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

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Michal Williams; José Ramírez-Garofalo; Aixa Torres; and Melissa Carty,

Petitioners,

-against-

Board of Elections of the State of New York; Kristen Zebrowski Stavisky, in her official capacity as Co-Executive Director of the Board of Elections of the State of New York; Raymond J. Riley, III, in his official capacity as Co-Executive Director of the Board of Elections of the State of New York; Peter S. Kosinski, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Henry T. Berger, in his official capacity as Co-Chair and Commissioner of the Board of Elections of the State of New York; Anthony J. Casale, in his official capacity as Commissioner of the Board of Elections of the State of New York; Essma Bagnuola, in her official capacity as Commissioner of the Board of Elections of the State of New York; Kathy Hochul, in her official capacity as Governor of New York; Andrea Stewart-Cousins, in her official capacity as Senate Majority Leader and President *Pro Tempore* of the New York State Senate; Carl E. Heastie, in his official capacity as Speaker of the New York State Assembly; and Letitia James, in her official capacity as Attorney General of New York,

Respondents,

-and-

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

Intervenors-Respondents.

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Index No. 164002/2025

Hon. Jeffrey H. Pearlman

Motion Seq.001, ____

MEMORANDUM OF LAW IN SUPPORT OF INTERVENOR-RESPONDENTS' MOTION TO DISMISS AND IN OPPOSITION TO PETITIONERS' MOTION FOR JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Rules

Other Authorities

PRELIMINARY STATEMENT

For the last 30 years, the boundaries of New York's 11th Congressional District have been largely stable, encompassing the geographically isolated borough of Staten Island. Congresswoman Nicole Malliotakis has won election to Congress from the 11th Congressional District in each of the past three elections, making her the only Republican representing a portion of New York City in Congress. Congresswoman Malliotakis' story is quintessentially American: she is the daughter of immigrants, with her father immigrating to the United States from Greece and her mother fleeing to our Nation from Cuba to escape the Castro dictatorship.

Petitioners brought this lawsuit to redraw the 11th Congressional District's historical boundaries and convert it into a so-called "influence" district for Black and Latino voters. Petitioners ask this Court to read into the New York Constitution an "influence" district requirement not found in the constitutional text, and then order a racial gerrymander that clearly violates the Fourteenth Amendment's Equal Protection Clause under U.S. Supreme Court precedent. In all, the Petition suffers from numerous, independently fatal flaws, each of which requires the Court to dismiss the Petition and/or enter judgment in favor of Intervenor-Respondents.

First, Petitioners' sole claim rests on their meritless assertion that Article III, Section 4 of the New York Constitution mandates the drawing of so-called "influence" districts. But Article III, Section 4 does not use the term "influence" and is, instead, modeled on Section 2 of the federal Voting Rights Act ("VRA"), using language materially indistinguishable from Section 2. Interpreting that shared language, the U.S. Supreme Court in *League of United Latin American Citizens v. Perry*, 548 U.S. 399 (2006) ("*LULAC*"), held that Section 2 does *not* mandate the creation of minority influence districts, *id.* at 446 (plurality op.). The U.S. Supreme Court decided

LULAC well before New York enacted Article III, Section 4 as part of the 2014 Amendments to the State's Constitution. Thus, under bedrock principles of constitutional interpretation, that reading of Article III, Section 4's language controls, and courts have no authority to write a different version of Article III, Section 4 into the New York Constitution.

Petitioners recognize that the text of Article III, Section 4 does not support their claim, and so remarkably ask this Court to read the statutory standards of the later-enacted New York Voting Rights Act ("NYVRA") into that constitutional provision. The NYVRA can require the creation of "influence" districts for local governments upon a showing, *inter alia*, that the candidates preferred by members of a minority group in a jurisdiction are "usually [ ] defeated" under the current map and that there is either "racially polarized" voting in the jurisdiction or that the minority group's ability "to elect candidates of their choice or influence the outcome of elections is impaired" "under the totality of the circumstances." N.Y. Elec. Law § 17-206(2)(b)(ii). Petitioners point to no authority that would allow this Court to amend retroactively a constitutional provision that the People adopted in 2014 to govern congressional redistricting to include standards and language from a statute that the Legislature adopted in 2022 to govern local redistricting.

Second, even if this Court were to accept Petitioners' invitation to judicially amend Article III, Section 4 to incorporate the NYVRA's standards, Petitioners' claim would fail on the merits. Most obviously, Petitioners have not made the NYVRA's threshold showing that Black and Latino voters' candidates of choice—Democrats—are "usually defeated" in New York. Minority-preferred candidates are not "usually defeated" throughout most congressional districts in New York—in fact, Democrats routinely win every seat wholly within New York City except for the 11th Congressional District and have a substantial chance to win that District as well. Petitioners' attempted showing on the remaining portions of the NYVRA's vote-dilution

analysis—either the racially-polarized-voting or the totality-of-the-circumstances inquiries—also fails, as demonstrated by Intervenor-Respondents' experts.

Finally, the U.S. Constitution bars Petitioners' requested relief for two separate reasons. To begin, redrawing the 11th Congressional District in the manner that Petitioners seek would violate the Fourteenth Amendment's Equal Protection Clause, as interpreted by the U.S. Supreme Court. The U.S. Supreme Court has made clear that when a mapdrawer moves voters within or without a particular district predominately based on racial consideration, this triggers strict-scrutiny review, meaning the action must be necessary to further a compelling state interest. As applied here, redrawing the 11th Congressional District for racial reasons clearly triggers strict scrutiny because it constitutes drawing a district to achieve a particular racial goal. Yet, Petitioners' request to redraw the 11th Congressional District cannot satisfy strict scrutiny's daunting two-step review. Petitioners have no evidence that such a redraw would further the compelling government interest of remediating specific instances of past discrimination—the only arguably compelling interest here. And redrawing the 11th Congressional District on a racial basis is not narrowly tailored because it is not necessary to remedy any identified racial discrimination that the State has engaged in. Additionally, Petitioners' requested remedy also violates the U.S. Constitution's Elections Clause. Were this Court to agree with Petitioners, it would have to judicially amend Article III, Section 4 to add the NYVRA's influence-district mandate to order the redrawing of a legislatively adopted congressional map. That approach exceeds the ordinary bounds of judicial review within which this Court must stay, according to the U.S. Supreme Court's recent Elections Clause decision in *Moore v. Harper*, 600 U.S. 1 (2023).

For any one of these reasons, and the additional reasons below, this Court should dismiss the Petition or, alternatively, reject Petitioners' claim on the merits.

BACKGROUND

A. The 2024 Legislature's Map Keeps The 11th Congressional District In Line With Its Historical Boundaries

Following the release of the 2020 federal census, New York "lost a congressional seat and other [of its] districts were malapportioned" due to "shifts in New York's population," making the State's "2012 congressional apportionment" "unconstitutional and necessitating the drawing of new district lines." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 504 (2022) (citation omitted). The resulting process to redraw the State's congressional map was New York's "first opportunity" to have its "district lines [ ] be drawn under the new [Independent Redistricting Commission ('IRC')] procedures established by the 2014 constitutional amendments" to the New York Constitution, *id.*, which prohibit partisan gerrymandering through a provision mirroring Section 2 of the VRA, *compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). The IRC's map-drawing process broke down, however, resulting in the Legislature adopting its own congressional map without receiving the mandatory IRC submission. *Harkenrider*, 38 N.Y.3d at 504–05. The Court of Appeals held that the Legislature's map was both "procedurally" and "substantively unconstitutional." *Id.* at 521. The Court then instructed the Steuben County Supreme Court to "adopt constitutional maps" itself, *id.* at 524, which led to the adoption of the *Harkenrider* Map on May 20, 2022, *see Harkenrider* No.670 at 1–2, 4–11; *see also Harkenrider* No.696 at 1 (adopting modified map correcting certain technical violations).[1] Notably, the map that the Court of Appeals struck down as being "drawn with an unconstitutional partisan intent," *Harkenrider*, 38 N.Y.3d at 502, before the adoption of the *Harkenrider* Map was designed by Democrats to further their "political ambitions to capture the 11th District," Affirmation of Bennet J. Moskowitz

[1] Cites e-filings in *Harkenrider v. Hochul*, Index No.E2022-0116CV (Sup. Ct. Steuben Cnty.), may be found at https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=kmywkTvfcaoSsQ66zseQsg==&display=all (all webpages last accessed Dec. 8, 2025), and are cited as "*Harkenrider* No.__."

("Moskowitz Aff."), Ex.A, by making similar changes to the district's boundaries as those that Petitioners have requested here, *see* NYSCEF Doc. No.1 ("Pet.") ¶¶ 101–02, that would render the district "significantly more liberal," Moskowitz Aff., Ex.B.

