Troutman Pepper Locke LLP
875 Third Avenue
New York, NY 10022

troutman.com

Bennet J. Moskowitz
D 212.704.6087
bennet.moskowitz@troutman.com

February 4, 2026

Heather Davis
Chief Clerk of Court
New York State Court of Appeals
20 Eagle Street
Albany, NY 12207

Re: Williams v. Board of Elections
APL-2026-00010

Dear Ms. Davis:

We represent Appellants-Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba (collectively, "Intervenor-Respondents") in the above-referenced proceeding. On January 21, 2026, the Supreme Court, Civil Branch, New York County issued a Decision and Order holding that the current configuration of the State's legislatively adopted congressional map, N.Y. State Law §§ 110–12, violates Article III, Section 4(c)(1) of the New York Constitution (the "Order"). The Order enjoins certain state officials from conducting any election under that adopted map and orders the Independent Redistricting Commission ("IRC") to reconvene to complete a new congressional map by February 6, 2026. Intervenor-Respondents and other parties filed Notices of Appeal from the Order in both this Court and in the Appellate Division, First Department.

On January 29, 2026, this Court advised the parties that it is determining whether it has jurisdiction for the appeals and provided the parties the opportunity to address three jurisdictional questions. Intervenor-Respondents offer the below responses.

I. If This Court Determines That It Has Jurisdiction Over This Appeal, Intervenor-Respondents Intend To Proceed In This Court And Would Withdraw Their Protective Appeal In The Appellate Division; If This Court Determines It Lacks Jurisdiction, Intervenor-Respondents Would Proceed In the Appellate Division

This Court asks whether simultaneous appeals lie to this Court and the Appellate Division from the same order. New York law does not contemplate simultaneous appeals to both the Appellate Division and the Court of Appeals, *see Moody v. Sorokina*, 9 N.Y.3d 986, 986 (2007), such that

one of the two appeals must be dismissed. In particular, when parties file appeals in both appellate courts, this Court will provide the appellant the opportunity to abandon an appeal to the Appellate Division if this Court has jurisdiction over the appeal. *Moody*, 9 N.Y.3d at 986; *Parker v. Rogerson*, 35 N.Y.2d 751, 753–54 (1974). For example, in *Parker*, the defendants "appealed both to this court and the Appellate Division from a final judgment at Supreme Court." 35 N.Y.2d at 752. After noting that these "remedies are mutually exclusive," this Court ordered that the defendants' appeal to the Court of Appeals would "be dismissed, without costs, by the Court of Appeals sua sponte, unless within 20 days" the appellants "serve upon respondents and file in this court a notice that they have abandoned their cross appeal to the Appellate Division, and stipulate for the withdrawal of that appeal, without costs." *Id.* at 753–54; *Moody*, 9 N.Y.3d at 986 (similarly dismissing appeal "unless within 20 days appellant, if she be so advised, serves upon all parties and files in the Court of Appeals a notice that she has abandoned her appeal to the Appellate Division and stipulates for the withdrawal of that appeal").

Having said that, there are times when it is unclear in what court an appeal lies, in which case it is wise for a party that wants to take an appeal in a particular court to file protective appeals in both potential courts, so as to protect its rights in the event of an adverse jurisdictional determination in its preferred court. This occurs somewhat regularly in cases challenging agency actions in federal court, when it can be unclear whether the district court or the court of appeals has jurisdiction. For instance, in *National Association of Manufacturers v. Department of Defense*, 583 U.S. 109 (2018), several parties challenged an agency regulation defining the Clean Water Act's term "waters of the United States." "Uncertainty surrounding the scope of the Act's judicial-review provision" caused several parties "to file 'protective' petitions for review in various Courts of Appeals to preserve their challenges in the event that their District Court lawsuits were dismissed for lack of jurisdiction." *Id.* at 119. Courts have advised "careful counsel" when they are not sure if their preferred court has jurisdiction to file in both courts as a protective matter. *See Inv. Co. Inst. v. Bd. of Govs. of the Fed. Reserve Syst.*, 551 F.2d 1270, 1280 (D.C. Cir. 1977).

