs' representation; only if so can the existing district configuration be dilutive. In contrast, the remedial issue is whether a particular proposed district—like one drawn by the legislature or offered by a party—would in fact cure the identified dilution and be otherwise lawful. Critically, the hypothetical district put forward at the liability stage need not be the same as the remedial district ultimately adopted.

Amici take no position on what result should follow here from the application of the proper standard for coalition crossover claims. Amici's view is simply that Congressional District 11 should not be invalidated unless and until a court concludes that this standard has been met.

ARGUMENT

I. The Supreme Court Correctly Construed Petitioners' Claim and Set Forth the Proper Standard for Coalition Crossover Claims.

A. As flagged above, Petitioners' suit is the first to allege a violation of Article III, Section 4(c)(1) of the New York Constitution. The litigation is novel in other respects as well. Very few vote dilution cases have been brought under state

constitutions (as opposed to state voting rights acts or the federal Voting Rights Act (VRA)). And very few vote dilution cases seeking the creation of crossover districts have been filed since the U.S. Supreme Court held that crossover claims are unavailable under the federal VRA in *Bartlett v. Strickland*, 556 U.S. 1 (2009).

The Supreme Court faced not just a novel suit but also a somewhat confusing one. As amici explained in their brief to that court, Petitioners' filings "freely mix[ed] the concepts of 'opportunity,' 'crossover,' and 'influence,'" sometimes seeming to request a new coalition crossover district, elsewhere appearing to call for a new influence district, and in still other places combining these formulations. NYSCEF Doc. 135 at 7. For example, one paragraph of the petition asserted that liability should arise if a district map "is responsible for the protected class's lack of electoral *influence*." NYSCEF Doc. 1 ¶ 46. The next paragraph switched from the language of "influence" to that of "coalition" and "crossover" claims, stating 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.* at ¶ 47. Then in their brief, Petitioners typically merged these concepts into a unitary idea, arguing that the current boundaries of Congressional District 11 impair minority voters' ability "to elect candidates of their choice *and* influence elections." NYSCEF Doc. 63 at 8, 10, 15, 19, 21, 26 (emphasis added).

B. By way of background, vote dilution law distinguishes between opportunity districts, influence districts, and all other districts. Minority voters have the ability to elect their candidate of choice in an opportunity district (thanks to the turnout and electoral decisions of minority and non-minority voters alike). In an influence district, minority voters cannot elect their preferred candidate but do have some sway over electoral outcomes (for instance, by blocking the election of their least-preferred candidate). And in all other districts, minority voters can neither elect their candidate of choice nor exert substantial electoral influence.

Opportunity districts, in turn, are divided between majority-minority and crossover districts. Minority voters comprise an outright majority of the population in a majority-minority district. They make up less than fifty percent of the population in a crossover district (and so must rely on some crossover support from white voters to elect their preferred candidate). In both a majority-minority and a crossover district, minority voters can belong to a single racial or ethnic group or to multiple such communities. Where multiple racial or ethnic groups are mutually politically cohesive, and are able to elect their jointly favored candidate, an opportunity district is known as a coalition district. *See, e.g.*, *Bartlett*, 556 U.S. at 13-14 (plurality opinion) (discussing this terminology); NYSCEF Doc. 135 at 8-17 (same).

As noted, crossover claims have been barred under the federal VRA since 2009. The U.S. Supreme Court also does not recognize claims for influence districts under the federal VRA. *See League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399, 445-46 (2006) (opinion of Kennedy, J.). However, the Court has assumed that coalition claims *may* be brought under the federal VRA, *see, e.g.*, *Growe v. Emison*, 507 U.S. 25, 41 (1993), and most federal courts, including the Second Circuit, agree that these claims are available, *see, e.g.*, *NAACP Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379 (S.D.N.Y. 2020), *aff'd*, 984 F.3d 213 (2d Cir. 2021).

C. Here, amici argued in their Supreme Court brief that Petitioners' claim is best understood as a coalition crossover claim—an allegation that Congressional District 11 is dilutive because it is not an opportunity district and could be replaced by a coalition crossover district in which minority voters *would* be able to elect their candidate of choice. *See* NYSCEF Doc. 135 at 18-19. The court construed Petitioners' claim the same way, stating that it "sees this as a crossover claim." NYSCEF Doc. 217 at 14; *see also id.* at 12-13 (holding that vote dilution was established with respect to a coalition of Black and Latino voters).

The Supreme Court's interpretation of Petitioners' claim was sensible. While their filings were opaque at times, "the thrust of their complaint [was] clearly that a new minority opportunity district (specifically, a coalition crossover district)

should be drawn." NYSCEF Doc. 135 at 19. The phrasing of Article III, Section 4(c)(1) also more plainly authorizes a coalition crossover claim (a type of claim for an opportunity district) than an influence claim. Unlike the New York Voting Rights Act (NYVRA), *see* N.Y. Elec. Law § 17-206(2)(a), the constitutional provision does not use the term "influence." But it does refer to the "opportunity" of "racial or minority language groups" to "elect representatives of their choice." N.Y. Const. art. III, § 4(c)(1). This sentence explicitly contemplates that a claim for an opportunity district may be brought. A coalition crossover claim, again, is merely one such claim.