The *Harkenrider* Map placed the boundaries of New York's 11th Congressional District largely in-line with the boundaries that had defined this district in every congressional map for decades (before the failed gerrymander), Moskowitz Aff., Ex.M ("Trende.Rebut") at 18–23; *compare Harkenrider* No.670 at 30, *with* Moskowitz Aff., Ex.C, Moskowitz Aff., Ex.D (2002 New York City Congressional District Map, numbering the general area covered by the current 11th Congressional District as the 13th Congressional District), *and* Moskowitz Aff., Ex.E (1997 New York City Congressional District Map, adopting same numbering), which District comprises all of Staten Island and parts of Southern Brooklyn, *see* N.Y. State Law § 111. The 11th Congressional District's boundaries date back to the 1980s—45 years ago. *See* Moskowitz Aff., Ex.F (1983 New York City Congressional District Map, numbering the general area covered by the current 11th Congressional District as the 14th Congressional District); *see also* Pet. ¶¶ 53, 94 (stating that the 11th "district's boundaries have remained static since 1980" and that "the district took its current form" in "the 1980s").

Thereafter, certain petitioners initiated a special proceeding to replace the *Harkenrider* Map. *Hoffman v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 355 (2023). The Court of Appeals ultimately required the IRC to submit a "congressional redistricting plan and implementing legislation" to the Legislature, as required by the 2014 Amendments, so that a new map would govern New York's 2024 congressional elections and beyond. *See id.* The IRC complied, approving the proposal in a 9-1 vote. *See* 2024 NY Senate Bill S8639; 2024 NY Assembly Bill A9304; *see also* Moskowitz Aff., Ex.G. The IRC's proposal only slightly modified

the *Harkenrider* Map and did not alter the 11th Congressional District. *See* Moskowitz Aff., Ex.G; Pet. ¶ 57. After receiving the IRC's proposed map, the Legislature made only modest changes, and then sent this proposal to the Governor. *See* 2023 NY Senate Bill S8653A; 2023 NY Assembly Bill A9310. The Legislature's map also did not alter the 11th Congressional District. Large, bipartisan majorities of the Senate (45-17) and the Assembly (118-30) voted in favor of the proposed congressional map. *See* 2023 NY Senate Bill S8653A (providing Senate floor vote details); 2023 NY Assembly Bill A9310 (same, as to Assembly). On February 28, 2024, Governor Hochul signed the 2024 Congressional Map drawn into law. N.Y. State Law §§ 110–12.

B. Congresswoman Malliotakis—The Daughter Of A Cuban Refugee And A Greek Immigrant—Represents The 11th Congressional District

Congresswoman Malliotakis is the incumbent Representative to the U.S. House of Representatives for New York's 11th Congressional District. *See* NYSCEF Doc. No.23 ("Malliotakis Aff."). She is the daughter of immigrants: her father immigrated to the United States from Greece and her mother came to America as a Cuban refugee fleeing the Castro dictatorship. Malliotakis Aff. ¶ 3. Congresswoman Malliotakis first ran for, and won, election to represent the 11th Congressional District in 2020. *Id.* ¶¶ 2–3. She garnered broad support in her first election, receiving over 155,000 votes and 53% of the total votes. *See* Moskowitz Aff., Ex.H. Congresswoman Malliotakis' election made her the first Hispanic and minority to represent the citizens of Staten Island in the House of Representatives, *see* Malliotakis Aff. ¶ 3, and the only elected Republican member of Congress representing a part of New York City, *see* N.Y. State GIS Clearinghouse, *GIS Data, NYS Congressional Districts* (Oct. 7, 2025).[2]

Congresswoman Malliotakis then successfully ran for reelection in the 11th Congressional District in 2022 and 2024. Malliotakis Aff. ¶ 2. In 2022, under the *Harkenrider* Map, Republican

[2] Available at https://data.gis.ny.gov/datasets/nys-congressional-districts/about.

representatives won 11 of New York's 26 congressional districts. *See* Moskowitz Aff., Ex.I; Moskowitz Aff., Ex.J. Congresswoman Malliotakis was the only Republican representative to win in New York City, earning 62% of the votes in the 11th Congressional District, totaling 115,992 votes. *See* Moskowitz Aff., Ex.J. In 2024, now under the 2024 Congressional Map, Republican representatives won only 7 of New York's 26 districts. *See* Moskowitz Aff., Ex.K; Moskowitz Aff., Ex.L. Congresswoman Malliotakis again decisively won reelection in the 11th Congressional District with 167,099 votes and 64% of the vote and, again, was the only Republican representative to win in New York City. *See* Moskowitz Aff., Ex.L. Congresswoman Malliotakis intends to run for reelection again in 2026 to continue representing the 11th Congressional District and is actively campaigning to win that election. *See* Malliotakis Aff. ¶¶ 5–7.

C. Petitioners Belatedly Challenge The 11th Congressional District

On October 27, 2025, Petitioners initiated this special proceeding, naming as Respondents the Board of Elections of the State of New York (the "Board") and certain state officials in their official capacities. Pet.1. Petitioners allege that they are registered voters residing in either the 10th or 11th Congressional Districts, *id.* ¶¶ 14–18, and claim that the 2024 Congressional Map's 11th Congressional District dilutes the votes of Black and Latino voters in that District in violation of Article III, Section 4(c)(1) of the New York Constitution, *id.* ¶¶ 96–102. Petitioners do not claim that Black or Latino voters in the 11th Congressional District could, either separately or even added together, form a majority in any reasonably configured district. Petitioners' sole claim is that the 11th Congressional District, as drawn in the 2024 Congressional Map, reduces the "*influence*" that Black and Latino voters "could" have in that district's elections. *Id.* ¶¶ 100–02 (emphasis added); *see also, e.g., id.* ¶¶ 1, 4, 65–68; *id.* ¶¶ 12–13. Petitioners ask this Court to "order the Legislature to adopt" a new map that "pair[s]" Staten Island with certain "voters in

lower Manhattan"—similar to the map the Court of Appeals invalidated in *Harkenrider*—in order "to create a minority influence district in CD-11" for Black and Latino voters. *Id.* at 28.

STANDARD OF REVIEW

CPLR 3211(a)(7) allows dismissal when a petition "fails to state a cause of action." CPLR 3211(a)(7). The Court accepts the allegations in the petition as true, but disregards "allegations consisting of bare legal conclusions," to determine "whether the facts as alleged fit within any cognizable legal theory," and it should dismiss the petition "if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery." *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 141–42 (2017) (citation omitted). Under CPLR 3212, summary judgment is proper where the moving party "demonstrate[s] that 'the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment' in the moving party's favor." *Jacobsen v. N.Y.C. Health & Hosps. Corp.*, 22 N.Y.3d 824, 833 (2014) (citing CPLR 3212(b)). The movant must first "make a prima facie showing of entitlement to judgment as a matter of law" by "tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Id.* (citation omitted). This requires a "tender of evidentiary proof in admissible form"—"mere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). If the moving party meets its initial burden, the burden shifts "to the non-moving party to demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action" by "produc[ing] evidentiary proof in admissible form" or by "demonstrat[ing] acceptable excuse for his failure to meet the requirement of tender in admissible form." *Id.* at 560–62 (citations omitted).

ARGUMENT

I. Petitioners' Claim Fails Under The New York Constitution

A. The New York Constitution's Vote-Dilution Provision Does Not Include An "Influence" District Mandate, Which Should Be The End Of This Case

This Court construes the New York Constitution in the same way that it "[c]onstru[es] the language of a statute"—by giving "the language used its ordinary meaning" and applying well-settled principles of construction. *In re Sherill*, 188 N.Y. 185, 207 (1907); *see Harkenrider*, 38 N.Y.3d at 509. Effect must "be given to the entire [provision] and every part and word thereof," *Lynch v. City of New York*, 40 N.Y.3d 7, 13 (2023) (citation omitted), "avoiding a construction that treats a word or phrase as superfluous," *Columbia Memorial Hosp. v. Hinds*, 38 N.Y.3d 253, 271 (2022). The Court must not "amend" a provision "by adding words that are not there." *Am. Transit Ins. Co. v. Sartor*, 3 N.Y.3d 71, 76 (2004). It is a "fundamental rule of construction" for the Court to "presume[ ]" that the Legislature "does not act in a vacuum" and was "aware of the law existing at th[e] time" it enacted the provision. *Thomas v. Bethlehem Steel Corp.*, 95 A.D.2d 118, 120 (3d Dep't 1983). So, when a state-law provision is either "modeled after a federal statute," *Bicknell v. Hood*, 6 N.Y.S.2d 449, 453–54 (Sup Ct. Yates Cnty. 1938), or is "substantively and textually similar to [its] federal counterpart[ ]," the Court generally construes it "consistently with federal precedent" interpreting the federal law, "striv[ing] to resolve federal and state" claims in the same way, *Zakrewska v. New School*, 14 N.Y.3d 469, 479 (2010) (citation modified); *see also Aurecchione v. N.Y. State Div. of Human Rights*, 98 N.Y.2d 21, 25–26 (2002). That is especially so when "state and local provisions overlap with federal" provisions that involve "civil rights," because "these statutes serve the same remedial purpose . . . to combat discrimination." *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 429 (2004). Further, if a law is open to two interpretations, "one of which would obey and the other violate the Constitution, the universal rule

of courts is to select the former." *People ex rel. Bridgeport Sav. Bank v. Feitner*, 191 N.Y. 88, 97–98 (1908).

