

**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 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,

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 APPEAR AS AMICI CURIAE**

PLEASE TAKE NOTICE, upon the accompanying Affirmation of Perry M. Grossman, dated February 4, 2026, the proposed *amici curiae* brief, and upon all the papers and proceedings herein, the undersigned 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 leave to the New York Civil Liberties Union (NYCLU), the NAACP Legal Defense and Educational Fund, Inc., LatinoJustice Puerto Rican Legal Defense and Education Fund, and the Asian American Legal Defense and Education Fund (“proposed *Amici*”) to file a brief as *amici curiae* in support of no party. A copy of the proposed *Amici Curiae* Brief is annexed hereto as **Exhibit B**. Proposed amici solicited the positions of all parties on this motion and each party responded that they took no position on amici’s motion.

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: New York, New York

February 4, 2026

Respectfully submitted,

NEW YORK CIVIL LIBERTIES
UNION FOUNDATION



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Counsel for Proposed Amici Curiae

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
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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,

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

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Appellate Division
Index No. 2026-00384

New York County
Supreme Court
Index No.: 164002/2025

**AFFIRMATION OF PERRY GROSSMAN IN SUPPORT OF MOTION
FOR LEAVE TO FILE PROPOSED BRIEF OF AMICI CURIAE**

I, PERRY GROSSMAN, an attorney duly admitted to practice before this Court, affirm under penalty of perjury, including fine or imprisonment, that the following is true and understand that this document may be filed in an action or proceeding in a court of law, pursuant to CPLR 2106:

1. I am a member of the bar of the State of New York. I am the Director of the Voting Rights Project at New York Civil Liberties Union (“NYCLU”). I am not a party to this action. I am in good standing in the Courts of the State of New York.

2. The New York Civil Liberties Union, Asian American Legal Defense and Education Fund, LatinoJustice Puerto Rican Legal Defense and Education Fund, and NAACP Legal Defense and Educational Fund, Inc. (together, “Amici”) request permission to submit a brief as amici curiae on the pending motions for a stay (motions #444 and #445) in the above-captioned appeal.

3. On February 3, 2026, I sent an e-mail to counsel of record for all parties of to request their consent to seek leave to submit a brief as amicus curiae in support of no party in this case in this case. Counsel for each party responded promptly by e-mail that they take no position on amici’s motion.

Background and Procedural History

4. On October 27, 2025, Petitioner filed their petition against Defendant-Respondents alleging that New York’s congressional district map SB S8653A, codified at New York State Law §§ 110-112 (McKinney 2024) creates less of an opportunity for Black and Latino Staten Islanders than other members of the electorate to elect a representative of their choice and influence elections in New York’s 11th Congressional District (“CD-11”), in violation of the prohibition against racial vote dilution in Article III, Section 4(c)(1) of the New York Constitution.

5. On December 16, 2025, Amici filed a motion by order to show cause for leave to file a brief of amici curiae in this case, including a copy of the brief attached as an exhibit to the motion. Index No. 164002/2025, NYSCEF Doc Nos. 137-39. Amici’s brief urged Supreme Court to adopt a standard that ensures that racial vote dilution claims under the New York State Constitution protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for partisan purposes. No party opposed Amici’s motion. Supreme Court granted Amici’s motion on January 21, 2026 (*id.* at NYSCEF Doc No. 212) and Amici filed their brief on the docket (*id.* at NYSCEF Doc No. 213).

6. On January 21, 2026, Supreme Court ruled in favor of Petitioner and ordered that the Independent Redistricting Commission reconvene to develop a remedial congressional redistricting plan by February 6, 2026. Decision and Order

on Motion, Index No. 164002/2025, NYSCEF Doc. No. 217. In its Decision and Order, Supreme Court cited and quoted Amici’s brief for the proposition that the court should set a legal standard applicable to racial vote dilution claims under the New York State Constitution such that “crossover claims [are not] easily . . . distorted for partisan maximization.” *Id.* at 14-15 (citing Index No. 164002/2025, NYSCEF Doc Nos. 139).

7. This case raises the question of whether the racial vote dilution protections in the redistricting criteria of the New York State Constitution provide for more expansive protection against racial vote dilution than the United States Constitution and Section 2 of Voting Rights Act of 1965. In particular, this case addresses whether the State Constitution protects against racial vote dilution even where minority voters must depend on non-minority “crossover” voters to elect the minority-preferred candidate and, if so, what standard is applicable to those claims. The decision on appeal raises the further question of how those standards should be applied in order to ensure that the State Constitution protects the rights of minority voters and frustrates attempts to misuse the voting rights laws for partisan purposes.

8. The parties to this litigation have not made a full and adequate presentation of this issue. To the best of Amici’s knowledge, no party has briefed the position that crossover claims are cognizable under the New York State

Constitution and Supreme Court established the correct standard for addressing those claims, but did not apply that standard correctly.

9. Amici’s proposed brief elucidates that it is an element of a racial vote dilution claim that a plaintiff demonstrate that their illustrative remedial plan would remedy the alleged dilution. Requiring a showing that a reasonable and effective remedy is available ensures that there is a causal nexus between the alleged vote dilution and the challenged districting scheme and that there is at least one potential remedy that comports with state and federal constitutional requirements. Failure to require such a showing could permit a finding of vote dilution that cannot redressed by any lawful alternative practice.

10. Amici explain the importance of and the authority for requiring a reasonable and effective remedy as an element of liability in vote dilution cases, and they offer a standard for assessing whether that element is satisfied by a proposed “crossover district”—that is, a district in which the protected class is able to wield electoral influence with the assistance of some majority voters who “crossover” to support the protected class’s preferred candidates.

11. Amici also identify the ways in which courts have ensured that racial vote dilution claims remain distinct from partisan gerrymandering claims. Courts have long made clear that racial vote dilution should not be an avenue for partisan

maximization. Amici's standards for influence and crossover claims seek to address this concern.