Here, Intervenor-Respondents wish to pursue their appeal from the Supreme Court's Order in this Court, if this Court determines that it has jurisdiction. Because the Supreme Court labeled the Order a non-final disposition—despite fully resolving Petitioners' sole claim in this case—it was unclear to Intervenor-Respondents at the time of filing (and, indeed, still today, *see infra* pp.3–6) whether this Court would conclude that it has jurisdiction under CPLR Section 5601(b)(2). Given this uncertainty, Intervenor-Respondents appealed from the Order in both this Court and the Appellate Division. Intervenor-Respondents do not contend that New York law provides for simultaneous appeals under these circumstances, *see Parker*, 35 N.Y.2d at 753–54, nor do they intend to pursue simultaneous appeals here. Rather, they filed in both courts protectively, while making clear in multiple filings that their preferred venue is this Court, to the extent both this Court and the Appellate Division provide permissible options.[*] Intervenor-Respondents have also made

[*] Intervenor-Respondents' position is also set forth in their letter to this Court dated January 28, 2026 and the first footnote of Intervenor-Respondents' Memorandum Of Law In Support Of Emergency Motion For Interim Stay And Stay, which was attached to that letter. Intervenor-Respondents made the same point in

this preference clear by seeking permission from the Appellate Division to file a direct appeal to this Court, to the extent this Court lacks jurisdiction under Section 5601(b)(2). *See* NYSCEF No.11 at 1612–13, *Williams v. Bd. of Elections*, No.2026-00384 (1st Dep't).

If this Court agrees with Intervenor-Respondents that it has jurisdiction over this appeal, Intervenor-Respondents respectfully request that the Court enter an order so indicating, in which case Intervenor-Respondents will withdraw their Appellate Division appeal. *See Parker*, 35 N.Y.2d at 753–54; *Moody*, 9 N.Y.3d at 986. If, however, this Court concludes that it lacks jurisdiction, it should dismiss the appeal in this Court, and Intervenor-Respondents intend to proceed with their appeal before the Appellate Division (including their pending motion that the Appellate Division authorize an appeal to this Court).

II. While Not Entirely Free From Doubt, The Better Reading Of The Law Is That The Order Appealed From Finally Determines The Action Within The Meaning Of The Constitution, As This Court Necessarily Determined Under Similar Circumstances in *Harkenrider*

This Court's briefing order asked whether the Order finally determines the action within the meaning of the Constitution. *See* N.Y. Const. art. VI, § 3. While Intervenor-Respondents do not believe the issue is free from doubt, as explained in footnote one of the Memorandum Of Law In Support Of Emergency Motion For Interim Stay And Stay that Intervenor-Respondents have submitted to this Court, *see also* NYSCEF No.11 at 1561 n.1, *Williams v. Bd. of Elections*, No.2026-00384 (1st Dep't), the better reading of the law is that because the Order conclusively decides all merits issues between the parties on Petitioners' sole claim, it finally determines the action and so is immediately appealable to this Court.

An order must "finally determine[ ]" an action to be immediately appealable to this Court. *See, e.g.*, CPLR § 5601(b)(2). This Court applies the finality requirement "pragmatically" rather than formalistically. CPLR § 5601 (Practice Commentary). Regardless of how the Supreme Court labels its order, a final order or judgment is one that "disposes of all of the causes of action between the parties in the action or proceeding and leaves nothing for further judicial action apart from mere ministerial matters." *Burke v. Crosson*, 85 N.Y.2d 10, 15 (1995). By contrast, where an order "disposes of some but not all of the substantive and monetary disputes between the same parties," that order "is, in most cases, nonfinal," such as when the court "decides one or more but not all causes of action in the complaint against a particular defendant or where the court disposes of a counterclaim or affirmative defense but leaves other causes of action between the same parties for resolution in further judicial proceedings." *Id.* at 15–16.