Here, Petitioners bring only one claim: that New York's 2024 Congressional Map violates Article III, Section 4 of the New York Constitution by "dilut[ing]" the ability of Black and Latino voters in the 11th Congressional District "to influence the outcome of elections" under the standards articulated in the New York Voting Rights Act. Pet. ¶¶ 97–102. Because the New York Constitution does not recognize such a theory, *infra* Part I.A.1, this Court should dismiss the Petition and/or enter judgment in Intervenor-Respondents' favor and against Petitioners.

1. New York Modeled Article III, Section 4 On Section 2 Of The VRA, And So Article III, Section 4 Does Not Require Influence Districts

To address a history of "partisan and racial gerrymandering," *Harkenrider*, 38 N.Y.3d at 503, the People in 2014 amended the New York Constitution. As most relevant here, Article III, Section 4 provides that, "[s]ubject to the requirements of the federal constitution and statutes," the "following principles shall be used in the creation" of congressional districts: "Districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgment of" "racial or language minority voting rights," but instead "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." N.Y. Const. art. III, § 4(c)(1). Article III, Section 4 says nothing about drawing districts to further a minority group's ability to "influence" the outcome of elections. *See generally id.*

New York "modeled" Article III, Section 4 "after" Section 2 of the federal VRA, *Bicknell*, 6 N.Y.S.2d at 453–54, and it is "substantively and textually similar" to Section 2, *Zakrewska*, 14 N.Y.3d at 479. Congress enacted the VRA in 1965 to create "stringent new remedies for voting discrimination, attempting to forever banish the blight of racial discrimination in voting." *Allen v.*

Milligan, 599 U.S. 1, 10 (2023) (citations omitted). As originally enacted, Section 2 provided that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973 (1970 ed.). After the U.S. Supreme Court interpreted that language in 1980 "not [to] prohibit laws that are discriminatory only in effect," Congress amended Section 2 in 1982 to its current form. *Allen*, 599 U.S. at 11–14. Section 2's text now provides that no "standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which *results* in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or" "because he is a member of a language minority group." 52 U.S.C. §§ 10301(a) (emphasis added), 10303(f)(2). A violation of Section 2 occurs when, "based on the totality of circumstances," racial or language minorities "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301.

Section 2 of the VRA prohibits "vote dilution" through the "dispersal of a group's members into districts in which they constitute an ineffective minority of voters." *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (citation modified). Under the so-called *Gingles* factors, there are "three threshold conditions for proving a [Section 2] vote-dilution claim: (1) "a 'minority group' must be 'sufficiently large and geographically compact to constitute a *majority*' in some reasonably configured legislative district," (2) "the minority group must be 'politically cohesive,'" and (3) "a district's white majority must 'vote sufficiently as a block' to usually 'defeat the minority's preferred candidate.'" *Id.* at 287 (emphasis added) (quoting *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)). The U.S. Supreme Court has not wavered from these requirements, repeatedly holding that Section 2 does not require particular action if the minority group at issue cannot

constitute a majority in a reasonably configured district. **Most relevant here, in *LULAC*, the U.S. Supreme Court concluded that Section 2's text does not require the "creat[ion of] an influence district," 548 U.S. at 446 (plurality op.)—that is, a district where minority groups can "play a substantial, if not decisive, role in the electoral process," *id.* at 479 n.15 (Stevens, J., concurring in part) (citation omitted)**. The Court explained that because Section 2 guarantees only the "opportunity" to "elect representatives of their choice," a claim under Section 2 "requires more than the ability to influence the outcome." *Id.* at 445–46 (plurality op.). Were it otherwise and Section 2 "were interpreted to protect this kind of influence, it would unnecessarily infuse race into virtually every redistricting, raising serious constitutional questions." *Id.*; *see also infra* Parts I.B, II.A. The Court has warned that "disregarding the majority-minority rule . . . would involve the law and courts in a perilous enterprise," "invit[ing] divisive constitutional questions that are both unnecessary and contrary to the purpose of" the VRA. *Bartlett v. Strickland*, 556 U.S. 1, 21–23 (2009) (plurality op.) (concluding that Section 2 does not require "crossover districts").

In 2014, after the 1982 amendments to Section 2 and after the U.S. Supreme Court decided *LULAC*, the People adopted Article III, Section 4, modeling it on Section 2 and using substantially similar language. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). These provisions address the same interests: both combat discrimination by prohibiting voting districts that "result[ ]" in the "denial or abridgement" of voting rights based on race or "language minority" status. *Compare* 52 U.S.C. §§ 10301(a), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1). And both are violated when, "based on the totality of the circumstances," racial groups "have less opportunity to participate in the political process and elect representatives of their choice." *Compare* 52 U.S.C. §§ 10301(b), 10303(f)(2), *with* N.Y. Const. art. III, § 4(c)(1).

Given that New York specifically modeled Article III, Section 4 on Section 2 of the VRA, Article III, Section 4 also does not mandate any redrawing of district lines to increase the influence of a minority group where that group is not a majority in a reasonably configured district. Article III, Section 4 uses substantively and textually similar language, *Bicknell*, 6 N.Y.S.2d at 453–54; *Zakrewska*, 14 N.Y.3d at 479, as Section 2. To begin, Article III, Section 4 provides that "districts shall not be drawn to have the purpose of, *nor shall they result in the denial or abridgment of*" "*racial or language minority voting rights*." N.Y. Const. art. III, § 4(c)(1) (emphases added). This first provision mirrors Section 2, which provides that no "standard, practice, or procedure"—including the drawing of district lines—"shall be imposed or applied by any State or political subdivision *in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or*" "*because he is a member of a language minority group*." 52 U.S.C. §§ 10301(a), 10303(f)(2) (emphases added); *see Cooper*, 581 U.S. at 292. Then, Article III, Section 4 states that 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*." N.Y. Const. art. III, § 4(c)(1) (emphasis added). This second provision tracks Section 2 as well, which likewise states that a violation occurs when, "*based on the totality of circumstances*," racial or language minorities "*have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice*." 52 U.S.C. § 10301 (emphases added). Again, the U.S. Supreme Court has determined that Section 2 does not require the creation of minority influence districts, *LULAC*, 548 U.S. at 446 (plurality op.); *Bartlett*, 556 U.S. at 21–23 (plurality op.), and this Court should likewise construe the analogous Article III, Section 4 not to require the creation of minority

influence districts. So, to succeed on their Article III, Section 4 claim, Petitioners would need to show that either the Black population or the Latino population is "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." *Cooper*, 581 U.S. at 287 (citation omitted).[3]

Notably, courts in other States have used similar reasoning to define their own State's redistricting provisions by reference to similarly worded provisions in the VRA, in even less obvious situations. Most notably, in *In re Colorado Independent Congressional Redistricting Commission*, 497 P.3d 493 (Colo. 2021), the Supreme Court of Colorado determined a state constitutional amendment's meaning by reference to the federal VRA. *Id*. at 512. There, the constitutional amendment prohibited a redistricting plan that denied or abridged a citizen's right to vote because of "race or membership in a language minority group, including diluting the impact of [a] racial minority's group's electoral influence." *Id*. at 505 (citation omitted). Despite that additional language, the court concluded that Colorado's amendment was "coextensive with the VRA provisions as they existed in 2018 and create[d] no further [redistricting] requirements" to "create additional protections for [minority] voters in the form of influence, crossover, or collation districts." *Id*. at 512. The court reasoned, in relevant part, that the Colorado General Assembly had failed to define separately the terms "dilution" or "electoral influence," "which [was] curious if [that] language was intended to establish new protections beyond those existing in federal law." *Id*. at 510; *see also Asian Ams. Advancing Just.-L.A. v. Padilla*, 41 Cal. App. 5th 850, 872 (2019) (concluding that the phrase "single language minority" in a California elections statute must be

[3] There currently exists a circuit split over whether Section 2 authorizes coalition claims—where a plaintiff *combines* two racial or ethnic minority groups to obtain a majority within a district for purposes bringing a Section 2 claim. *Compare Petteway v. Galveston Cnty.*, 111 F.4th 596 (5th Cir. 2024) (*en banc*) (holding that Section 2 does not permit such claims), *with Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990). Although Intervenor-Respondents believe that Section 2 does not authorize coalition claims, this Court need not weigh in on that question here, given that Petitioners have not argued that the Black population or the Latino population can form a majority in a reasonably configured district whether added together or not.

interpreted as defined in the federal VRA because the legislature "undoubtedly would have, said so" if it intended the phrase "to have a different meaning under state law"). This reasoning applies with even greater force here given how closely Article III, Section 4's language mirrors the language of Section 2. *Supra* pp.13–14.