D. After correctly construing Petitioners' claim, the Supreme Court set forth the proper standard for a coalition crossover claim. A hypothetical district counts as a crossover district if, first, "minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election." NYSCEF Doc. 217 at 15. "Second, these candidates must usually be victorious in the general election." *Id.* When these conditions are satisfied, minority voters (whether from a single group or a coalition) are genuinely able to elect their preferred candidates despite comprising less than a majority of the district's population.[1]

[1] The court added a third condition that seems unnecessary to Amici: "the reconstituted district should also increase the influence of minority voters, such that they are decisive in the

As Amici pointed out in their earlier brief, this standard is consistent with the opinions of U.S. Supreme Court justices who have addressed crossover districts. In *LULAC*, 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*, the plurality 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 (plurality opinion). Consideration of both the primary and general elections is also implied by the plurality's understanding of a crossover district as one where the minority population "is large enough" (despite not being a majority) "to elect the candidate of its choice." *Id.* at 13. A minority population is sufficiently large when it can both

---

selection of candidates." NYSCEF Doc. 217 at 15. As long as the challenged district is not an opportunity district and a hypothetical district would be one, the hypothetical district would necessarily "increase the influence of minority voters." *Id.* And minority voters are necessarily "decisive in the selection of candidates" when (as required by the first two conditions) their candidates of choice usually prevail in both the primary and the general election. *Id.*

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 evaluated 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.

A final benefit of this standard is that it eschews racial thresholds for crossover district status. The U.S. Supreme Court is extremely suspicious of such thresholds, viewing them as admissions that race predominated over all other factors. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 299 (2017) (applying strict scrutiny when "the State's mapmakers . . . purposefully established a racial target: African-Americans should make up no less than a majority of the voting-age population"). But this standard does not rely on crude racial quotas. Instead, it asks, as a functional matter, whether minority voters control the primary election because their candidate of choice is usually nominated, and whether they also control the general election because their preferred candidate usually wins that

race, too. Answering these questions requires a sophisticated assessment of voters' likely turnout and electoral decisions. The issues are *not* resolved by simply tabulating a minority group's size.

II. The Supreme Court Erred by Failing to Apply Its Standard for Coalition Crossover Claims.

A. So far, so good. But despite correctly construing Petitioners' claim and setting forth the proper standard for coalition crossover claims, the Supreme Court made a serious mistake in its decision. Fundamentally, the court did not *apply* its own standard. That is, the court did not examine whether the demonstrative district offered by Petitioners was, in fact, a coalition crossover district (and otherwise lawful). This district combines Staten Island with a portion of lower Manhattan rather than southern Brooklyn. *See* NYSCEF Doc. 217 at 13. The court did not consider whether a coalition of minority voters in this district would usually be able to nominate their candidate of choice in the primary election and, if so, whether this candidate would usually prevail in the general election as well.

The Supreme Court did not perform this analysis because it apparently believed that vote dilution liability arises when three elements are present: racially polarized voting, historical and ongoing discrimination highlighted by the totality

of the circumstances, and a lack of current representation for minority voters.[2] *See* NYSCEF Doc. 217 at 8-13 (discussing relevant evidence). These three elements are indeed necessary—but they are insufficient to establish vote dilution liability. What is missing is a showing that minority voters' current underrepresentation could be *ameliorated* by a reasonable alternative policy: here, a new coalition crossover district that complies with all federal and state legal requirements. Without this showing, it might be that no plausible remedy could improve the representation of minority voters in Congressional District 11. In that case, linguistically and legally, one would not say that these voters are the victims of vote dilution since the concept implies the existence of an available undiluted state.

B. Justice Scalia once humorously expressed the idea that vote dilution requires an undiluted baseline at an oral argument. "It seems to me you need a standard for dilution," he told Solicitor General Ken Starr. "You don't know what watered beer is unless you know what beer is, right?" Transcript of Oral Argument at 8, *Chisom v. Roemer*, 501 U.S. 380 (1991) (Nos. 90-757, 90–1032).

[2] The court also focused on minority voters' lack of representation in Congressional District 11 alone. But vote dilution occurs across multiple districts (typically, a geographic region or an entire jurisdiction). The court should thus have asked whether minority voters are underrepresented in part or all of New York State, not solely in Congressional District 11. *See, e.g.*, *Johnson v. De Grandy*, 512 U.S. 997, 1013-16, 1023-24 (1994) (finding no vote dilution in the Dade County portions of Florida state legislative plans because both Black and Hispanic voters already received close to proportional representation in this area).

In the *Gingles* framework for vote dilution claims under the federal VRA, the first precondition serves the purpose of identifying an undiluted baseline to which the challenged plan is then compared. The first precondition requires a plaintiff to prove that a minority group is "sufficiently large and geographically compact to constitute a majority in [an additional] single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). When a plaintiff makes this showing, "minority voters possess the *potential* to elect [more] representatives" than they do under the "challenged structure or practice." *Id.* n.17. Conversely, if the first precondition is not satisfied, minority voters "cannot claim to have been injured by that structure or practice." *Id.*

The U.S. Supreme Court has confirmed the baseline-identifying function of the first *Gingles* precondition in subsequent cases. In *Growe*, the Court explained that this element is "needed to establish that the minority has the potential to elect a representative of its own choice in [an additional] single-member district." 507 U.S. at 40. "Unless [this] point[] [is] established, there neither has been a wrong nor can be a remedy." *Id.* at 40-41. More recently, in *Allen v. Milligan*, 599 U.S. 1 (2023), the Court observed that "[e]ach *Gingles* precondition serves a different purpose." *Id.* at 18. "The first, focused on geographical compactness and numerosity," does what the Court said in *Growe*: ensure that a hypothetical district map exists that is better in terms of minority representation and still compliant with

traditional line-drawing criteria. *Id.*; *see also, e.g.*, *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 480 (1997) ("Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must . . . postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice.").