Statement of Interest of Amici

12. Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims on behalf of voters of color and developing voting rights policy. Amici and the communities that they serve have a significant interest in ensuring that the New York State Constitution provides effective protection against racial vote dilution. Amici include counsel who have litigated precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under New York State law (*New York Communities for Change v County of Nassau*, Index No. 602316/2024 [Sup Ct, Nassau County]). Amici submitted a brief earlier in this case, urging Supreme Court to adopt a standard that ensures that racial vote dilution claims protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for

partisan purposes. Amici wish to assist this Court by providing a workable and constitutional standard for the dilution claim at issue here.

13. The NYCLU is the New York State affiliate of the American Civil Liberties Union, and a non-profit, non-partisan organization with more than 112,000 members and supporters. The NYCLU is dedicated to the principles of liberty and equality enshrined in the United States and New York State Constitutions. In support of those principles, the NYCLU has litigated on behalf of voters in cases involving the right of electoral suffrage under New York state law, including *Palla v Suffolk Cnty Bd of Elections* (31 NY2d 36 [1972]); *Amedure v State* (178 NY3d 220 [3d Dept 2022]); *People by James v Schofield* (199 AD3d 5 [3d Dept 2021]); *New York Communities for Change v County of Nassau* (86 Misc3d 627 [Sup Ct, Nassau County]), and in cases involving the proper interpretation of the New York State Constitution, such as *Hernandez v State*, (173 AD3d 105 [3d Dept 2019]).

14. The NAACP Legal Defense and Educational Fund, Inc. (“LDF”), is a non-profit, non-partisan law organization established under the laws of the state of New York to assist Black people and other people of color in the full, fair, and free exercise of their constitutional and statutory rights. Founded in 1940 under the leadership of Thurgood Marshall, LDF focuses on eliminating racial discrimination in education, economic justice, criminal justice, and political participation, using

various tools including census data. LDF has represented Black voters as parties in nearly all the precedent setting redistricting cases in the U.S. Supreme Court and lower federal courts related to protecting the ability of Black people and other people of color to fully participate in the political process. See, e.g., *Louisiana v. Callais*, No. 24-109 (U.S.); *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1 (2024); *Allen v. Milligan*, 599 U.S. 1 (2023); *Shelby Cnty. v. Holder*, 570 U.S. 529 (2013); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009); *Easley v. Cromartie*, 532 U.S. 234 (2001); *Thornburg v. Gingles*, 478 U.S. 30 (1986); *Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025); *Robinson v. Ardoin*, 86 F.4th 574 (5th Cir. 2023); *Ala. State Conf. of the NAACP v. Allen*, No. 2:21-CV-1531, 2025 WL 2451166 (N.D. Ala. Aug. 22, 2025); *Singleton v. Allen*, 782 F. Supp. 3d 1092 (N.D. Ala. 2025).

15. The Asian American Legal Defense and Education Fund (“AALDEF”) is a national organization, founded in 1974, that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF focuses on critical issues affecting Asian Americans, including the right of Asian American communities across the country to cast an effective ballot and receive fair representation. AALDEF has documented the continued need for protection of Asian voters and has litigated cases under state and federal law, including the John R. Lewis Voting Rights Act of

New York, to protect the ability of Asian American communities of interest to elect candidates of their choice, influence the outcome of the elections, and keep communities whole, often in partnership with Black and Hispanic communities. Notably, several of these lawsuits involve constitutional and statutory challenges to redistricting plans that would dilute the vote of Asian communities. *See, e.g., N.Y. Cmty. for Change v Cnty. of Nassau*, No. 602316-2024 (Sup Ct., Nassau Cnty, Feb. 7, 2024); *League of United Latin Am. Citizens v. Abbott*, No. 3:21-cv-00259-DCG-JESJVB (W.D. Tex. Oct. 18, 2021); *Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012); *Diaz v. Silver*, 978 F. Supp 96 (E.D.N.Y. 1997).

16. LatinoJustice PRLDEF (“LatinoJustice”) (formerly known as the Puerto Rican Legal Defense and Education Fund) was founded in New York City in 1972. For over 50 years, LatinoJustice has used and challenged laws to promote a more just and equitable society by transforming harmful systems, empowering our communities, and cultivating the next generation of Latino leaders in the fight for racial justice. LatinoJustice has a long and distinguished history championing unfettered access to the ballot for Puerto Rican, Latino, and limited English proficient voters. LatinoJustice has served as a watchdog against attempts to dilute Latino, Black, and Asian American voting power, most recently helping to secure a historic settlement in *New York Communities for Change v. County of Nassau*, a New York Voting Rights Act case remediating the county’s dilution of the

collective voting power of Latino, Black, and Asian community members.

LatinoJustice also has a distinguished history of protecting Black and brown New Yorkers from vote dilution under the federal Voting Rights Act. *See e.g. Favors v. Cuomo*, 881 F. Supp.2d 356 (E.D.N.Y. 2012); *Rios-Andino v. Orange Cnty.*, 51 F. Supp. 3d 1215, 1217 (M.D. Fla. 2014); *Garcia v. 2011 Legislative Reapportionment Comm'n*, 559 F. App'x 128, 129 (3d Cir. 2014).

17. The New York Civil Liberties Union hereby discloses that it is a non-profit 501[c][4] organization and is the New York State affiliate of the American Civil Liberties Union. The NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and LatinoJustice PRLDEF disclose that each is a non-profit 501[c][3] organization.

18. No party or party's counsel contributed content to the proposed amicus brief or participated in the preparation of the brief in any other manner. No party or a party's counsel or any other person or entity, other than proposed amici, contributed money that was intended to fund preparation or submission of the proposed amicus brief.

Request to File Proposed Brief

19. *Amici* respectfully request to file the proposed Brief of Amici Curiae, a true and correct copy of which is included with this submission as **Exhibit B**.