The most closely analogous case to the situation here is *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022) ("*Harkenrider II*"). There, the petitioners challenged the 2022 congressional and senate maps that the Legislature purported to adopt without following the IRC process as unconstitutional

their filings with the Appellate Division. *See* NYSCEF No.11 at 1561 n.1, *Williams v. Bd. of Elections*, No.2026-00384 (1st Dep't).

under the New York Constitution. *Id.* at 505–06. The trial court agreed. It declared all of the challenged maps to be void, "enjoined the state respondents from using the maps in the impending 2022 election, and directed the legislature to submit new 'bipartisanly supported' maps that meet constitutional requirements for the court's review by a particular date." *Id.* at 507. On appeal, the Appellate Division concluded that the petitioners had standing to bring the action, affirmed the Supreme Court's order in part as to the State's 2022 congressional map (on substantive grounds only), gave "the legislature [ ] until April 30, 2022 to enact a constitutional replacement for the congressional map," and "remitted" the matter "to Supreme Court for further proceedings." *Harkenrider v. Hochul*, 204 A.D.3d 1366, 1375 (4th Dep't 2022) ("*Harkenrider I*").

In asserting jurisdiction over both the respondents' appeal and the petitioners' cross appeal from the Appellate Division's decision—and then ultimately overturning the Appellate Division's remedy in favor of a judicially supervised special master process—this Court necessarily determined that the Appellate Division's order affirming in part and remitting the Supreme Court's conclusion that the 2022 congressional map was unconstitutional was final under CPLR Section 5601(b)(1)—despite the fact that there was not yet a remedial map in place from the Supreme Court and Appellate Division proceedings. *Compare Harkenrider II*, 38 N.Y.3d at 508, *with Harkenrider I*, 204 A.D.3d at 1375. This Court noted that the parties' appeals were "as of right," citing to Section 5601(b)(1). *Harkenrider II*, 38 N.Y.3d at 508. That provision allows a party to appeal to this Court "from an order of the appellate division which *finally determines* an action where there is directly involved the construction of the constitution of the state or of the United States." CPLR § 5601(b)(1) (emphasis added). In other words, Section 5601(b)(1) requires finality for an appeal to this Court to lie. *See id.* Even though the Appellate Division's order contemplated additional legislative and judicial proceedings—including drawing and implementing a new remedial congressional map—these additional proceedings did not prevent this Court from concluding that the Appellate Division's order "finally determin[ed]," CPLR § 5601(b)(1), all substantive issues in the case, such that an appeal to this Court "as of right" was proper, *see Harkenrider II*, 38 N.Y.3d at 508 (citing CPLR § 5601(b)(1)).

Here, while the Supreme Court labeled its Order non-final, the better reading of the law is that this Order finally determines all substantive merits issues and so "finally determines" the action within the meaning of the Constitution. *See* N.Y. Const. art. VI, § 3. The Order holds that "the configuration of New York's 11th Congressional District under the 2024 Congressional Map is deemed unconstitutional under Article III, Section 4(c)(1) of the New York Constitution," "enjoin[s]" Respondents "from conducting any election thereunder or otherwise giving any effect to the boundaries of the map as drawn," and orders the IRC to "reconvene to complete a new Congressional Map in compliance with this Order by February 6, 2026." This Order finally resolved the disputes between the parties, despite the Supreme Court's decision to leave the case open "until the successful implementation of a new Congressional Map complying with this order." *See Burke*, 85 N.Y.2d at 15. While Petitioners have argued in a letter to this Court that "supervising the process for drawing a new congressional map [cannot] be characterized as 'ministerial,'" the Order does not suggest that the Supreme Court intends to "supervis[e]" either the IRC or the Legislature. In any event, even if the Supreme Court does intend to exercise some

undefined "supervisory" authority over the IRC and the Legislature, the Order would still be final for purposes of this Court's review, for the same reasons that the Appellate Division's order in *Harkenrider* (which directed the Legislature to enact a remedial map with the Supreme Court retaining jurisdiction for "further proceedings") was final for purposes of this Court's review. *Harkenrider I*, 204 A.D.3d at 1375; *Harkenrider II*, 38 N.Y.3d at 508 (noting that the parties' cross-appeals were "as of right" under CPLR Section 5601(b)(1)).