C. While state voting rights acts diverge from the federal VRA in several ways, they share its approach that liability may be imposed only if the existence of a reasonable alternative policy that better represents the plaintiffs is proven. For instance, in the second appellate decision interpreting the NYVRA, the Appellate Division held that, "in order to obtain a remedy under the NYVRA, a plaintiff . . . must show that 'vote dilution' has occurred." *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 39 (2d Dep't 2025). In turn, vote dilution has occurred only if "there is an alternative practice that would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Id.* (quoting N.Y. Elec. Law § 17-206(5)(a)). "Thus," the court concluded, "the NYVRA does not significantly differ from the FVRA in this respect." *Id.*

Similarly, the California Supreme Court held in *Pico Neighborhood Association* that, to succeed under the California Voting Rights Act (CVRA), a plaintiff must do more than show racially polarized voting and a lack of minority representation. "[W]hat is [also] required to establish 'dilution' . . . is proof that,

under some lawful alternative electoral system, the protected class would have the potential . . . to elect its preferred candidate." *Pico Neighborhood Association*, 534 P.3d at 60. According to the court, this element is necessary because, otherwise, "a party [could] prevail based solely on" racially polarized voting and minority underrepresentation "that could not be remedied or ameliorated by any other electoral system." *Id.* at 65. The reasonable-alternative-policy requirement ensures that there could be "a net gain in the protected class's potential to elect candidates under an alternative system." *Id.* at 69; *see also* Ruth M. Greenwood & Nicholas O. Stephanopoulos, *Voting Rights Federalism*, 73 Emory L.J. 299, 345-46 (2023) (arguing that state voting rights acts plaintiffs should "identify a benchmark relative to which their underrepresentation would be evaluated").

D. Federal and state vote dilution precedents make clear, then, that the Supreme Court erred by imposing liability without first investigating whether Petitioners' demonstrative district qualifies as a coalition crossover district (and is otherwise lawful). Contrary to the court's decision, *see* NYSCEF Doc. 217 at 13-15, this question is part of the *merits* analysis of this (and any other) vote dilution case. It is not an issue that can be deferred to the remedial stage.

That said, the Supreme Court was right that district configuration and performance must be examined anew at the remedial stage. At this stage, a court knows that a new district *could* be drawn that would improve the plaintiffs'

representation and comport with all federal and state requirements. Again, demonstrating this is the whole point of the reasonable-alternative-policy requirement at the liability stage. Now, however, a court must determine whether a proposed remedial district *would* actually cure the vote dilution by bolstering the plaintiffs' representation. This potential district could be enacted by the legislature, put forward by a party, or crafted by the court itself, possibly with the assistance of a special master. Regardless of the remedial district's provenance, the court must ensure that it would fully cure the violation. *See, e.g.*, N.Y. Elec. Law § 17-206(5)(a) ("Upon a finding of a violation . . . the court shall implement appropriate remedies to ensure that voters of [all racial and ethnic groups] have equitable access to fully participate in the electoral process . . .").

Of course, if the remedial district contemplated by the court is the same as the demonstrative district used earlier to satisfy the reasonable-alternative-policy requirement, the liability and remedial analyses are identical. But "the remedy the court ends up selecting . . . need not[] be the benchmark the plaintiff offered to show the element of dilution." *Pico Neighborhood Ass'n*, 534 P.3d at 69. And when the demonstrative district and the potential remedial district are different, the latter may not cure the violation even if the former, had it been adopted, would have done so.

To illustrate, in the *Milligan* litigation in which the U.S. Supreme Court recently reaffirmed the viability of vote dilution claims, the district court initially held that the plaintiffs satisfied the first *Gingles* precondition by offering several demonstrative maps containing two reasonably-configured Black-majority districts (compared to one in the enacted plan). *See Singleton v. Merrill*, 582 F. Supp. 3d 924, 1004-16 (N.D. Ala. 2022), *aff'd sub nom Allen v. Milligan,* 599 U.S. 1 (2023). After liability was found, however, Alabama declined to accept any of the plaintiffs' demonstrative maps, instead ratifying its own new plan. At the remedial stage, the district court rejected this plan on the ground that it did "not completely remedy the likely [federal VRA] violation" because it included only one rather than the necessary two Black opportunity districts. *Singleton v. Allen*, 690 F. Supp. 3d 1226, 1295 (N.D. Ala. 2023).

Accordingly, the Supreme Court was correct that its standard for coalition crossover claims must be applied at the remedial stage to determine if a potential remedial district *would* fully cure a violation. But the court was wrong to think that this standard need only be applied at the remedial stage. To the contrary, it must first be applied at the liability stage to find out if a hypothetical, reasonable district *could* improve the plaintiffs' representation.

E. Amici take no position on what result should follow here from the application of the proper standard for coalition crossover claims. This application

could be conducted by the Supreme Court upon remittitur. It could be conducted by the Appellate Division, to which Intervenor-Respondents have also appealed. *See, e.g.*, *People v. Brenda WW.*, 2025 N.Y. Slip Op. 03643, at 6 (N.Y. June 17, 2025) ("The Appellate Division has the same factfinding ability as the trial courts, and its factual review is plenary."). Amici's view is simply that Congressional District 11 should not be invalidated unless and until a court concludes that this standard has been met.

CONCLUSION

In this complex and novel case, the Supreme Court correctly construed Petitioners' claim as a claim for a coalition crossover district and set forth the proper standard for this kind of allegation. However, the court failed to apply its own standard before imposing liability, mistakenly believing that this application could be postponed until the remedial stage of the litigation. Congressional District 11 should not be struck down unless and until a court determines that a coalition crossover district compliant with federal and state legal requirements could be drawn in its place.