WHEREFORE, the proposed *Amici* respectfully requests that they be permitted to file their proposed brief.

Dated: New York, New York
February 4, 2026

A handwritten signature in black ink, appearing to read 'P. Grossman', with a long, sweeping horizontal flourish extending to the right.

Perry Grossman

EXHIBIT A

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

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

Petitioners,

vs.

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.

NOTICE OF APPEAL

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

Mot. Seq. 001, 006, 007

PLEASE TAKE NOTICE that 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, in his official capacity as Co-Executive Director of the BOE (collectively, “Respondents”) hereby appeal to the Supreme Court of the State of New York, Appellate Division, First Department from the Decision and Order of the Supreme Court, New York County (Pearlman, J.), dated January 21,

2026 and entered in the office of the Clerk of the Supreme and County Court on January 22, 2026. Respondents hereby appeal from each and every part of said Decision & Order by which they are aggrieved. Copies of the Notice of Entry of the Decision & Order and Informational Statement are attached as **Exhibit A** and **Exhibit B**, respectively.

Dated: January 26, 2026
Albany, New York

CULLEN AND DYKMAN LLP

By: /s/ Nicholas J. Faso
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Christopher E. Buckey, Esq.
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*Attorneys for Respondents Raymond J. Riley
III, Peter S. Kosinski, and Anthony J. Casale*

Exhibit B

Informational Statement

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.

Michael Williams, et al.

- against -

Board of Elections of the State of New York, et al.

For Court of Original Instance

Date Notice of Appeal Filed

For Appellate Division

Case Type

- | | |
|--|--|
| <input type="checkbox"/> Civil Action | <input checked="" type="checkbox"/> CPLR article 78 Proceeding |
| <input type="checkbox"/> CPLR article 75 Arbitration | <input type="checkbox"/> Special Proceeding Other |
| | <input type="checkbox"/> Habeas Corpus Proceeding |

Filing Type

- | | |
|---|---|
| <input checked="" type="checkbox"/> Appeal | <input type="checkbox"/> Transferred Proceeding |
| <input type="checkbox"/> Original Proceedings | <input type="checkbox"/> CPLR Article 78 |
| <input type="checkbox"/> CPLR Article 78 | <input type="checkbox"/> Executive Law § 298 |
| <input type="checkbox"/> Eminent Domain | <input type="checkbox"/> CPLR 5704 Review |
| <input type="checkbox"/> Labor Law 220 or 220-b | |
| <input type="checkbox"/> Public Officers Law § 36 | |
| <input type="checkbox"/> Real Property Tax Law § 1278 | |

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input checked="" type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input checked="" type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal

Paper Appealed From (Check one only): If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.

- Amended Decree, Amended Judgement, Amended Order, Decision, Decree, Determination, Finding, Interlocutory Decree, Interlocutory Judgment, Judgment, Order, Order & Judgment, Partial Decree, Resettled Decree, Resettled Judgment, Resettled Order, Ruling, Other (specify):

Court: Supreme Court County: New York

Dated: 01/21/2026 Entered: 01/22/26

Judge (name in full): Jeffrey H. Pearlman Index No.: 164002/2025

Stage: Interlocutory Final Post-Final Trial: Yes No If Yes: Jury Non-Jury

Prior Unperfected Appeal and Related Case Information

Are any appeals arising in the same action or proceeding currently pending in the court? Yes No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.

Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:

Original Proceeding

Commenced by: Order to Show Cause Notice of Petition Writ of Habeas Corpus Date Filed:

Statute authorizing commencement of proceeding in the Appellate Division:

Proceeding Transferred Pursuant to CPLR 7804(g)

Court: Choose Court County: Choose County

Judge (name in full): Order of Transfer Date:

CPLR 5704 Review of Ex Parte Order:

Court: Choose Court County: Choose County

Judge (name in full): Dated:

Description of Appeal, Proceeding or Application and Statement of Issues

Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.

The appeal is from the Decision and Order of Hon. Jeffrey H. Pearlman (Supreme Court, New York County) dated January 21, 2026, and entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, on January 22, 2026. The relief requested was: (a) a declaration that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the NY Constitution; (b) an order directing the Legislature to adopt a revised congressional redistricting map; (c) a permanent injunction enjoining Respondents from conducting congressional elections under the current map; (d) holding hearings and considering briefing and evidence. The relief was granted

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

The issues proposed to be raised on the appeal include, without limitation: (1) whether Supreme Court erred in finding that the 2024 Congressional Map violates Article III, Section 4(c)(1) of the New York State Constitution; (2) whether Supreme Court improperly established a new legal standard for evaluating vote dilution claims under the New York State Constitution; (3) whether Supreme Court erred in adopting a three-pronged standard for crossover districts under Article III, Section 4(c)(1); (4) whether Supreme Court's remedy ordering the Independent Redistricting Commission to reconvene and complete a new Congressional Map by February 6, 2026 was proper; and (5) whether Supreme Court erred in denying Respondents' Cross-Motion to dismiss. Appellants appeal from each and every part of the Decision and Order to which they have been aggrieved. The relief sought on appeal includes, inter alia, the reversal of the Decision and Order in its entirety and dismissal of Petitioners' proceeding.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

Table with 4 columns: No., Party Name, Original Status, Appellate Division Status. Row 1 contains 'Please see attached addendum for party information' and a dropdown arrow.