Finally, constitutional-avoidance principles mandate interpreting Article III, Section 4 as not requiring the creation of influence districts. *Bridgeport*, 191 N.Y. at 97–98. As Intervenor-Defendants show below, *infra* Part II.A, Petitioners' requested relief—redrawing the 11th Congressional District with the goal of giving Black and Latino voters more electoral influence, Pet.28—both triggers and fails strict-scrutiny review under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution. *Infra* Part II.A. That is because redrawing the 11th Congressional District in this way constitutes the taking of government action based upon race that does not further any compelling government interest in the least-restrictive (*i.e.*, necessary) means. *Infra* Part II.A. This conclusion would apply to the creation of an influence district drawn under any influence-district mandate read into Article III, Section 4, meaning that the constitutional-avoidance canon compels the rejection of such an interpretation of Article III, Section 4. Notably, the U.S. Supreme Court cited constitutional avoidance as a reason for interpreting Section 2 of the VRA as not requiring the creation of minority influence districts, *LULAC*, 548 U.S. at 445–46 (plurality op.), and the Court has only grown more skeptical in its recent precedent of government action based on race, *see Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 206 (2023) ("*SFFA*").

2. Petitioners' Effort To Read The NYVRA Retrocatively Into Article III, Section 4 Is Utterly Meritless

As noted, Petitioners here bring only one claim: that the 2024 Congressional Map violates Article III, Section 4 by "dilut[ing]" Black and Latino voters' ability to "influence elections" in

the 11th Congressional District under the NYVRA's vote-dilution standard and that "[a] minority influence district" should be drawn in the 11th Congressional District to remedy that violation. Pet. ¶¶ 96–102. Petitioners admit that the Black and Latino population is only 30% of Staten Island, *id.* ¶ 52, and offer no "reasonably configured legislative district," *Cooper*, 581 U.S. at 287, in which the Black and Latino populations—whether considered independently, or even combined—would constitute a majority, *see generally* Pet. Petitioners' lawsuit thus fails because nothing in Article III, Section 4 even mentions the creation of influence districts, and New York's modeling of Article III, Section 4 on Section 2 of the VRA means that there is no influence-district mandate in this constitutional provision. *Supra* pp.12–14. Petitioners, of course, understand that nothing in Article III, Section 4's text supports their theory, so they ask this Court to impose the NYVRA's statutory standards—enacted in 2022, eight years after the People adopted Article III, Section 4—retroactively into Article III, Section 4. Pet. ¶¶ 97–98. This outlandish argument is flawed in multiple respects. While it should go without saying, *Sgaglione v. Levitt*, 37 N.Y.2d 507, 514 (1975), courts cannot retroactively amend the New York Constitution's language adopted in 2014 dealing with congressional districts to add statutory language enacted eight years later for other jurisdictions.

In 2022, the Legislature enacted the NYVRA to establish greater voting rights protections applicable to local New York "board[s] of elections" and "political subdivisions." N.Y. Elec. Law § 17-206(2)(a). The NYVRA expressly departs from multiple aspects of the federal VRA and the U.S. Supreme Court's interpretation of that statute. *Clarke v. Town of Newburgh*, 237 A.D.3d 14, 22 (2d Dep't 2025) (citation omitted). As relevant here, the NYVRA includes a "[p]rohibition against vote dilution," which bans localities from "us[ing] any method of election, having the effect of impairing the ability of members of a protected class to elect candidates of their choice

or influence the outcome of elections, as a result of vote dilution." N.Y. Elec. Law § 17-206(2) (emphasis added). Unlike Article III, Section 4, the NYVRA allows plaintiffs challenging local maps to pursue claims based on minority groups that can only "influence the outcome of elections," *id.* § 17-206(2)(b)(ii)(B), as well as claims relying on a "combin[ation]" of multiple minority groups into a coalition, *id.* § 17-206(2)(c)(iv). To prevail on a claim against a district-specific system, a plaintiff must show that the "candidates or electoral choices preferred by members of the protected class would usually be defeated." *Id.* § 17-206(2)(b)(ii); *infra* Part I.B.1. If this threshold requirement is met, the NYVRA provides two pathways for a plaintiff to establish a violation: the plaintiff can "either" show (a) that the "voting patterns of members of the protected class within the political subdivision are racially polarized," or (b) that "under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or *influence the outcome* of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(ii) (emphasis added); *infra* Part I.B.2.

Petitioners argue that the NYVRA provides the framework for claims under Article III, Section 4 of the New York Constitution because the "language" of the NYVRA and Article III is "similar," but this is egregiously false and legally meritless. Pet. ¶¶ 7, 10–11; NYSCEF Doc. No.63 ("Mem.") at 15. ***Unlike the NYVRA, Article III, Section 4 says absolutely nothing about a minority group's ability to "influence the outcome of elections." Contrast* N.Y. Elec. Law § 17-206(2), *with* N.Y. Const. art. III, § 4(c). Article III, Section 4 makes no mention of "influence" and instead focuses solely on ensuring an equal "opportunity to participate," N.Y. Const. art. III, § 4(c), using the same language as Section 2 of the VRA, which does not recognize influence districts, *supra* pp.13–14.**

Rather than point to any language from Article III, Section 4's text that supports their argument that this constitutional provision somehow imports the NYVRA's distinct, later-enacted "framework for evaluating vote dilution," Petitioners instead look to the NYVRA's "statement of purpose," adopted in 2022. Mem.14–15. That 2022 statement of purpose provides New York's policy "to participate in the [State's] political processes . . . and especially to exercise the elective franchise" and recognizes "the constitutional guarantees . . . against the denial or abridgment" of voting rights. Mem.15 (citation omitted). Beyond failing to provide any support for the suggestion that the policy of a later enacted statute should inform the Court's interpretation of a constitutional provision adopted eight years prior, *see generally* Mem.15–16, the language that Petitioners rely on does nothing to support their argument. Interpreting Article III, Section 4 to be consistent with Section 2—without a minority-influence-district guarantee—expressly ensures the right to "participate" in New York's political process and in no way denies or abridges voting rights, *see LULAC*, 548 U.S. at 445–46 (plurality op.).

According to Petitioners, "[s]tatutory interpretation principles" allow this Court to graft the NYVRA's vote-dilution framework retroactively onto Article III, Section 4 because courts may look to state law when interpreting a constitutional provision. Mem.15. But Petitioners point to no case even suggesting that a court should look to law enacted years *after* the provision being construed. The case that Petitioners cite provides that courts will consider "*preexisting* State or statutory common law" when interpreting constitutional provisions, *People v. Harris*, 77 N.Y.2d 434, 438 (1991) (citation omitted) (emphasis added), and not law that was enacted years later.

Petitioners claim that *Harkenrider* supports their position because it "suggested" that Article III, Section 4, like the NYVRA, provides broader protection against vote dilution than the VRA. Mem.17. But *Harkenrider* stated only that the 2014 Amendments' "prohibition against

discriminating against minority voting groups at the least encapsulated the requirements of the Federal Voting Rights Act, and according to many experts expanded their protection." Mem.17 (citing *Harkenrider*, 173 N.Y.S.3d at 112). That some "experts" believe that the 2014 Amendments may provide greater protection than Section 2 of the VRA in some unspecified manner, Mem.17, is no justification for this Court to disregard Article III, Section 4's plain text, *Lynch*, 40 N.Y.3d at 13, and blue pencil the NYVRA's 2022 provisions into the 2014 Amendments. If some other party presents and adequately develops some theory as to how Article III, Section 4 is broader than Section 2 in some respect, courts can consider that theory in that case. But here, Petitioners only developed their Article-III-Section-2-equals-NYVRA theory, which is plainly wrong, and this alone dooms their lawsuit.[4]

Petitioners then point to the allegedly "distinctive attitudes of the [New York] citizenry," Mem.18, but that argument gets them nowhere as well. Petitioners cite no case that suggests that courts can amend constitutional text based on assertions that New York's citizens seek to "ensur[e] strong protections against minority vote dilution in all aspects of the political process." Mem.19. Petitioners claim that interpreting Article III, Section 4 according to its plain language may "create an inconsistent application of vote dilution protections across New York" because the NYVRA's "more robust protections" will apply only to "municipal and local elections," while Article III, Section 4's "lesser protections [will] apply[ ] to congressional and senate elections." Mem.18. But the Legislature did not adopt a law imposing NYVRA's requirements on congressional

[4] Petitioners claim in a footnote that if the Court does not adopt their theory that the New York Constitution incorporates the vote-dilution standard "set forth in the NY VRA," that the Court could still rule for Petitioners under "a different constitutional standard." Mem.19 n.5. But Petitioners brought the lone claim in their Petition under that theory, *see* Pet. ¶¶ 96–102, so if the Court rejects that theory, it must dismiss the Petition. Petitioners cannot rely upon the Court to invent a new, unpleaded theory for them. *See Quintal v. Kellner*, 264 N.Y. 32, 39 (1934) ("We cannot create a cause of action which is not alleged."). In any event, Petitioners' request comes in a conclusory footnote and is thus waived. *See OFSI Fund II, LLC v. Canadian Imperial Bank of Com.*, 82 A.D.3d 537, 538 (1st Dep't 2011).

redistricting, limiting that statute instead to "board[s] of elections" and local "political subdivisions" of New York. N.Y. Elec. Law § 17-206(2)(a).