Dated: February 9, 2026
Cambridge, MA

Respectfully submitted,

ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL

by:

Ruth Merewyn Greenwood
Nicholas O. Stephanopoulos
Attorneys for Proposed Amici Curiae
6 Everett Street, Suite 4105
Cambridge, MA 02138
(617) 998-1010
rgreenwood@law.harvard.edu

PRINTING SPECIFICATION STATEMENT

Pursuant to 22 NYCRR § 1250.8(f) and (j)

The foregoing brief was prepared on a computer. A proportional typeface was used as follows:

Name of typeface: Times New Roman

Point size: 14

Line spacing: Double

The total number of words in this brief inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of citations, proof of service, printing specifications statement, or any authorized addendum containing statutes, rules and regulations, etc. is 4,481 words.

Dated: February 9, 2026
Cambridge, MA

/s/ Ruth M. Greenwood

Ruth M. Greenwood

Exhibit B

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. JEFFREY H. PEARLMAN **PART** 44M

Justice

----------X

MICHAEL WILLIAMS, JOSE RAMIREZ-GAROFALO, AIXA TORRES, MELISSA CARTY,

Petitioner,

- v -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK, KRISTEN ZEBROWSKI STAVISKY, RAYMOND J. RILEY, PETER S. KOSINSKI, HENRY T. BERGER, ANTHONY J. CASALE, ESSMA BAGNUOLA, KATHY HOCHUL, ANDREA STEWART-COUSINS, CARL E. HEASTIE, LETITIA JAMES,

Respondent.

----------X

INDEX NO. 164002/2025

MOTION DATE 10/27/2025, 12/08/2025, 12/08/2025

MOTION SEQ. NO. 001 006 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 10, 52, 53, 56, 59, 60, 61, 62, 63, 95, 98, 142, 143, 144, 145, 154, 167, 168, 175, 186, 187

were read on this motion to/for MISCELLANEOUS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 128, 130, 146, 147, 148, 149, 155, 157, 159, 160, 161, 169, 170, 188, 189

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 116, 117, 118, 119, 120, 121, 122, 129, 131, 150, 151, 152, 153, 156, 158, 171, 172, 173, 174, 176, 190, 191

were read on this motion to/for DISMISSAL.

This election case was heard on an expedited basis, beginning with a hearing on November 7, 2025. The parties submitted briefings on the motions addressed in this Order, including reply memoranda, as well as exhibits including reports from expert witnesses. Additional briefing was provided by Amici Curiae. A trial was held from January 5, 2026 through January 8, 2026, during which Petitioners and Respondents were provided with equal

time to make their cases. After the completion of trial, parties provided additional briefing regarding the remedy in this case, as well as post-trial memoranda.

Background

On October 24, 2025, Petitioner Michael Williams, an elector of the state of New York, residing in Richmond County, Petitioner José Ramírez-Garofalo, an elector of the state of New York, residing in Richmond County, Petitioner Aixa Torres, an elector of the state of New York, residing in New York County, and Melissa Carty, an elector of the state of New York, residing in New York County (Collectively, "Petitioners"), filed a petition pursuant to Article III, Sections 4 and 5 of the New York Constitution, Unconsolidated Laws § 4221 (L 1911, ch. 773, § 1), and Civil Practice Law and Rules 3001, requesting: (1) that the Court declare "that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York Constitution by unlawfully diluting the votes of Black and Latino voters in CD-11;" (2) "Pursuant to Art. III, Section 5 of the New York Constitution, ordering the Legislature to adopt a valid congressional redistricting plan in which Staten Island is paired with voters in lower Manhattan to create a minority influence district in CD-11 that complies with traditional redistricting criteria;" (3) that the Court issue "a permanent injunction enjoining [Respondents] and their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in the 2024 Congressional Map, including an injunction barring [Respondents] from conducting any further congressional elections under the current map;" and (4) that the Court "[hold] hearings, [consider] briefing and evidence, and otherwise tak[e] actions necessary to order a valid plan for new congressional districts in New York that comports with Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 2*. On December 8, 2025 Intervenor-Respondents Congresswoman Nicole Malliotakis' and Individual Voters Edward L. Lai, Joel Medina, Solomon

B. Reeves, Angela Sisto, and Faith Togba ("Intervenor-Respondents") filed a Cross-Motion, seeking to dismiss this matter. *NYSCEF Doc. No. 97.*

On December 8, 2025, Respondents Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York ("BOE"), Anthony J. Casale, in his official capacity as a Commissioner of the BOE, and Raymond J. Riley, III ("BOE Respondents", in his official capacity as Co-Executive Director of the BOE filed an additional Cross-Motion, also seeking dismissal. *NYSCEF Doc. No. 116.*

Article III § 4(c) of the New York State Constitution governs redistricting of the state legislative districts and congressional districts, "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Article III § 4(c)(1) states:

> When drawing district lines, the commission shall consider whether such lines would result in the denial or abridgement of racial or language minority voting rights, and districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement of such rights. Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice.

This case arises out of and relates to Petitioners' claim that that in New York's 11th Congressional District ("CD-11"), "Black and Latino Staten Islanders have less opportunity than other members of the electorate to elect a representative of their choice and influence elections… in violation of the prohibition against racial vote dilution in Article III, Section 4(c)(1) of the New York Constitution." *NYSCEF Doc. No. 1.* CD-11 contains the entirety of Staten Island and extends into a portion of southern Brooklyn, reflecting district boundaries that have existed since 1980. *Pet. Exh. C., NYSCEF Doc. No. 62.* In the same period, the racial demographics have shifted drastically, from "85.3 percent white, 7 percent Black, 5.4 percent Latino, and 1.9 percent Asian"

to "56.6 percent white, 19.5 percent Latino,…9 percent Black," and 12 percent Asian, with "[t]he remaining 2.9 percent" largely comprised of "people who consider themselves members of two or more races." *NYSCEF Doc. No. 61*. Petitioners' proposed remedy would move the boundaries of CD-11, grouping Staten Island with a portion of southern Manhattan.