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Nicholas J. Faso/ Cullen & Dykman LLP

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E-mail Address: nfaso@cullenllp.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 7-8, 10

Attorney/Firm Name: Andrew G. Celli, Jr./ Emery Celli Brinckerhoff Abady Ward & Maazel LLP

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Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1-4

Attorney/Firm Name: Aria Branch/ Elias Law Group LLP

Address: 250 Massachusetts Avenue - Nw, Suite 400

City: Washington State: DC Zip: 20001 Telephone No: (202) 968-4518

E-mail Address: abranch@elias.law

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1-4

Attorney/Firm Name: Brian Lee Quail/ New York State Board of Elections

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Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 5-6, 9, 11

Attorney/Firm Name: Seth J. Farber/ Office of the Attorney General of the State of New York

Address: 28 Liberty Street, 17th Floor

City: New York State: NY Zip: 10005 Telephone No: (212) 416-8029

E-mail Address: seth.farber@ag.ny.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 12-15

Attorney/Firm Name: Misha Tseytlin/ Troutman Pepper Locke LLP

Address: 875 Third Avenue

City: New York State: NY Zip: 10022 Telephone No: (212) 704-6000

E-mail Address: misha.tseytlin@troutman.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 16-20

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Perry Maxwell Grossman/ New York Civil Liberties Union Foundation

Address: 125 Broad Street, 19th Floor

City: New York State: NY Zip: 10004 Telephone No: (212) 607-3347

E-mail Address: pgrossman@nyclu.org

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 22

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Party or Parties Represented (set forth party number(s) from table above):

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

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

Petitioners,

vs.

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.

ADDENDUM

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

Supplemental Party Information

No.	Party Name	Original Status	Appellate Status
1	Michael Williams	Petitioner	Appellee-Petitioner
2	Jose Ramirez-Garofalo	Petitioner	Appellee-Petitioner
3	Aixa Torres	Petitioner	Appellee-Petitioner
4	Melissa Carty	Petitioner	Appellee-Petitioner
5	Board of Elections of the State of New York	Respondent	Appellee-Respondent
6	Kristen Zebrowski Stavisky in her official capacity as Co-Executive	Respondent	Appellee-Respondent

	Director of the Board of Elections of the State of New York		
7	Raymond J. Riley III in his official capacity as Co-Executive Director of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
8	Peter S. Kosinski in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
9	Henry T. Berger in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York	Respondent	Appellee-Respondent
10	Anthony J. Casale in his official capacity as Commissioner of the Board of Elections of the State of New York	Respondent	Appellant-Respondent
11	Essma Bagnuola in her official capacity as Commissioner of the Board of Elections of the State of New York	Respondent	Appellee-Respondent
12	Kathy Hochul in her official capacity as Governor of New York	Respondent	Appellee-Respondent
13	Andrea Stewart-cousins in her official capacity as Senate Majority Leader and President Pro Tempore of the New York State Senate	Respondent	Appellee-Respondent
14	Carl E. Heastie in his official capacity as Speaker of the New York State Assembly	Respondent	Appellee-Respondent
15	Letitia James in her official capacity as Attorney General of New York	Respondent	Appellee-Respondent
16	Congresswomen Nicole Malliotakis	Intervenor	Intervenor
17	Edward L. Law	Intervenor	Intervenor
18	Solomon B. Reeves	Intervenor	Intervenor
19	Angela Sisto	Intervenor	Intervenor
20	Faith Togba	Intervenor	Intervenor
21	Nicholas O. Stephanopoulos	Intervenor	Intervenor
22	New York Civil Liberties Union Foundation	Intervenor	Intervenor

Dated: January 26, 2026
Albany, New York

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Exhibit A

Notice of Entry

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

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

Petitioners,

vs.

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.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 001, 006, 007

NOTICE OF ENTRY

PLEASE TAKE NOTICE that the within is a true copy of the Decision and Order of the Hon. Jeffrey H. Pearlman in the above-referenced proceeding, dated January 21, 2026, and entered in the office of the Clerk of the Supreme Court of the State of New York, County of New York, on January 22, 2026.

Dated: January 26, 2026
Albany, New York

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**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 than 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.

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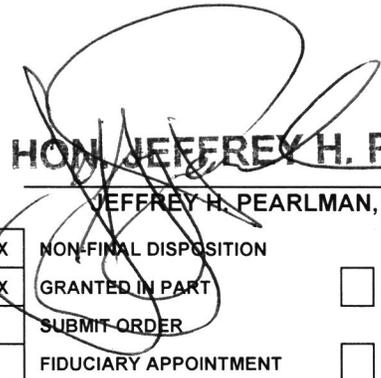
Based on the reasoning above, the parties' arguments on the record, and the documents submitted to the Court, it is hereby **ORDERED** that the configuration of New York State's 11th Congressional District under the 2024 Congressional Map is deemed unconstitutional under Article III, Section 4(c)(1)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

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

EXHIBIT B

New York Supreme Court
Appellate Division – First Department

MICHAEL WILLIAMS, JOSÉ RAMÍREZ-GAROFALO, AIXA
TORRES, and MELISSA CARTY,

Petitioner-Respondents,

- against -

BOARD OF ELECTIONS OF THE STATE OF NEW YORK; et al.,

Respondent-Respondents.

- and -

NICOLE MALLIOTAKIS; EDWARD L. LAI, JOEL MEDINA,
SOLOMON B. REEVES, ANGELA SISTO, and FAITH TOGBA,

Intervenor-Respondents.

PROPOSED BRIEF OF AMICI CURIAE
THE NEW YORK CIVIL LIBERTIES UNION, THE NAACP LEGAL
DEFENSE AND EDUCATION FUND, LATINOJUSTICE PRLDEF, AND
THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
IN SUPPORT OF NO PARTY

(Counsel for Proposed Amici listed on next page)

Dated: February 4, 2026

New York, N.Y.