B. Even If This Court Somehow Concludes That The New York Constitution's 2014 Amendments Time Traveled To Adopt The NYVRA 2022 Standards For Congressional Districts, Petitioners Still Cannot Prevail

1. Petitioners Have Not Satisfied The NYVRA's Threshold "Usually Defeated" Mandate

If this Court nevertheless adopts Petitioners' theory that Article III, Section 4 somehow incorporates the NYVRA's later-enacted vote-dilution standards, this Court should still grant judgment to Intervenor-Respondents and deny judgment to Petitioners because Petitioners have put forth insufficient evidence to satisfy the NYVRA's threshold "usually be defeated" inquiry. *Id.* § 17-206(2)(b)(ii).

a. The NYVRA is a newly enacted statute, and no court has determined what it means for a candidate to "usually be defeated," which is a threshold requirement for a district-specific vote dilution claim under the NYVRA. *Id.* To adjudicate Petitioners' only merits theory, therefore, this Court would be the first to determine how that provision works, and to do so in the context of congressional redistricting that the NYVRA does not even cover. In conducting that inquiry, this Court would need to apply the same interpretative principles discussed above, *supra* pp.9–10, including taking care to avoid adopting any interpretation that leads to absurd results, *see People ex rel. McCurdy v. Warden*, 36 N.Y.3d 251, 263 (2020) (leading to absurd results, is "in itself, sufficient reason to reject" an interpretation).

If this Court accepts Petitioners' Article-III-Section-4-Equals-NYVRA theory, this Court should interpret Subsection 17-206(2)(b)(ii)'s "usually be defeated" language as requiring an NYVRA vote-dilution plaintiff to demonstrate that minority-preferred candidates are routinely defeated in elections across the entire jurisdiction. While the NYVRA does not define "usually,"

see N.Y. Elec. Law § 17-204, the plain meaning of the word "usually" shows that the Legislature intended this to be a robust requirement. "Usually" is commonly understood to refer to something that occurs "ordinarily" or "as a rule." *Usually*, Oxford English Dictionary ("OED") (2024)[5]; *see Usually*, MerriamWebster.com Dictionary, Merriam-Webster (2024) (defining usually as "most often" or "as a rule").[6] Thus, "usually be defeated" means one will routinely or "as a rule" be defeated, implying a standard that is far more robust than "more likely than not" or 50% plus one. In other words, one could not reasonably conclude that racial group's preferred candidates are defeated "ordinarily" or "as a rule" in a political subdivision where they win—for example—49% of races in the relevant jurisdiction. *See Usually*, OED, *supra*. Evaluating NYVRA vote-dilution claims on a jurisdiction-wide basis—here, across New York's entire 2024 Congressional Map or at least the 11th Congressional District's surrounding region—is also the best reading of the statutory text because the NYVRA's vote-dilution analysis is not district specific by its statutory text. The NYVRA provides that "evidence concerning whether members of a protected class are geographically compact or concentrated," N.Y. Elec. Law § 17-206(2)(c)(viii), such that they could form a voting "majority in a reasonably configured district," *Wis. Legislature v. Wis. Elections Comm'n*, 595 U.S. 398, 402 (2022), "shall *not* be considered [for liability]," N.Y. Elec. Law § 17-206(2)(c)(viii) (emphasis added). The NYVRA also allows vote-dilution plaintiffs to reach all over the relevant jurisdiction, "combin[ing]" members of multiple minority groups to bring a vote-dilution "[c]oalition claim[ ]," N.Y. Elec. Law § 17-206(8), regardless of what district those members live in within the jurisdiction. Further, if a violation is found, the NYVRA provides for a host of remedies that affect the entire "political subdivision" and do not alter the boundaries of any particular district. *See id.* § 17-206(5). Thus, unlike with Section 2 of the VRA, there is no

[5] Available at https://www.oed.com/ dictionary/usually_adv?tab=meaning_and_use#16029712.
[6] Available at https://www.merriam-webster.com/dictionary/usually.

requirement for a court evaluating an NYVRA claim to "carefully evaluat[e] evidence at the district level," or evaluate "the design of [a new] district." *Wis. Legislature*, 595 U.S. at 401, 404.

Any other approach to Petitioners' Article-III-Section-4-Equals-NYVRA theory would "lead to absurd results." *McCurdy*, 36 N.Y.3d at 262. Interpreting "usually be defeated," N.Y. Elec. Law § 17-206(2)(b)(ii), to mean anything less than a minority group's preferred candidates losing elections "ordinarily" or "as a rule," *see Usually*, Oxford English Dictionary, *supra*, across the jurisdiction would often render compliance with the NYVRA impossible, as at least *some* racial groups' candidates of choice are bound to be defeated more than 50% of the time in any given jurisdiction at any given time that has racial polarized voting as between any racial group, absent some unusual and mathematically improbable (or impossible) circumstance, *see* Trende.Rebut.9–15. This is because "[r]edistricting is always a zero-sum game" where "[m]oves that benefit one side hurt another side," *id.* at 15, such that by redrawing districts to ensure that one racial group's preferred candidates will not be defeated over 50% of the time in one individual district, the jurisdiction would inevitably "hurt" another racial group's ability to elect its preferred candidates in at least one other district, *see id.* at 9–15. After all, at least some racial group's candidates of choice will be defeated over 50% of the time in any hand-picked district or districts given the zero-sum nature of elections where there is racially-polarized voting, *see id.*, and the New York Legislature could not be assumed to have enacted an absurd statute, which makes compliance with the law impossible in any political subdivision that happens to have racially-polarized voting, *see McCurdy*, 36 N.Y.3d at 262. This is especially true given that the NYVRA has been interpreted "as allowing members of *all* racial groups, including white voters, to bring vote dilution claims," *Clarke*, 237 A.D.3d at 33 (emphasis added), making it almost certain that either Whites or at least one non-White racial group would be able to bring a vote-dilution claim at any given time there is

racially-polarized voting. That "absurd result[ ]," *McCurdy*, 36 N.Y.3d at 262, would become even more ridiculous under Petitioners' influence district theory because any racial group (or groups)—including Whites—whose preferred candidates are defeated more often than not in a jurisdiction could claim that they lack "an equal opportunity to influence elections," Mem.14, as other racial groups and demand that jurisdiction's maps be redrawn to create a new "minority influence district" for them, Mem.39.

Nor is this "a purely hypothetical concern" in New York: there is "racially polarized voting in the area covered by district[s] 5, 8, and 9," and, under Petitioners' interpretation of the NYVRA, "it would appear that White voters would have viable claims all over New York's congressional map"; and "changing districts so that minority-favored candidates of choice win more would then mean the same district would need to be changed back so that White voters' candidates of choice are not usually defeated." *Id.* at 10. For example, District 8, where Whites constitute "a minority" and non-White racial groups' preferred Democratic candidates routinely defeat White-preferred Republican candidates, *id.*, could be redrawn to create a district "where Republican candidates win more often than not," *id.* at 12, while keeping the remaining districts "heavily Democratic," *id.* at 10, but then "the minorities in District 8 . . . [would] have a claim" because they would no longer be able to "elect their candidate of choice" more often than not and "[t]here is still racially polarized voting in District 8," *id.* at 14. Thus, "[c]onducting the analysis only on the basis of the district in question—especially without a stringent requirement that the racial group's candidate of choice be 'usually defeated'" routinely in elections across the jurisdiction—would lead to a never-ending cycle of jurisdictions being forced to draw new districts to benefit different racial groups, *id.* at 10—a manifestly "absurd result[ ]" that this Court should avoid, *McCurdy*, 36 N.Y.3d at 262.