This is an issue of first impression; New York courts have yet to determine the appropriate legal standard to evaluate a vote dilution claim under Article III, Section 4 of the New York State Constitution. Petitioners assert that in evaluating this claim, the Court should utilize the vote dilution framework provided in the 2022 John R. Lewis New York Voting Rights Act ("NY VRA"). Intervenor-Respondents and BOE Respondents both argue that consideration of the NY VRA is impermissible under the state constitution and that the case should be dismissed as a result. *NYSCEF Docs. No 115, 122*. Respondents Kathy Hochul, in her official capacity as Governor of the State 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 the State of New York (collectively, "State Respondents"), for their part, claim that a "totality of the circumstances" standard is appropriate pursuant to the text of Article III Section 4(c)(1) but make no argument as to the result that would be reached under such a standard. *NYSCEF Doc. No. 95*.

Analysis

Article III, Section 4(c)(1) was part of a series of 2014 constitutional amendments regarding redistricting approved by the voters of New York State. As stated by State Respondents, it calls for a totality of the circumstances standard, reading in relevant part: "Districts shall be drawn so that, *based on the totality of the circumstances*, racial or minority language groups do

not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." *New York State Constitution, Article III, Section 4(c)(1)* (Emphasis Added). The state constitution provides no guidance as to how to evaluate the totality of the circumstances, nor does the legislative history of the redistricting amendments. Petitioners point to the NY VRA, which bans vote dilution in local subdivisions based on the protections provided by Article III, Section 4, while providing detailed guidance on evaluating the totality of the circumstances. *NYSCEF Doc. No. 1*.

Utilizing the NY VRA, however convenient, is impermissible. Article III, Section 4 specifically states that the redistricting of congressional districts is "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements." Here, the text of the state constitution directly contradicts the notion that the Court can use the NY VRA, a state statute, to interpret a constitutional vote dilution claim. Not only was the NY VRA passed years after the redistricting amendments were ratified, the provision names "the federal constitution and statutes" and "state constitutional requirements," with no mention of state statutes. *Id.* That the phrase "the federal constitution" is paralleled "state constitutional requirements" while federal statutes receive no such mirror implies that state legislation was excluded on purpose and it should not be used to interpret Article III, Section 4. Moreover, there is no legislative history that provides any evidence that Article III, Section 4(c)(1) should be influenced by legislation that would be passed after the amendment took effect, even if that legislation is meant to bolster efforts against vote dilution.

That conclusion, however, does not end the inquiry, as Petitioners *are* correct in their assertion that the New York State Constitution provides greater protections against racial vote dilution than the federal constitution or the federal Voting Rights Act. That the protections of

Article III, Section 4 are broader than those provided by the federal constitution and federal statutes can be gleaned from the text itself and from case law regarding state legislation. Assertions that the federal Voting Rights Act controls simply do not hold up under a basic logical analysis. Article III, Section 4(c) says "[s]ubject to the requirements of the federal constitution and statutes and in compliance with state constitutional requirements," that under Section 4(c)(1), "[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." These provisions, taken in conjunction, simply imply that the protections provided by the redistricting amendments should not violate federal or state constitutional requirements or the state constitution, not that these protections cannot expand on those provided by the federal government. *See Harkenrider v. Hochul,* 38 N.Y.3d 494, 509 (2022) ("In construing the language of the Constitution as in construing the language of a statute, ... [we] look for the intention of the People and give to the language used its ordinary meaning"). Were the redistricting amendments simply meant to establish that the federal constitution and federal statutes should be used to protect voting rights in New York, the amendments would have no purpose. *See People v. Galindo,* 38 N.Y.3d 199, 205–206 (2022) (a statute should not be read in a way that "hold[s] it a legal nullity.") Moreover, under *People v. P.J. Video, Inc.*, "[i]f the language of the State Constitution differs from that of its Federal counterpart, then the court may conclude that there is a basis for a different interpretation of it." 68 N.Y.2d 296, 302 (1986). As pointed out by State Respondents, there are differences between the Voting Rights Act (52 U.S.C. § 10301(b)), which uses phrases referring to particularized groups including "a class of citizens" and "its members" and Article III, Section 4(c)(1), which protects the ability of "racial or minority groups [from having] less opportunity to participate in the political process than other members of the

electorate and to elect representatives of their choice." Here, the state's expansion on federal protections can be observed in language that literally expands on that included in the Voting Rights Act.