New York County Supreme Court Index No. 164002/2025

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INTEREST OF AMICI CURIAE

Amici are national and New York-based civil rights and racial justice groups with extensive experience litigating racial vote dilution claims on behalf of voters of color and developing voting rights policy. Amici and the communities that they serve have a significant interest in ensuring that the New York State Constitution provides effective protection against racial vote dilution. Amici include counsel who have litigated precedent-setting racial vote dilution claims in the U.S. Supreme Court and New York federal courts (*see e.g. Alexander v SC State Conf of the NAACP*, 602 US 1 [2024]; *Allen v Milligan*, 599 US 1 [2023]; *Thornburg v Gingles*, 478 US 30 [1986]; *Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 233 [2d Cir 2021]; *Favors v Cuomo*, 39 F Supp 3d 276 [ED NY 2014]; *Puerto Rican Legal Defense & Educ. Fund v Gantt*, 796 F Supp 681 [ED NY 1992]). Amici also include the counsel who litigated the first racial vote dilution challenge to a redistricting plan under New York State law (*New York Communities for Change v County of Nassau*, Index No. 602316/2024 [Sup Ct, Nassau County]). Amici submitted a brief earlier in this case, urging Supreme Court to adopt a standard that ensures that racial vote dilution claims protect the rights of minority voters and frustrate attempts to misuse the voting rights laws for partisan purposes. Amici wish to assist this Court by providing a workable and constitutional standard for the dilution claim at issue here.

INTRODUCTION

Supreme Court identified the correct standard and elements for proving the State Constitutional racial vote dilution claim at issue. The State Constitution provides more expansive protection against racial vote dilution than federal law. Unlike federal law, the State Constitution protects against racial vote dilution even where minority voters must depend on non-minority “crossover” voters to elect the minority-preferred candidate. Thus, this Court should affirm the lower court’s recognition that such “crossover” claims are cognizable under the State Constitution.

Supreme Court, however, ignored an essential prerequisite to proving vote dilution: evidence that there is an effective remedy for the alleged dilution. To satisfy this prerequisite, a plaintiff must present a lawful nondilutive remedy against which the challenged scheme can be measured against. This requirement serves three important salutary functions. First, it confirms that the challenged redistricting scheme—and not other factors—is the *cause* of the racial dilution. Second, it ensures that the alleged racial vote dilution is redressable with a remedy that is both adequate and appropriately tailored to state and federal laws. Third, Supreme Court itself correctly agreed with and quoted *Amici* in recognizing that this requirement

guarantees that “crossover claims [are not] easily . . . distorted for partisan maximization.”¹

In the context of a crossover claim, this requirement requires proof from a petitioner that it is possible to draw a reasonable crossover district that would enable the minority group to elect their candidates of choice. A proposed district that merely allows non-minority voters to dictate electoral outcomes at the expense of minority-preferred candidates in primary elections and general elections would not satisfy this standard.

But Supreme Court skipped this necessary step in its liability analysis. The court correctly considered evidence of racially polarized voting and other factors in its totality of the circumstances analysis (Slip Op. 7-12). But it failed to analyze whether petitioners’ illustrative district would *increase* the ability of minority voters to elect their candidates of choice, as opposed to serving as a vehicle for partisan maximization.

While the court acknowledged that petitioners had submitted an illustrative remedial plan, it failed to evaluate whether that plan would be a reasonable or effective remedy under the applicable standard. Instead, the court moved directly to

¹ *Williams v. State Board of Elections*, Index No. 164002/2025, NYSEC Doc No. 217 at 14-15 [Sup Ct, New York County Jan. 21, 2026] [“Slip Op.”].

ordering the Independent Redistricting Commission to propose a remedial plan (Slip Op. 15-16).

Before otherwise ruling on the merits of this case then, this Court should first require Supreme Court to conduct a complete analysis. Supreme Court should have the opportunity, in the first instance, to determine whether plaintiffs' illustrative plan includes an effective remedial crossover district that otherwise complies with state and federal laws.

As Supreme Court recognized, proper application of this illustrative-map requirement is necessary to prevent the abuse of "racial vote dilution claims . . . for the purpose of simply bolstering a political party's power and influence" (Slip Op. at 15). This is important because efforts to maximize partisan advantage in redistricting have at times resulted in racial vote dilution (*see e.g. Pope v County of Albany*, 94 F Supp 3d 302, 317-18, 348-49 [ND NY 2015] [finding that a Democratic-controlled legislature "packed" Black voters into a few districts to protect white Democratic incumbents]; *Coads v Nassau County*, 86 Misc 3d 627 [Sup Ct, Nassau County 2024] [denying summary judgment on claims that redistricting plan enacted by Republican-controlled legislature packed and cracked Black, Latino, and Asian voters in enacting a partisan gerrymander]).

Accordingly, while *Amici* agree that the Supreme Court identified the correct standard for addressing racial vote dilution claims under the New York State

Constitution, this case should be remanded to the Supreme Court for a proper evaluation of whether the petitioners' illustrative plan provides for an adequate remedial crossover district.

ARGUMENT

I. Supreme Court Correctly Recognized that the New York Constitution Protects, and in Some Circumstances Requires, Crossover Districts.

Supreme Court properly recognized that the New York Constitution offers more expansive protection against racial vote dilution than federal law. States have a special role in serving as “laborator[ies]” in vindicating the fundamental interest in maintaining an equitable, functional democratic process (*New State Ice Co. v Liebmann*, 285 US 262, 311 [1932] [Brandeis, J., dissenting]). And “it is characteristic of our federal system that States retain autonomy to establish their own governmental processes” (*Arizona State Legislature v Arizona Indep. Redistricting Comm’n*, 576 US 787, 816 [2015]). The State Constitution reflects New York’s deeply held value of equitable and inclusive democracy through, among other provisions, the express protection for the right to vote (NY Const art II, § 1); the presumption against disfranchisement (*id.* art I, § 1); and a broader guarantee of equal protection under the law than the federal Constitution (*id.* art I, § 11). Consistent with these values and given the textual differences with federal voting laws, the court correctly ruled that the State Constitution permits petitioners to bring

“crossover” claims even though such claims are unavailable under the federal Voting Rights Act (Slip Op. 5-7, comparing text of NY Const art III, § 4[c][1] to 52 USC § 10301[b]).