Notably, this never-ending-violation issue is not a problem under Section 2 of the VRA. *See Wis. Legislature*, 595 U.S. at 401–04. This is because a Section 2 plaintiff must satisfy the stringent two-step framework for evaluating vote-dilution claims that the U.S. Supreme Court established in *Thornburg v. Gingles*, 478 U.S. 30 (1986). A given jurisdiction only violates Section 2's vote-dilution provisions if a plaintiff can first satisfy all three *Gingles* preconditions as to each new majority-minority district that the plaintiff seeks to force the jurisdiction to create. *Gingles*, 478 U.S. at 50; *Wis. Legislature*, 595 U.S. at 402. The first precondition requires that "[t]he minority group must be sufficiently large and compact to constitute a majority in a reasonably configured district." *Wis. Legislature*, 595 U.S. at 402. This precondition is not satisfied by showing that it is possible to create an "influence district[ ]." *LULAC*, 548 U.S. at 446 (plurality op.). The second precondition requires that "the minority group must be politically cohesive." *Wis. Legislature*, 595 U.S. at 402. And under the third precondition, "a majority group must vote sufficiently as a bloc to enable it to usually defeat the minority group's preferred candidate." *Id.* If those preconditions are met, the plaintiff would then need to satisfy the required, separate second-step of *Gingles*' vote-dilution analysis—the totality-of-the-circumstances inquiry—by showing that "the political process is [not] equally open to minority voters" in the jurisdiction. *Id.* (citations omitted). These carefully crafted safeguards—which are absent from the NYVRA—cabin Section 2's application, such that jurisdictions can comply with its requirements and that creating a new district to remedy a violation under Section 2 will not generally give rise to another Section 2 claim in another jurisdiction.

b. Petitioners do not satisfy the NYVRA's "usually be defeated" showing. Black and Latino voters' candidates of choice—Democrats—are not "usually defeated" across the State of New York, within the region surrounding the 11th Congressional District, or even within the 11th

Congressional District itself. Trende.Rebut.6–9. Statewide across New York's 26 congressional districts, Democrats comprise 73% of New York's congressional delegation, leaving Republicans with the remaining 27%—only seven seats. *Id.* at 8. The below table summarizes Democratic candidates' performance in statewide races in New York's congressional districts:

District	Gov 18	AG 18	Sen 18	Comp 18	Pres 20	Comp 22	Sen 22	Gov 22	AG 22	Sen 24	Pres 24	# D Wins	% D Wins
1	50.9%	50.7%	53.1%	55.5%	49.1%	46.0%	44.3%	41.9%	42.7%	47.1%	44.9%	4	36.4%
2	52.6%	52.3%	54.6%	56.8%	48.8%	43.2%	41.8%	39.0%	40.1%	45.2%	43.0%	4	36.4%
3	58.9%	57.7%	60.0%	62.2%	55.7%	50.8%	49.8%	45.8%	46.7%	50.1%	47.8%	7	63.6%
4	60.8%	59.6%	61.6%	63.3%	57.3%	51.5%	50.6%	47.1%	48.1%	52.8%	50.6%	9	81.8%
5	88.2%	88.3%	88.3%	88.6%	81.4%	75.5%	76.6%	73.3%	74.8%	74.1%	71.3%	11	100.0%
6	74.7%	74.6%	75.0%	75.2%	64.8%	58.3%	59.8%	53.7%	55.7%	58.1%	53.3%	11	100.0%
7	90.1%	90.5%	90.5%	90.2%	80.5%	77.9%	80.3%	74.0%	77.7%	77.4%	73.6%	11	100.0%
8	86.0%	86.2%	86.1%	86.0%	77.9%	73.9%	74.7%	71.7%	73.3%	75.2%	72.5%	11	100.0%
9	85.9%	86.9%	85.5%	86.2%	76.2%	74.1%	75.1%	68.7%	72.8%	75.2%	70.6%	11	100.0%
10	89.5%	89.5%	90.1%	89.3%	85.7%	82.7%	85.1%	80.6%	82.3%	82.8%	81.0%	11	100.0%
11	54.0%	53.5%	55.4%	55.7%	46.1%	39.4%	40.1%	36.3%	37.4%	41.2%	37.6%	4	36.4%
12	86.2%	84.7%	86.6%	85.3%	86.0%	80.9%	83.5%	80.1%	79.9%	81.9%	82.4%	11	100.0%
13	95.3%	95.3%	95.2%	95.0%	88.8%	86.5%	89.1%	86.4%	87.7%	83.5%	80.1%	11	100.0%
14	86.4%	86.7%	86.7%	86.8%	77.8%	70.6%	73.1%	69.1%	70.7%	70.0%	66.2%	11	100.0%
15	93.1%	93.0%	92.9%	93.1%	85.5%	81.0%	83.5%	80.3%	81.9%	78.1%	74.4%	11	100.0%
16	74.2%	74.5%	75.6%	76.0%	72.5%	65.6%	66.2%	63.3%	64.0%	68.6%	66.6%	11	100.0%
17	55.6%	58.4%	60.0%	61.8%	55.1%	52.4%	52.3%	48.3%	50.4%	55.1%	50.3%	10	90.9%
18	49.8%	55.8%	59.3%	59.3%	54.6%	53.3%	52.2%	49.1%	51.0%	56.9%	51.7%	9	81.8%
19	46.8%	52.6%	57.6%	59.1%	52.3%	52.2%	50.3%	46.5%	48.5%	54.4%	50.9%	8	72.7%
20	49.4%	57.0%	62.1%	66.7%	59.8%	60.4%	56.6%	52.9%	54.8%	60.1%	57.2%	10	90.9%
21	35.0%	42.2%	50.9%	52.4%	42.0%	43.1%	40.0%	34.4%	37.6%	44.3%	39.6%	2	18.2%
22	49.5%	54.4%	59.5%	62.5%	55.8%	54.3%	54.1%	48.9%	50.1%	56.2%	53.8%	9	81.8%
23	36.4%	37.5%	46.8%	48.4%	40.7%	40.3%	38.9%	35.5%	36.4%	41.9%	39.4%	0	0.0%
24	33.1%	37.7%	45.5%	47.0%	39.6%	38.1%	37.2%	32.7%	34.1%	41.0%	38.4%	0	0.0%
25	54.3%	57.0%	62.2%	63.2%	60.5%	57.4%	57.0%	53.8%	54.0%	60.0%	59.3%	11	100.0%
26	59.8%	58.5%	66.9%	69.0%	62.8%	62.1%	61.6%	58.4%	58.8%	62.6%	59.8%	11	100.0%

Id. at 6.

As the above table shows, Democratic statewide candidates have won in *every* New York congressional district except for two districts, the 23rd and 24th Districts in upstate New York. *Id.* at 8–9. Outside of Districts 1 and 2 on Long Island—where Democrats have still won four elections—Democrats have won a majority of the statewide elections in every remaining district throughout the State. *Id.* In all, Democratic statewide candidates have won an outright majority of the statewide races that Petitioners' expert, Dr. Palmer, analyzed in all but six of New York's 26 districts—a staggering 77%. *Id.* Conversely, this means that Republicans have won a majority of the statewide elections in only six of New York's 26 congressional districts. *Id.* Under this Democratic dominance, Republicans have not carried New York in a Presidential Election since

1984, a gubernatorial election since 2002, a U.S. senate election since 1992, an attorney general election since 1994, or a comptroller election since 1990. *Id.* at 5–6.

These lopsided results in favor of minority-preferred Democratic candidates become even more stark when focusing on elections within the region surrounding the 11th Congressional District—New York City. *Id.* at 6–7. With the exception of the 11th Congressional District, Democrats have *never* lost a statewide election in any of the 11 districts wholly within New York City. *Id.* at 6. Moreover, Democrats usually win those elections "by wide margins," such that there is only one district wholly within New York City "where a Democratic candidate has ever dropped below 60%." *Id.* at 7. Even including the two districts that are partly within New York City, Districts 3 and 16, does not change this conclusion because Democrats still routinely win or are at least competitive in statewide elections in those districts as well. *See id.* at 5–7. So, far from being usually defeated, minority-preferred candidates "routinely win[ ] elections in congressional districts across New York City." *Id.* at 6.

Nor does zooming in solely on the 11th Congressional District itself change the conclusion that minority-preferred candidates are not usually defeated. *See id.* at 5–6. As shown in the above chart, the minority candidate of choice is plainly still "capable of winning elections in District 11." *Id.* at 6. Indeed, Democrats "have won four of eleven [statewide] elections" there since 2018 and "Joe Biden carried 46% of the vote in 2020." *Id.*

Petitioners therefore cannot satisfy the NYVRA's threshold requirement as the minority candidate of choice is not "usually defeated" anywhere in New York—statewide, in the New York city region, or in the 11th Congressional District itself.

2. Petitioners Also Have Not Satisfied Either The NYVRA's Racially-Polarized-Voting Test Or The Totality-Of-The-Circumstances Test

If this Court concludes that Petitioners could satisfy the "usually defeated" showing—which, as explained above, is the legally required, threshold inquiry for NYVRA liability, *see* N.Y. Elec. Law § 17-206(2)(b)(ii); *supra* Part I.B—Petitioners have not submitted sufficient facts to establish that the 11th Congressional District violates the NYVRA under the statute's racially-polarized-voting showing or totality-of-the-circumstances inquiry. As discussed above, *supra* pp.16–18, the NYVRA provides that a political subdivision with a district-based system has engaged in "vote dilution" when minority-preferred candidates "would usually be defeated" and either of two showings are made: (A) there is "racially polarized" voting in the jurisdiction, "or (B) under the totality of the circumstances, the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired." N.Y. Elec. Law § 17-206(2)(b)(ii). Petitioners fail to make either showing.