As a case of first impression, it falls on the Court to establish a standard for evaluating the totality of the circumstances. The Court notes that Article III, Section 4(c)(1) states "Districts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups *do not have less opportunity to participate* in the political process than other members of the electorate and to elect representatives of their choice" (emphasis added). This language is key, as it does not demand that a district suppress minority voters who could make up a majority under different lines in order to find that opportunity has been denied. Instead, it must be shown that the lines unfairly reduce their impact on electoral outcomes as drawn. While Article III, Section (4)(c) goes beyond the scope of the federal Voting Rights Act, the VRA is still instructive. As such, the Court turns to case law regarding the VRA to establish factors that can be evaluated in this analysis. In *Thornburg v. Gingles*, the United States Supreme Court utilized factors laid out by the United States Senate during the passage of the VRA to evaluate a vote dilution claim. 478 U.S. 30, 44-45. Those factors included "the extent to which voting in the elections of the State or political subdivision is racially polarized;…the exclusion of members of the minority group from candidate slating processes; the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and the extent to which members of the minority group have been elected to public office in the jurisdiction." *Id.* This list is not intended to encompass the entirety of what factors should be considered in a vote dilution claim, nor is there any specific threshold that must be met to establish that a totality of the

circumstances has been met. *Id.* The Court elects to follow these principles in evaluating a vote dilution claim under Article III, Section 4(c)(1).

Fundamental to this claim is the extent of racially polarized voting in CD-11. As a racial vote dilution claim is predicated on the notion that minority voters cannot elect their candidate of choice, it is vital that Petitioners show that there is, in fact, a predominant choice among minority voters in a congressional district. Not only that, but it must also be demonstrated that White voters vote as a bloc that usually defeats minority-preferred candidates. *See Gingles* 478 U.S. at 56. Racially polarized voting must be observed as a pattern; a single election is not a sufficient basis to satisfy this portion of the claim. *Id.* This allows room for elections that break from the general pattern (such as a minority-preferred candidate winning or racially-polarized voting blocs breaking from one another) without reading these exceptions as negating said general pattern. *Id.* That voting is racially polarized can be proven through mere correlation between the race(s) of a voting bloc and need not rise to the level of causation. *Id.*

Here, racially polarized voting has been clearly demonstrated. Dr. Maxwell Palmer, an expert witness from New York University who testified in this case, showed in his report and shared on the record that across federal, state, and city elections from 2017 to 2024, Black voters in CD-11 voted together an average 90.5 percent of the time, while Latino voters voted together 87.7 percent of the time.[1] *NYSCEF Doc. No. 60.* Asian voters voted for the Black and Latino-preferred candidates 58.93 percent of the time, displaying less cohesion than Black or Latino voters but still demonstrating a consistent preference. *Id.* White voters, meanwhile, voted against the candidates preferred by Black and Latino 73.7 percent of the time. *Id.* Across the 20 most recent elections in CD-11 used in the analysis, the Black and Latino-preferred candidates won merely

[1] The Court notes that the expert witness' analysis does not include either state Assembly or state Senate races.

five (5) races. Respondents raised doubts as to the significance of this number on the record, asserting that roughly 30 percent of the population saw its preferred candidate win roughly 25 percent of the time. The Court does not read a racial vote dilution claim so simply. Vote dilution claims do not turn on whether minority-preferred candidates win elections at a rate that matches the relative population of minority groups in a district. A demonstration of racially polarized voting shows that the minority groups at issue vote as a bloc, as do White voters, and that the minority-preferred candidates "usually" lose. *See Gingles* 478 U.S. at 56. Petitioners have demonstrated that here.

Petitioners have also shown through testimony and by empirical data that the history of discrimination against minority voters in CD-11 still impacts those communities today. Staten Island has a long history of racial discrimination. Expert witness Dr. Thomas J. Sugrue reports that "Staten Island has a long history of racial segregation, discrimination, and disparate treatment against Blacks and Latinos." *NYSCEF Doc. No. 61.* Staten Island was the subject of intense redlining, a process in which the federal government enforced segregation by drawing race-based lines around different neighborhoods and ensured that Black people would not be allowed to obtain loans or mortgages. *Id.* This process largely confined Black people to neighborhoods north of the Staten Island Expressway with low property values and lowered the property values in areas where Black people resided, even majority-White neighborhoods. *Id.* These neighborhoods also had significant environmental hazards, leading to long-term health issues for residents over time. *Id.* Black and Latino people were often excluded from public housing in predominantly White neighborhoods and the real estate industry worked to keep them away from private property in White neighborhoods. *NYSCEF Doc. No. 61*. Even as racial protections were codified at a federal

level, Black and Latino Staten Islanders experienced harsh racial intimidation, violence, and hate-crimes. *Id.*

In the 1920s, New York state began requiring literacy tests to vote, a practice specifically designed to target immigrants and non-English speakers and prevent them from voting; this practice had a particularly negative impact on Black and Latino New Yorkers. *NYSCEF Doc. No. 61.* The long-term effects of this history has resulted in significant gaps in the lives of Black and Latino populations of Staten Island and the White population to this day, impacting "housing, education, [and] socioeconomic status…—all of which are known to have a negative impact on political participation and the ability to influence elections." *Id.* White Staten Islanders enjoy notably higher education rates than Black and Latino residents; "[m]ore than 1 in 5 Latinos and 1 out of 9 Blacks but only 1 in 14 Whites are not high school graduates" and "[a] little less than a quarter of Latinos and a little more than a quarter of Blacks, but more than one-third of Whites, have obtained at least a bachelors' degree." *Id.* White Staten Islanders have a per capita income of $52,273.00, Black Staten Islanders' per capita income is $31,647.00 and Latinos' is $30,748.00. *Id.* Moreover, where the White poverty rate on Staten Island is 6.8 percent, the Latino poverty rate is 16.3 percent, and the Black poverty rate is 24.6 percent. *NYSCEF Doc. No. 61.* Over 75 percent of White Staten Island residents own homes while only 43.7 percent of Latino residents, and 35.8 percent of Black residents do. *Id.* According to Dr. Sugrue's testimony on the record, de facto segregation remains the norm, with moderate segregation rates between Hispanic and White residents and significant segregation between Black and White residents.