This holding squares with federal precedent. In recognition of states’ roles and independent interests in regulating democracy, states are allowed to draw crossover or influence districts even when a specific minority community could not comprise a majority in a given district (*see Bartlett v Strickland*, 556 US 1, 23 [2009] [“Our holding that § 2 does not require crossover districts does not consider the permissibility of such districts as a matter of legislative choice or discretion.”]).

Moreover, the U.S. Supreme Court has recognized that, while Section 2 of the federal Voting Rights Act does not require crossover districts, the statute’s guarantee of equal electoral opportunity does not mandate that remedial districts must be majority-minority minority. The federal VRA says nothing about the form in which equal electoral opportunity must be provided (*see Abrams v Johnson*, 521 US 74, 93 [1997]; *cf. Voinovich v Quilter*, 507 US 146, 155 [1993] [noting Section 2 “says nothing about majority-minority districts”]). Accordingly, remedies short of majority-minority districts that secure the electoral opportunity that the federal law guarantees are permissible (*see e.g. Singleton v Allen*, No. 21-CV-1291, 2023 WL 6567895, at *16 [ND Ala Oct. 5, 2023] [adopting “opportunity” district that is “not majority Black”]; *Ala. State Conf. of NAACP v Allen*, No. 2:21-CV-1531-AMM,

2025 WL 3227673, at *5, *12 [ND Ala Nov. 17, 2025] [adopting 43.9% Black remedial district]; *Montes v City of Yakima*, No. 12-CV-3108, 2015 WL 11120964, at *9, 12 [ED Wash Feb. 17, 2015] [remedial district with a 46% Latino citizen population]; *see also Cooper v Harris*, 581 US 285, 305-306 [2017] [the federal VRA is satisfied with existing crossover district]; *Lawyer v Department of Justice*, 521 US 567, 573, 581-83 [1987] [court-approved settlement map including crossover district satisfied the federal law].)

Having correctly established that crossover claims are cognizable under the New York Constitution, Supreme Court then analyzed petitioners' claims in this case as a crossover claim. After considering evidence of racially polarized voting and the historical and ongoing discrimination faced by Black and Latino Staten Islanders, Supreme Court concluded that the evidence "provide[d] strong support for the claim that Black and Latino votes are being diluted in the current CD-11" (Slip Op. 13).

But in reaching that conclusion, the court failed to consider an element of the claim: It did not assess whether the petitioners had demonstrated that their illustrative remedial district would provide the electoral opportunity the challenged district allegedly denies. Although Supreme Court acknowledged that the petitioners had submitted an illustrative remedial plan, the court neglected to evaluate that plan as part of its liability analysis and instead proceeded to order a remedy (Slip Op. 15-16). Yet, as the following section explains, the existence of a reasonable alternative

district is an essential element of a vote dilution claim, without which petitioners were not entitled to a remedy. Supreme Court thus erred in finding liability without making a determination as to this essential element.

II. Supreme Court Erred in Not Requiring Petitioners to Demonstrate the Existence of a Reasonable Remedy Necessary to a Vote Dilution Claim.

Racial vote dilution claims require plaintiffs to show that an alternative to the challenged electoral scheme exists that would remedy the alleged dilution. “After all, ‘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’” (*Clarke v Town of Newburgh*, 237 AD3d 14, 27 [2d Dept 2025], quoting *Reno v Bossier Parish School Bd.*, 520 US 471, 480 [1997]). Thus, to prevail on a claim of vote dilution, a plaintiff must prove not only racially polarized voting and a lack of minority electoral success, but must adduce “illustrative maps—that is, example districting maps that [New York] could enact” as the benchmark of an “undiluted” plan (*Allen v Milligan*, 599 US 1, 20 [2023]).

The reason this requirement of a reasonable alternative practice is intrinsic to the liability determination in a vote dilution case is simple: Unless some reasonable and legally permissible alternative electoral mechanism exists that would remedy the allegedly dilutive effect of the challenged practice, it cannot be said that “the protected class ... has less ability to elect its preferred candidate or influence the

election’s outcome than it would have if the [challenged] system had not been adopted.” (*Clarke*, 237 AD3d at 27, citing *Pico Neighborhood Association v City of Santa Monica*, 15 Cal 5th 292, 314-15 [2023] (“*Pico*”).

Authority from state and federal courts supports the principle that proffering a reasonable alternative practice is part of a vote-dilution plaintiff’s liability showing. The California Supreme Court recognized and endorsed the necessity of proving the existence of an effective remedy as an element of liability in racial vote dilution cases. In *Pico*, the California Court addressed whether a plaintiff must prove as an element of a racial vote dilution claim that their illustrative remedy would effectively address the dilution. The *Pico* Court concluded that proving “‘dilution’ requires not only a showing that racially polarized voting exists, but also that the protected class thereby has less ability to elect its preferred candidate or influence the election’s outcome than it would have if the at-large system had not been adopted” (*Pico*, 15 Cal 5th at 314-15). To make that showing, a racial vote dilution plaintiff “must identify a reasonable alternative voting practice to the existing ... electoral system that will serve as the benchmark ‘undiluted’ voting practice” (*id.* at 315 [citations and internal quotation marks omitted]). A legal standard that omitted this element of the vote dilution claim, the court explained, “would allow a party to prevail based solely on proof of racially polarized voting that could not be remedied or ameliorated by any other electoral system” (*id.*).

Federal law under Section 2 of the Voting Rights Act similarly recognizes that the possibility of an effective remedy is an essential element of a vote dilution claim. In *Gingles*, the U.S. Supreme Court first required the plaintiffs in VRA litigation to demonstrate that “there exists a minority group that is sufficiently large and compact to constitute a single-member district” (*Thornburg v Gingles*, 478 US 30, 49 n16 [1986]). “If it is not” possible to draw a reasonable remedial district, then the challenged plan “cannot be responsible for minority voters’ inability to elect its candidates” (*id.* at 50). More recently, in *Milligan*, the Court reaffirmed that plaintiffs must present a “reasonably configured” illustrative plan that “comports with traditional districting criteria, such as being contiguous and reasonably compact” (599 US at 18). It is enough that a plaintiff present “at least one illustrative map that comport[s] with [federal court] precedents” (*id.* at 33 [plurality]; *see also id.* at 43-44 & n2 [Kavanaugh, J., concurring]).