The situations here and in *Harkenrider* appear to be parallel in all material respects. There, the Appellate Division concluded that the 2022 congressional map was unconstitutional, gave the legislature "until April 30, 2022 to enact a constitutional replacement for the congressional map," and remitted the matter "to Supreme Court for further proceedings." *Harkenrider I*, 204 A.D.3d at 1375; *see Harkenrider II*, 38 N.Y.3d at 507 (noting that the Appellate Division "affirmed [in part] and remitted"). The Order here similarly concludes that the 2024 congressional map is unconstitutional, while still contemplating that the Legislature will enact a replacement for the congressional map at issue and that the Supreme Court will retain jurisdiction over the matter until the replacement map is implemented. Although this Court's jurisdiction in this case would arise under Section 5601(b)(2), which governs direct appeals from a Supreme Court order, *see* CPLR § 5601(b)(2), both Section 5601(b)(2) and Section 5601(b)(1) require that the appealed-from order "finally determine[ ] an action." *Compare* CPLR § 5601(b)(1), *with* CPLR § 5601(b)(2).[†] This Court necessarily determined that the Appellate Division's *Harkenrider* order "finally determine[d the] action," CPLR § 5601(b)(1), despite the ongoing proceedings, *see Harkenrider II*, 38 N.Y.3d at 508 (noting that the parties' appeals were "as of right" under Section 5601(b)(1)), and it should do the same here with respect to the Supreme Court's Order.

III. The Only Claim Involved Is the Constitutional Validity Of A Statute; Whether That Is Sufficient To Invoke This Court's Jurisdiction under CPLR § 5601(b)(2) Given The Many Constitutional Defects In The Supreme Court's Ruling Is An Open Issue That This Court Should Decide In Favor Of Its Jurisdiction.

This Court asks whether the only issue involved in this appeal is the constitutional validity of a statute so as to support a direct appeal under CPLR Section 5601(b)(2). The answer depends on how strictly this Court interprets the single-issue rule.

Section 5601(b)(2) provides for direct appeals to this Court from any "judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." CPLR § 5601(b)(2). In other words, "on a direct appeal, the only question which may be raised is the constitutionality of a statute." *Merced v. Fisher*, 38 N.Y.2d 557, 557–58 (1976). By contrast, where a case "involves a procedural issue

[†] Section 5601(a), which allows for an appeal to this Court as of right "where there is a dissent by at least two justices on a question of law in favor of the party taking such appeal," similarly requires that the appealed-from order "finally determines the action." CPLR § 5601(a).

as well as the constitutional issue, a direct appeal as of right to the Court of Appeals does not lie." *City of Amsterdam v. Helsby*, 37 N.Y.2d 19, 28 (1975).

The Order here resolves the only *claim* set forth in Petitioners' Petition—whether New York's congressional map (specifically, CD11), signed into law on February 28, 2024, N.Y. State Law §§ 110–12, is unconstitutional under Article III, Section 4 of the New York Constitution. All of Intervenor-Respondents' arguments on appeal arise from this fundamental constitutional issue. There are no other procedural or threshold issues (such as standing) at play. *See City of Amsterdam*, 37 N.Y.2d at 28; *Lavine v. State of New York*, 229 A.D.3d 1173, 1174–75 (2024).