The impact of discrimination is not only social and economic, political, as Black, Latino, and Asian Staten Islanders' political representation and participation in politics still lags behind White Staten Islanders. Expert witness Dr. Palmer's report analyzes voter turnout on Staten Island

the 2020, 2022, and 2024 elections, showing that while White voter turnout averaged 65.3 percent across those races, Black voter turnout averaged 48.7 percent, Latino turnout averaged 51.3 percent, and Asian turnout averaged 47.7 percent. *NYSCEF Doc. No. 60*. In the same years, the average voter turnout was 58.7 percent. The election of minority candidates in CD-11 presents more complexity, though representation still low.[2] Staten Island has elected a minority candidate to represent the district in Congress: Intervenor-Respondent Representative Nicole Malliotakis, became the first elected official of Latin American descent elected in Staten Island when she won a race for the New York State Assembly in 2010. *NYSCEF Doc. No. 61.* The first Black elected official in Staten Island, won a North Shore council race in 2009. *Id.*. Petitioners have shown that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" to a noteworthy extent. *Gingles*, 478 U.S at 44-45.

Petitioners have additionally shown that both overt and subtle racial appeals are common in campaigns in CD-11. The Court lends this less relative weight than other factors given the prevalence of racial appeals in political campaigns across the country. However, as a part of the broader suite of factors considered in a totality of the circumstances analysis, it is still meaningful. Dr. Palmer's report provides strong examples of racial appeals in Staten Island politics. For instance, in the 1960s, there was strong opposition to minorities moving to the island, with one popular political cartoon decrying "ghetto areas" being delivered by Mayor John Lindsay. *NYSCEF Doc. No. 61*. In the 1990s, a movement advocating for the secession of Staten Island from New York City rose, driven in part by frustration at minority New Yorkers moving from other boroughs into public housing on Staten Island. *Id.* More recently, the first Black elected

[2] It is important to note that the election of minority candidates is distinct from the election of minority-preferred candidates. Here, the Court analyzes the former factor.

official on Staten Island was the subject of racially charged political attacks during her 2017 reelection campaign. *Id.* One Facebook page critical of her campaign accused her of supporting "a 'welfare hotel full of criminals and addicts' and turning a property into 'a heroin/methadone den.'" *Id.* This follows common trends linking Black candidates to negative stereotypes associated with Black people. *Id.*

Based on the facts presented by the expert witness reports and on the record, it is clear to the Court that the current district lines of CD-11 are a contributing factor in the lack of representation for minority voters. In state and local races, Staten Island is allowed be divided in a way that has enabled Black and Latino voters to show some political power, however insufficient. *See Sugrue Report, NYSCEF Doc. No.* 61. In the redistricting process, a county can only be broken up to draw congressional districts if that country has a population greater than the "ideal population size" for a district. *Cooper Report, NYSCEF Doc. No.* 62. Because "the ideal population size for a congressional district in New York is 776,971" and Staten Island's population is 495,747, "[Staten Island] must be joined with a neighboring portion of another New York City borough." *Id.* Under the historic makeup of CD-11, which links Staten Island to southern Brooklyn, however, Black and Latino voters, who are already affected by a history of discrimination in the political process, education, housing, and more, are essentially guaranteed to have their votes diluted. *Id; Sugrue Report, NYSCEF Doc. No. 61.*

In this case, a totality of the circumstances analysis indicates that as drawn, the district lines for CD-11 "result in the denial or abridgement of racial or language minority voting rights minority voters," particularly Black and Latino voters, violating Article III, Section 4(c)(1) of the New York State Constitution. Petitioners have shown strong evidence of racially polarized voting bloc (including preferences from Asian voters that align with Black and Latino voters, though the latter

two are the subject of Petitioners' arguments), they have demonstrated a history of discrimination that impacts current day political participation and representation, and they have shown that racial appeals are still made in political campaigns today. Taken together, these circumstances provide strong support for the claim that Black and Latino votes are being diluted in the current CD-11. Moreover, it is evident that without adding Black and Latino voters from elsewhere, those voters already affected by race discrimination will remain a diluted population indefinitely.

The Court must next determine, then, the proper remedy for unlawful vote dilution. Although Petitioners have shown a violation of the state constitution, their remedy must align with the law. Petitioners request that the Court mandate a new set of district lines for CD-11, shifting the boundaries from the entirety of Staten Island and a portion of Brooklyn to the entirety of Staten Island and a portion of Southern Manhattan; this map would redraw Congressional District 10 so that it would retain the Chinatown neighborhood and the portion of Brooklyn it currently holds while extending down into the portions of Southern Brooklyn currently contained in CD-11. *NYSCEF Doc. No. 62*.

To determine whether ordering a redrawing of the congressional lines is a proper remedy, Petitioners must first show that minority voters make up a sufficient portion of the district's population. Under *Gingles*, the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district." 478 U.S. at 51. Because the New York State Constitution is more sweeping that the VRA, such a high bar need not be cleared under a vote dilution claim in this state. *See supra*. Still, minority voters must comprise a sufficiently large portion of the population of the district's voting population that they would be able to influence electoral outcomes. However, the Court can still find guidance from the federal jurisprudence. In *Bartlett v. Strickland*, the United States Supreme Court differentiated between

"majority-minority" districts, where minority voters make up a majority of the electorate and "crossover" districts, where "members of the majority help a 'large enough' minority to elect its candidate of choice."[3] 556 U.S. 1, 13 (2009); Cooper v. Harris, 581 U.S. 285, 303 (2017) (quoting Bartlett, 556 U.S. at 13). Nowhere in their papers do Petitioners assert that a majority-minority district can or should be drawn here; as such, the Court sees this as a crossover claim.