1. The NYVRA defines "racially polarized voting" as the "divergence in the . . . choice[s] of members in a protected class from the . . . choice[s] of the rest of the electorate." *Id.* § 17-204(6). The U.S. Supreme Court has observed that "racially polarized voting" is the "discernible, non-random relationship[ ] between race and voting." *Cooper*, 581 U.S. at 304 n.5. Thus, to establish the existence of racially polarized voting, an NYVRA plaintiff must present evidence showing that there is a "discernible, non-random relationship[ ] between race and voting" choices among the plaintiff's identified minority group, *id.*, and that those electoral choices "diverge[ ]" from the "electoral choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), on a statewide (or at least region-wide) basis—which, as explained *supra* pp.20–25, is the proper way to conduct the NYVRA's vote-dilution analysis.

Here, Petitioners have failed to submit evidence showing that the electoral choices of Black and Latino voters diverge from the choices of the rest of the electorate under the 2024 Congressional Map either on a statewide or regional basis, *see* Moskowitz Aff., Ex.N ("Voss.Rebut.") at 4–6, and thus fail to state a vote-dilution claim under the NYVRA's racially polarized voting prong, *see* N.Y. Elec. Law § 17-206(2)(b)(ii)(A). As discussed above, the NYVRA requires evaluating vote-dilution claims on a statewide basis or, at minimum, a regional basis. *Supra* pp.20–25. The only evidence Petitioners, who carry the burden here, provide is one "unreliable," Voss.Rebut. at App'x B.9, expert opinion on the existence of a "discernible, non-random relationship [ ]" between Black and Latino residents of the 11th Congressional District's "race" and their "voting" for Democrat candidates, *Cooper*, 581 U.S. at 304 n.5, and evidence showing that those "choice[s]" "diverge[ ]" from the "choice[s] of the rest of the electorate," N.Y. Elec. Law § 17-204(6), in the 11th Congressional District who tend to favor Republicans, *see* NYSCEF Doc. No.60 ("Palmer Rep.") at 2–5. But Petitioners have presented *no* evidence showing that Black and Latino voters' choices diverge from the rest of the New York electorate on a statewide or regional basis, *see* Voss.Rebut.4–6; *id.* at App'x B.18–20, as the NYVRA's vote-dilution prohibition requires, *supra* pp.20–25.

Rather, Petitioners' expert Dr. Palmer "restrict[ed] his analysis to a single congressional district's precincts—either only the precincts in the current [11th Congressional District] or only the illustrative district's precincts"—rendering his "unreliable." Voss.Rebut.5. "[A]n analysis of group cohesion and of racially polarized voting [ ] needs to extend beyond a single legislative district," *id.*, as an analyst conducting a racially polarized voting analysis should "[i]deally" identify "meaningful subdivisions within a state—such as regions with a shared history or that share known economic or cultural commonalities—and conduct[ ] the ecological inferences within

those regions, combining them into statewide results if desired," *id.* at App'x B.19. The "substantive[ ] problem" with Dr. Palmer's narrow focus on a "single district" to "conduct[ ] ecological inferences" is that the "same voters can be made to look polarized, or not polarized, depending on how one draws the lines." *Id.* at App'x B.20. In other words, "[f]ocusing on a single district . . . renders a vote-dilution analysis practically worthless, because mapmakers can manipulate the level of racial/ethnic voting cohesion—by separating or merging like-minded members of a demographic group." Voss.Rebut.5. For example, "[a] cohesive White and Asian population in Staten Island"—currently in the 11th Congressional District and whom tend to "prefer Republican representation"—"can be brought into relief, or hidden, depending on the other precincts tossed into the district" from the current 10th Congressional District. *Id.* at App'x B.20. Similarly, "[f]airly cohesive Republican communicates in Brooklyn can be made to look less cohesive by merging them into [the 10th Congressional District]." *Id.* Petitioners' single district focus thus "give[s] a misleading picture of how cohesive a racial or ethnic group actually is in the area where mapmakers [a]re working"—here, the entire 2024 Congressional Map or at least the New York City metropolitan region surrounding 11th Congressional District—and provides "a distorted view of the level of racial polarization." Voss.Rebut.5; *see id.* at App'x B.10. "Widen[ing] the scope of [the] analysis" to conduct ecological inferences for at least "a broader metro area" as the NYVRA requires, *id.* at App'x B.19–20, shows that "New York City's congressional districts as a whole do not exhibit racially polarized voting," because "White voting is not cohesive, and neither Whites nor Asians consistently vote against the candidates preferred by African-American and Hispanic citizens," Voss.Rebut.6. Further, that same "conclusion extends to the entire state of New York as well," should the Court conclude "that is the proper scope of analysis." Voss.Rebut.6. In sum, none of Petitioners experts opined on racially polarized

voting on a statewide or regional basis as required by the NYVRA and their flawed analyses of voting limited only to the 11th Congressional District—"that are in no way tailored to the time period, the political context, or the possibility that racial/ethnic groups differ across a diverse metropolitan area," *id.* at App'x B.15–16—fail to reliably establish racially polarized voting in any event. Accordingly, Petitioners have failed to state a claim for vote-dilution under the NYVRA's racially polarized voting prong.

2. Regarding the totality-of-the-circumstances inquiry, the NYVRA provides a non-exhaustive list of 11 factors that courts may consider, including factors such as "the history of discrimination" in the jurisdiction, the use of voting or election practices that have had "dilutive effects" on the identified minority group's voting strength, the use of "racial appeals" in campaigns, the extent to which members of the minority group have participated in the electoral and political processes and been elected to office, and whether those members "are disadvantaged" in other socioeconomic areas such as "education" and "employment." N.Y. Elec. Law § 17-206(3). Looking at these factors, an NYVRA plaintiff must show that "the ability of members of the protected class to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), in order to "establish[ ] that [ ] a violation" of the NYVRA's vote-dilution prohibition "has occurred," *id.* § 17-206(3).

Here, while Petitioners have attempted to submit facts on the NYVRA's all-things-considered inquiry, their evidence is insufficient to establish that "the ability of" Black and Latino voters in the 11th Congressional District "to elect candidates of their choice or influence the outcome of elections is impaired," *id.* § 17-206(2)(b)(ii), under a proper application of the NYVRA's vote-dilution prohibition. As Intervenor-Respondents' expert, Joseph Borelli, explains, the history of racism on Staten Island provided by Petitioners' expert, Dr. Segrue, is one-sided and

omits the significant progress that Staten Island has made to counter any disparate treatment of minorities. Moskowitz Aff., Ex.O ("Borelli.Rebut") at 18–26.

Borrelli also explains that, in recent years, Staten Island has made significant progress. Purported hate crimes in Staten Island—which mainly consist of graffiti and literature—decreased by 66% from 2018 to 2019, while New York City simultaneously saw a 67% increase. *Id*. at 48. Although Dr. Sugrue points to disparities in education, homeownership, and household income, he ignores the significant progress that has been made in these areas. *Id*. at 37–44. Both Black and Hispanic Staten Islanders' educational attainment and household income have increased over the past decade. *Id*. And Dr. Sugrue omits that Staten Island has a homeownership rate more than two times greater than New York City's average and significantly higher than the statewide average. *Id*. at 41–42. Staten Island also has "extensive minority resources" meant to serve Staten Island's minority communities, providing resources, ensuring voting rights, and assisting with integration. *Id*. at 45–48. Additionally, Latino voter eligibility, registration, and turnout has increased regionally and across the country, with Latinos "shattering previous voting turnout records," in New York City's 2025 municipal primaries. *Id*. at 33 (citation omitted). Black voter turnout is even higher and is comparable to White voter turnout. *Id*. at 35. More than just showing up for elections, Blacks and Latinos have had success in being elected to political office in Staten Island. Currently, a Black woman represents the North Shore of Staten Island in the New York City Council, a Black man represents the same in the New York Assembly, and Congresswoman Malliotakis—the daughter of immigrants—represents the 11th Congressional District in Congress. *Id*. at 29–30. That Dr. Segrue failed to demonstrate vote dilution in the 11th Congressional District is made clear by Borelli's extensive, sixty-two-page report. *Id*. at 1–62.

II. The U.S. Constitution Bars Petitioners' Requested Remedy And Core Theory

A. Petitioners' Racial Gerrymander Violates The Equal Protection Clause

Petitioners' requested relief—the redrawing of the 11th Congressional District to create an "influence" district for Black and Latino voters—would trigger, *infra* Part II.A.1, and fail, *infra* Part II.A.2, strict-scrutiny review under the Equal Protection Clause.