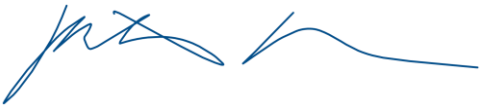
Having said that, and to be absolutely clear, Intervenor-Respondents will raise arguments in this appeal about why the Supreme Court's resolution of that one claim was erroneous, grounded in both the New York Constitution and the U.S. Constitution: (i) whether the Supreme Court erred in concluding that the legislatively adopted map's CD11 is unconstitutional under the New York Constitution; (ii) whether the Supreme Court's determination that the legislatively adopted map's CD11 is unconstitutional based upon a theory that no party raised violates the U.S. Constitution's Due Process Clause; (iii) whether the Supreme Court's conclusion that the legislatively adopted map's CD11 must be redrawn based upon race violates the U.S. Constitution's Equal Protection Clause; and (iv) whether the Supreme Court's determination that the legislatively adopted map's CD11 is unconstitutional violates the U.S. Constitution's Elections Clause. Each of these issues involves the constitutional validity of New York's congressional map, N.Y. State Law §§ 110–12, and so implicates this Court's jurisdiction under Section 5601, *see* CPLR § 5601(b)(2).

Intervenor-Respondents recognize that the jurisdictional questions here are not free from doubt, just as the finality issue discussed above is not free from doubt, but contend that the best course, and the better reading of Section 5601(b)(2), is for this Court to take jurisdiction of the appeal,. This case presents urgent issues of statewide importance—the Order enjoins Respondents from giving any effect to the State's legislatively adopted congressional map, such that there is currently no map in place for the upcoming congressional election cycle. Given the extraordinary public importance of ensuring stable, lawful rules for electing New York's congressional delegation, the legal issues involved, and the practical necessity of prompt, definitive guidance from the State's highest court, this Court is best-positioned to address this appeal.

For the sake of clarity, however, Intervenor-Respondents reiterate that they intend to raise all of the constitutional issues outlined above in their appeal. If this Court concludes that doing so places the case beyond its jurisdiction, then it should so hold and dismiss the notice of appeal to this Court, thereby making clear that the Appellate Division must resolve this matter. Intervenor-Respondents again note that they have already asked the Appellate Division to authorize a direct appeal to this Court. They further respectfully underscore that, in all events, they have asked for clarity by February 10, 2026 from the New York appellate courts as to whether the State's legislatively adopted map will remain enjoined based upon the indefensible Order here, including so that they can decide whether they must seek relief from the U.S. Supreme Court given the forthcoming February 24 scheduled date for the beginning of the congressional election.

troutman pepper locke

Respectfully submitted,



Bennet J. Moskowitz

CC: Counsel for all Parties by FedEx and Email

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP

Andrew G. Celli, Jr.
1 Rockefeller Plaza, 8th Floor
New York, NY 10020
Tel. (212) 763-5000
acelli@ecbalaw.com

Counsel for Appellees-Petitioners
ELIAS LAW GROUP LLP

Aria C. Branch
250 Massachusetts Avenue, Suite 400
Washington, D.C. 20001
Tel. (202) 968-4490
abranch@eliaslaw.com

Counsel for Appellees-Petitioners

NEW YORK STATE BOARD OF ELECTIONS

Brian L. Quail
40 North Pearl Street, 5th Floor
Albany, NY 12207
Tel. (518) 447-6367
brian.quail@elections.ny.gov

Counsel for Appellee-Respondent Board of Elections of the State of New York

OFFICE OF THE ATTORNEY GENERAL

Seth J. Farber
28 Liberty Street
New York, NY 10005
Tel. (212) 416-8029

seth.farber@ag.ny.gov

Counsel for Appellees-Respondents Governor Kathy Hochul, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl E. Heastie, and Attorney General Letitia James

CULLEN AND DYKMAN LLP

Nicholas J. Faso
80 State Street, Suite 900
Albany, NY 12207
Tel. (518) 788-9406
nfaso@cullenllp.com

Counsel for Appellees-Respondents Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III