While crossover claims were rejected under the VRA in *Bartlett*, the Article III, Section 4(c)(1)'s language indicated that they are allowed in actions in the state of New York. In *LULAC v. Perry*, Justice David Souter proposed a bar for crossover claims as establishing a district 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. 399, 485-86 (2006) (Souter, J., concurring in part and dissenting in part). Based on this opinion, and on legal scholarship, Amici Professors Ruth M. Greenwood and Nicholas O. Stephanopoulos propose the following standard for a crossover claim: "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." *NYSCEF Doc. No. 135*. Also in *LULAC,* Justice Stephen Breyer went a step beyond Justice Souter's proposed definition, arguing that a crossover claim should "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). Based on Justice Breyer's opinion, Amici New York Civil Liberties Union, NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and Center for Law and Social Justice propose that the Court follow a similar

[3] A majority-minority district may come in the form of a simple majority or a "coalition" district, where multiple minority voting groups form a majority of voters. *Bartlett*, 556 U.S. 1, 13 (2009).

logic so that "crossover claims [are not] easily…distorted for partisan maximization." *NYSCEF Doc. No. 139*

The Court adopts a three-pronged standard for evaluating a proposed crossover district in a vote dilution case pursuant to Article III, Section 4(c)(1) of the New York State Constitution. First, a proposed district should count as a crossover district if minority voters (including from two or more ethnic groups) are able to select their candidates of choice in the primary election. Second, these candidates must usually be victorious in the general election. Third, the reconstituted district should also increase the influence of minority voters, such that they are decisive in the selection of candidates.

The Court emphasizes two aspects of this standard for clarity. First, the minority-preferred candidates must "usually" win the general election so that the standard for establishing a crossover district closely mirrors the standard for establishing vote dilution, which says that minority-preferred candidates must "usually" fail. *See Gingles* 478 U.S. at 56. "Usually be victorious" should only be interpreted to the extent that minority-preferred candidates win more often than not. Second, that prong three requires minority voters to be "decisive" in primary races so that crossover districts cannot be used to achieve vote dilution in favor of a different political party. As stated above, racial vote dilution claims should not be used for the purpose of simply bolstering a political party's power and influence. Otherwise, it would be relatively simple to use vote dilution claims to establish districts in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority-preferred candidates regardless of whether those minority voters were drawn into a new district or not.

While Petitioners offer new district lines for the Court to adopt, the New York State Constitution points the Court in a different direction. Under Article III, Section 5 of the New York

State Constitution, "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities," should the Court find a congressional map invalid. In *Harkenrider v Hochul*, the New York State Court of Appeals found that, where the election calendar's start was imminent and the Independent Redistrict Commission ("IRC") process was in disarray, it was appropriate to appoint a special master to draw new congressional maps, as the redistricting plan was unconstitutional and "incapable of a legislative cure." 38 NY3d 494, 523 (2022). In *Hoffmann v New York State Ind. Redistricting Commn*, the Court of Appeals built on this, stating that "[c]ourt-drawn judicial districts are generally disfavored because redistricting is predominantly legislative." 41 NY3d 341, 361 (2023). Instead, the Court pointed to Article III, Section 5(b), which states that "at any other time a court orders that congressional or state legislative districts be amended, an independent redistricting commission shall be established to determine the district lines for congressional and state legislative offices." *Hoffman*, 41 NY3d 341, 360 (2023). Under a Court-ordered IRC redistricting process, the redrawing of the maps is considered "adopted by the IRC and legislature." *Id.*

As in *Harkenrider*, time is of the essence to fix congressional lines in this case. *Harkenrider v. Hochul,* 38 NY3d 494, 523. Respondent New York State Board of Elections has stated that to properly implement a new congressional map, a multiagency process including county boards, borough staff, central New York City staff, the New York City Department of Planning, and the Board itself, would need to be completed. *NYSCEF Doc. No. 204*. This includes the redrawing of election districts, which is a city-wide process, and requires as much time as possible before the election calendar begins on February 24, 2026. *Id.* Unlike *Harkenrider*, though, the IRC has not had the chance to redraw maps, meaning that constitutionally, they should receive an opportunity to do so. *Harkenrider*, 38 NY3d at 523. Therefore, in keeping with the precedent established

Hoffman, and following the requirements of Article III, Section 5(b) of the New York State Constitution, the proper remedy in this case is to reconvene the IRC to redraw the CD-11 map so that it comports with the standard described above. 41 NY3d 341, 360. Per the request of the Board of Elections, new congressional lines must be completed by February 6, 2026. The Court has considered Respondents additional arguments, including regarding the Elections clause and laches, and finds them unavailing.

(Intentionally Left Blank)

Based on the reasoning above, the parties' arguments on the record, and the documents submitted to the Court, it is hereby **ORDERED** that the configuration of New York State's 11th Congressional District under the 2024 Congressional Map is deemed unconstitutional under Article III, Section 4(c)(1) of the New York State Constitution; and it is further

ORDERED that Respondents are hereby enjoined from conducting any election thereunder or otherwise giving any effect to the boundaries of the map as drawn; and it is further

ORDERED that the Independent Redistricting Commission shall reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026; and it is further

ORDERED that this case shall not be deemed resolved until the successful implementation of a new Congressional Map complying with this order.

1/21/2026
DATE

HON. JEFFREY H. PEARLMAN J.S.C.
JEFFREY H. PEARLMAN, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION	
		GRANTED	DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT	REFERENCE