Finding these state and federal authorities persuasive, in *Clarke*, the Second Department construed a state statutory racial vote dilution protection to require plaintiffs to “show that . . . there is an alternative practice that would allow the minority group to ‘have equitable access to fully participate in the electoral process.’” (237 AD3d at 39, quoting Election Law § 17-206 [5] [a]).

This Court should affirm Supreme Court’s conclusion that vote-dilution claims, including a crossover or influence claims, are cognizable under the New

York Constitution. This Court should further hold that an prerequisite requirement for proving racial vote-dilution under the New York Constitution is evidence of “a reasonable alternative practice as a benchmark against which to measure the existing voting practice” (*Pico Neighborhood Assn*, 15 Cal 5th at 314-15). Here, the “reasonable alternative practice” would be a remedial crossover district where minority voters would be able to elect their candidate of choice; and *not* a plan where non-minority voters will continue to control and pick the winners in both primary and general elections (Slip. Op. 15-16).

But Supreme Court did not analyze whether petitioner’s illustrative remedial plan satisfies this standard, and thus neglects to address whether this element of a racial vote dilution claim had been met here. This Court should remand for Supreme Court to make that determination in the first instance, applying the principles outlined below.

III. Supreme Court Must Assess whether Petitioners’ Proposed Remedy Provides Greater Electoral Opportunity for Voters of Color and their Proposal Comports with the Federal and New York Constitutional Requirements.

When evaluating whether a plaintiff has met their obligation in supplying a reasonable illustrative remedy, courts must analyze whether (i) the proposed remedy both provides greater electoral opportunity for the protected class and (ii) comports with state and federal law, including constitutional requirements.

A. Supreme Court’s Proposed Remedial Standard Provides the Appropriate Test for Assessing Electoral Opportunity in a Crossover Claim.

Supreme Court adopted a standard for assessing whether a remedial map addresses the identified vote dilution in a crossover case. Although the Supreme Court did not apply this standard in assessing liability, the opinion below offers an appropriate framework for analyzing the “reasonable alternative practice” element of a vote dilution claim in crossover cases.

Under Supreme Court’s standard, a proposed crossover district would satisfy the “reasonable alternative practice” requirement if it meets three requirements. First, the protected class of minority voters (including a coalition of voters from two or more minority groups) must be able to select their candidates of choice in the primary election (Slip Op. 15). Second, the candidates preferred by the protected class must usually (but not always) be victorious in the general election (*id.*). Third, the remedial district should also increase the influence of minority voters, such that they are “decisive in the selection of candidates” (*id.*).

In elucidating this standard, Supreme Court ensured it contained appropriate guardrails. It explained that, under the second prong of its proposed standard, the requirement that minority candidates of choice “usually” win a general election is satisfied “to the extent minority-preferred candidates win more often than not.” As Supreme Court noted, the standard is the mirror image of the requirement to show

that, under the challenged practice, minority-preferred candidates are “usually” defeated (Slip Op. 15, citing *Gingles*, 478 US at 56). It also comports with federal law under Section 2 of the VRA (*cf. Abrams v Johnson*, 521 US 74, 94 [1997] [noting that a majority-Black district should be maintained when reducing the BVAP resulted in Black-preferred candidates winning less than half of elections]; *Abbott v Perez*, 585 US 579, 617 [2018] [finding that plaintiffs’ alternative map “would not enhance the ability of minority voters to elect the candidates of their choice” when the minority-preferred candidate won “7 out of the 35 relevant elections”]).

Supreme Court also emphasized that its standard should be applied to prevent racial vote dilution claims from being leveraged solely for partisan electoral gain—that to ensure “crossover districts cannot be used to achieve vote dilution in favor of a different political party” (Slip Op. 15). One potential way to satisfy this “gatekeeping condition” would be to require Petitioners to “show that minority voters in a reconstituted or putative district constitute a majority of those voting in the primary of the dominant party, that is, the party tending to win in the general election” (*League of United Latin Am. Citizens v Perry*, 548 US 399, 485-86 [2006] [*“LULAC”*] [Breyer, J., dissenting in part] [proposing standards for adjudicating a crossover claim]). Alternatively, Petitioners could show that the minority-preferred candidate can win both contested primary and general elections in the illustrative district (*cf. id.* at 444 [rejecting a crossover claim where the plaintiffs could not show

that a white Democrat was the Black-preferred candidate in both primary and general elections]).

In the absence of such evidence, crossover claims can easily be distorted for partisan maximization. For example, without this requirement, a plaintiff could argue for the creation of purported crossover districts in which white bloc voting by the putative “crossover” voters usually defeats minority-preferred candidates in primary elections, but minority voters support the white-preferred candidates in general elections (*cf. e.g., Gingles*, 478 US at 59; *Pope*, 94 F Supp 3d at 336-37). Justice Souter recognized this problem in his dissent in *Georgia v Ashcroft* (539 US 461, 508 [2003]). There, Georgia Democrats had created “influence” districts by breaking up opportunity-to-elect districts (*id.* at 470). Justice Souter noted that, although this approach might maximize partisan advantage for Democrats, it would do so at the expense of minority voters’ ability to elect their preferred candidates: “if the proportion of [white] Democrats is high enough, the minority group may well have no impact whatever on which Democratic candidate is selected to run and ultimately elected” (*id.* at 508 [Souter, J., dissenting]).