ELECTION LAW CLINIC, HARVARD LAW SCHOOL

Ruth Merewyn Greenwood
6 Everett Street, Suite 4105
Cambridge, MA 02138
Tel. (202) 560-0590
rgreenwood@law.harvard.edu

Counsel for Third Party Nicholas O. Stephanopoulos

NEW YORK CIVIL LIBERTIES UNION FOUNDATION

Perry M. Grossman
125 Broad Street, 19th Floor
New York, NY 10004
Tel. (212) 607-3347
pgrossman@nyclu.org

Counsel for Third Party New York Civil Liberties Union Foundation

Prepared by PrintingHouse Press, Ltd. 10 East 39th Street, New York, NY 10016
Tel No: (212) 719-0990 Fax No: (212) 398-9253

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS

James Pacheco, Being duly sworn, deposes and says that deponent is not party to the action, and is over 18 years of age.

That on 2/4/2026 deponent caused to be served 1 copy(s) of the within

Letter Brief of Appellants-Intervenor-Respondents Congresswoman Nicole Malliotakis and Individual Voters Edward L. Lai, Joel Medina, Solomon B. Reeves, Angela Sisto, and Faith Togba

upon the attorneys at the address below, and by the following method:

By Overnight Delivery and Email

CULLEN AND DYKMAN LLP
Nicholas J. Faso, Esq.
Counsel for Appellees-Respondents Peter S. Kosinski, Anthony J. Casale, and Raymond J. Riley, III
80 State Street, Suite 900
Albany, NY 12207
Tel. (518) 788-9406
nfaso@cullenllp.com

By Overnight Delivery and Email

NEW YORK STATE BOARD OF ELECTIONS
Brian L. Quail, Esq.
Counsel for Appellee-Respondent Board of Elections of the State of New York
40 North Pearl Street, 5th Floor
Albany, NY 12207
Tel. (518) 447-6367
brian.quail@elections.ny.gov

By Overnight Delivery and Email

EMERY CELLI BRINCKERHOFF ABADY WARD & MAAZEL, LLP
Andrew G. Celli, Jr., Esq.
Counsel for Appellees-Petitioners
1 Rockefeller Plaza, 8th Floor
New York, NY 10020
Tel. (212) 763-5000
acelli@ecbalaw.com

By Overnight Delivery and Email

OFFICE OF THE ATTORNEY GENERAL
Seth J. Farber, Esq.
Counsel for Appellees-Respondents Governor Kathy Hochul, Senate Majority Leader Andrea Stewart-Cousins, Assembly Speaker Carl E. Heastie, and Attorney General Letitia James
28 Liberty Street
New York, NY 10005
Tel. (212) 416-8029
seth.farber@ag.ny.gov

Affidavit of Service

(Continued)

By Overnight Delivery and Email

ELIAS LAW GROUP LLP
Aria C. Branch, Esq.
Counsel for Appellees-Petitioners
250 Massachusetts Avenue,
Suite 400
Washington, D.C. 20001
Tel. (202) 968-4490
abranch@eliaslaw.com

By Overnight Delivery and Email

ELECTION LAW CLINIC, HARVARD LAW SCHOOL
Ruth Merewyn Greenwood, Esq.
Counsel for Third Party Nicholas O. Stephanopoulos
6 Everett Street, Suite 4105
Cambridge, MA 02138
Tel. (202) 560-0590
rgreenwood@law.harvard.edu

By Overnight Delivery and Email

NEW YORK CIVIL LIBERTIES UNION FOUNDATION
Perry M. Grossman, Esq.
Counsel for Third Party New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004
Tel. (212) 607-3347
pgrossman@nyclu.org

Kevin Ayala

Sworn to me this
Wednesday, February 4, 2026

Case Name: Michael Williams v. Board of Elections of the State of New York (3)

Affidavit of Service
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Index:

KEVIN AYALA
Notary Public, State of New York
No. 01AY6207038
Qualified in New York County
Commission Expires 7/13/2029