Supreme Court likewise emphasized that its standard would not be satisfied by a district “in which minority voters *do not* gain actual influence but *are* grouped with White voters who would elect minority candidates of choice regardless of whether those minority were drawn into a new district or not” (*id.*; *see also e.g.,*

Georgia v Ashcroft, 539 US 461, 508 [2003, Souter, J., dissenting] [opportunity districts should not be dismantled to create influence districts in which the protected class “hav[ing] no impact whatever on which Democratic candidate is selected to run and ultimately elected”]).

And Amici suggest a further clarification of the Supreme Court’s standard to avoid partisan manipulation: In analyzing whether proposed crossover districts provide greater electoral efficacy to the protected class, courts must assess more of the map than only the challenged district. An alternative plan that increases minority opportunity in a new crossover district while reducing opportunity elsewhere in the plan does not show that the challenged district is dilutive (*cf. LULAC*, 548 US at 429-30 [2006] [Section 2 plaintiff must show that it is possible to draw more than the existing number of opportunity districts]). A myopic focus only on the challenged district could permit district lines to be manipulated to create a new crossover district while dismantling an existing opportunity district for partisan gain (*cf. Ashcroft*, 539 US at 496-97 [Souter, J., dissenting]).

B. The Proposed Crossover District Must Comport with Federal and State Constitutional Requirements in that Race Did Not Predominate in its Creation.

Supreme Court recognized that alternative electoral processes proposed to remedy vote dilution must comport with the requirements of the New York State Constitution (Slip Op. 12, 13 [noting that remedial congressional districts must not

divide counties that do not exceed the ideal size of a district]). To satisfy the element of a vote dilution claim requiring a reasonable non-dilutive alternative, a proposed crossover district must also comport with the U.S. Constitution, including the “one-person, one-vote” principle and the Equal Protection Clause. The U.S. Supreme Court has suggested that race must not be the predominant consideration in the creation of illustrative plans offered to satisfy the first *Gingles* precondition. (*Milligan*, 599 US at 30-32 [plurality]). The mere fact that a plaintiff seeks to establish racial vote dilution by offering an illustrative district does not demonstrate racial predominance or undermine the validity of the claim or the eventual remedy (*Clarke*, 237 AD3d at 33-38). In *Milligan*, the U.S. Supreme Court explained that “[t]he very reason a plaintiff adduces a map at the first step of *Gingles* is precisely *because of* its racial composition—that is, because it creates an additional majority-minority district that does not then exist” (499 US at 34 n7). The mere fact that an illustrative district is drawn with a racial target in mind does not alone subject a district to strict scrutiny (*see id.* at 30-31; *see also North Carolina v Covington*, 585 US 969, 977-78 [2018]; *Bethune-Hill v Va. State Bd. of Elections*, 580 US 178, 192 [2017]).

In the redistricting context, federal courts review race-conscious decision-making differently than in other state action contexts (*Shaw v Reno*, 509 US 630, 645 [1993]). Creating a district that provides greater minority electoral opportunity

is not inherently suspect nor does it per se mean that race predominated. Thus, proposing an effective remedy as an element of a vote-dilution claim does not automatically trigger strict scrutiny (*Milligan*, 599 US at 34 n7; *Miller v Johnson*, 515 US 900, 915-916 [1995]). This doctrinal distinction reflects the U.S. Supreme Court’s recognition that map drawers will almost always be aware of racial demographics during the map-drawing process (*Miller*, 515 US at 915-916), as well as the fact that map drawers may need to consider race to a limited degree to comply with federal law and protection of equal rights, (*Milligan*, 599 US at 30 [plurality]).

Moreover, while some consideration of race is constitutionally permissible, remedying racial vote-dilution may be accomplished through entirely race-neutral means that do not require classifying voters by race or assigning them to districts on that basis. Plaintiffs may offer proposed non-dilutive alternative maps drawn based solely on traditional districting principles. New York’s redistricting criteria generally align with those that federal courts have identified as “traditional districting criteria” (*Milligan*, 599 US at 20 [referring to compactness, contiguity, and respect for existing political subdivisions]). New York’s notable additions are prohibitions on partisan gerrymandering, incumbency protection, or anything that discourages competition (see NY Const art III, § 4[c][5]). Remedial crossover districts drawn based solely on these non-racial traditional districting principles and without consulting racial data could satisfy the vote-dilution claim’s requirement of

a reasonable, non-dilutive alternative in an entirely race-neutral manner (*cf.*, *Milligan v Allen*, No. 2:21-CV-01530, 2025 WL 2451593, at *4 [ND Ala Aug. 7, 2025] [noting that a remedy under the federal VRA was “drawn race-blind” based on communities of interest and socioeconomic data]); (*NAACP*, 2025 WL 3227673, at *1 [adopting remedial plan drawn without viewing race data]).

Because Supreme Court did not evaluate whether petitioners’ proposed remedial plan either provided greater electoral opportunity or comported with constitutional principles, this Court should remand for application of the correct legal standard. Amici take no position on whether petitioners’ illustrative map would satisfy these standards.

CONCLUSION

At the heart of racial vote dilution claims are the experiences of how a lack of electoral opportunity and representation affects the everyday lives of the community, not partisan politics. Indeed, efforts to maximize partisan advantage in redistricting have at times actually led to racial vote dilution.

To ensure that does not happen here, this Court should affirm the Supreme Court’s recognition of vote dilution claims, including crossover claims, under the state constitution, but remand for consideration of whether petitioners have satisfied their burden of demonstrating that a reasonable and effective remedy exists for the

unequal electoral opportunity the Supreme Court found in its totality of the circumstances analysis.²

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Respectfully submitted,

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² The New York Civil Liberties Union hereby discloses that it is a non-profit 501(c)(4) organization and is the New York State affiliate of the American Civil Liberties Union. The NAACP Legal Defense and Education Fund, Asian American Legal Defense and Education Fund, and LatinoJustice PRLDEF disclose that each is a non-profit 501(c)(3) organization. No other person or entity has contributed to the preparation or submission of this brief. Additionally, no party or party's counsel contributed money that was intended to fund preparation or submission of this brief.

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