1. Petitioners' Request To Redraw The 11th Congressional District For Racial Reason Triggers Strict-Scrutiny Review

Petitioners' request that this Court order the redrawing of the 11th Congressional District to create an "influence" district for Black and Latino voters triggers strict-scrutiny review, as this would mandate the placement of voters either within or without the 11th Congressional District predominantly (and, indeed, solely) to give voters lumped together by race the benefit of a greater chance of electing their preferred candidates (and, given the zero-sum nature of elections, give citizens grouped together by other races a lesser chance to elect their preferred candidates).

a. A mapdrawer has separated "citizens into different voting districts on the basis of race"—triggering strict-scrutiny review—when "race was the predominant factor motivating the [mapdrawer's] decision to place a significant number of voters within or without a particular district." *Cooper*, 581 U.S. at 291 (citation omitted); *see also Miller v. Johnson*, 515 U.S. 900, 916 (1995). These principles ensure that redistricting does not reinforce "impermissible racial stereotypes," *Shaw v. Reno*, 509 U.S. 630, 647 (1993) ("*Shaw I*"), or result in a district "being represented by a legislator who believes his primary obligation is to represent only the members of a particular racial group," *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 263 (2015) (citation omitted). And they apply whether the mapdrawer is a legislature, *Cooper*, 581 U.S. at 291, or a court, *Wis. Legislature*, 595 U.S. at 401.

When a mapdrawer draws a districted based on race, that establishes that "race furnished the predominant rationale for that district's redesign," triggering strict-scrutiny review. *Cooper*, 581 U.S. at 299–301. A mapdrawer can only achieve such a racial goal by moving voters "within or without a particular district" based on race until the goal is met—the definition of racial predominance. *Id.* at 291, 299–300. That conclusion holds even if the district at issue "respects traditional [redistricting] principles" if race was nevertheless the one "criterion that, in the [mapdrawers' view], could not be compromised. *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 189 (2017) (citations omitted; alterations omitted). The U.S. Supreme Court has repeatedly reaffirmed these principles, concluding over and over again that a mapdrawer drawing district lines with race as the "predominant motive for the design of the district as a whole"—that is, redistricting with a specific racial goal—triggers strict scrutiny. *See, e.g.*, *id.* at 192–93; *Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03.

b. Here, Petitioners' requested remedy triggers strict-scrutiny review because it mandates placement of voters in a district based not just predominantly, *Cooper*, 581 U.S. at 299–301; *Bethune-Hill*, 580 U.S. at 192–193, but entirely upon racial considerations: creating a new district with the express goal of giving Black and Latino voters the benefit of increased electoral "influence" than under the prior map, Pet.27–28. That is plain from the Petition, which asks this Court to order the redrawing of the district so that "Staten Island is paired with voters in lower Manhattan to create a minority influence district." Pet.28. Thus, the "predominant motive for the design of the district as a whole" that Petitioners present is race-based, *Bethune-Hill*, 580 U.S. at 192–93; *see also Cooper*, 581 U.S. at 299–301; *Wis. Legislature*, 595 U.S. at 402–03, as mapdrawers must move voters either in or out of the district until Black and Latino voters have enough "influence" to satisfy Petitioners' demands, *see* Pet.28. That inflicts the harms that the

Equal Protection Clause forbids: the use of racial stereotypes, the presumption that individuals of the same race or ethnicity share political preferences, and the signaling that the district exists to serve a particular racial constituency. *Shaw I*, 509 U.S. at 647; *Alabama*, 575 U.S. at 263.

Petitioners' request for an "influence" district here triggers strict scrutiny even if the adopted map "complie[d] with traditional redistricting criteria," Pet.28, which Petitioners' map plainly does not. Moving enough voters either in or out of the 11th Congressional District with the goal of giving Black and Latino voters the benefit of more electoral influence—as Petitioners' requested remedy requires—makes race the "predominant motive" for redrawing the district. *See Bethune-Hill*, 580 U.S. at 192. In other words, a minority influence district necessarily uses race or ethnicity as the principle for "the design of the district as a whole." *Id.* So, even if other traditional redistricting criteria were considered, race would be the "predominant [motivating] factor" in the redraw. *E.g.*, *Cooper*, 581 U.S. at 291. All that said, as Intervenor-Defendants' experts show, the proposed redraw of the 11th Congressional District that Petitioners seek would disregard traditional redistricting principles. Specifically, Petitioners' proposal for the 11th Congressional District disregards communities of interest because Manhattan's largely White population does not have much in common with Staten Island's diverse community. Borelli.Rebut.15–16. Further, it makes little practical sense to combine Southern Manhattan's city dwellers--who, for example, have the lowest rate of car ownership -- with Staten Island's more suburban community, who have the highest rate of car ownership of all the boroughs. *Id.* at 17–18. It also disregards compactness given the physical separation between those two boroughs. *Id.* at 17–19. So, for all these reasons, strict scrutiny necessarily applies. *Wis. Legislature*, 595 U.S. at 402–03.

2. Redrawing The 11th Congressional District For Racial Reasons Is Not Narrowly Tailored To Further Any Compelling State Interest

a. A law that allocates benefits or burdens based on race violates the Equal Protection Clause unless it can pass strict scrutiny by demonstrating that it is "narrowly tailored to achieving a compelling state interest." *Id.* at 401. Only two relevant compelling interests could possibly justify race-based government action.[7] First, the State has a compelling interest in "remediating specific, identified instances of past discrimination that violated the Constitution or a statute." *SFFA*, 600 U.S. at 207; *see Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007). "[G]eneralized assertion[s] of past discrimination" are insufficient to constitute a compelling interest. *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996) ("*Shaw II*"). Second, the Court has "long assumed" that, in the redistricting context, attempted compliance with Section 2 of the VRA is another "compelling interest" that could justify drawing district lines with predominately racial motives. *Cooper*, 581 U.S. at 292; *see also Abbott v. Perez*, 585 U.S. 579, 587 (2018); *Wis. Legislature*, 595 U.S. at 401–02. That is because Section 2 is the rare race-based law that satisfies strict scrutiny due to its "exacting requirements" and safeguards that narrowly tailor its application. *Allen*, 599 U.S. at 30.[8] A law is "narrowly tailored" when its use of race is "*necessary*" to "achieving [the law's] interest." *SFFA*, 600 U.S. at 206–07 (citations omitted; emphasis added). To satisfy that requirement, "the means chosen to accomplish the government's asserted purpose must be *specifically and narrowly framed* to accomplish that purpose"—an exceedingly high standard. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013) (citations omitted; emphasis added). For example, if the State has a compelling interest in remediating a specific instance of

[7] "[A]voiding imminent and serious risks to human safety in prisons, such as a race riot" is also a compelling interest. *SFFA*, 600 U.S. at 207.

[8] As explained below, the Court may soon retreat from this holding, given the reargument in *Louisiana v. Callais*, 606 U.S. ___, 2025 WL 1773632 (June 27, 2025) (reargued Oct. 15, 2025). *Infra* p.37.

past intentional discrimination, its chosen remedy must be "necessary to cure [the] effects" of that particular discrimination. *See City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 510 (1989) (plurality op.); *accord SFFA*, 600 U.S. at 249 (Thomas, J., concurring).

b. Adopting Petitioners' position and requiring the creation of a minority influence district would not further a compelling state interest and is not narrowly tailored to achieving such interest.

i. *No Compelling State Interest*. Petitioners do not articulate any "strong" evidentiary basis to conclude that race-based action is "necessary" to remediate "*identified* discrimination." *Shaw II*, 517 U.S. at 909–10 (emphasis added; citation omitted). They point only to isolated and "generalized," *id.*, instances of past discrimination against Black and Latino populations in Staten Island generally, having nothing to do with *voting*, *see* Pet. ¶¶ 67–95. For example, Petitioners allege that "remnants" of redlining and discriminatory housing practices still exist in Staten Island, *see* Pet. ¶¶ 76–77, without explaining how the ability to influence an election will remedy that alleged discrimination. That is not a compelling interest—and certainly not New York's proclaimed interest—that satisfies strict scrutiny. *SFFA*, 600 U.S. at 207. Moreover, the States lack Congress' constitutional entitlement to use voting-rights laws to remedy societal discrimination, further demonstrating that mandating influence districts advances no compelling *state* interest. The Fourteenth Amendment prohibits the *States* from using "race as a criterion for legislative action"—including "benign racial classifications," *City of Richmond*, 488 U.S. at 490–91, 495 (citation omitted)—so States cannot undertake the "odious" exercise of "pick[ing] winners and losers based on the color of their skin," *SFFA*, 600 U.S. at 208, 229 (citation omitted). Although "Congress may identify and redress the effects of society-wide discrimination[, this] does not mean that, *a fortiori*, the States and their political subdivisions are free to decide that such

remedies are appropriate." *City of Richmond*, 488 U.S. at 490; *accord Trump v. Anderson*, 601 U.S. 100, 112 (2024).

Although the U.S. Supreme Court has in the past assumed that ensuring compliance with the federal VRA is a compelling interest, *see Cooper*, 581 U.S. at 292, that interest is not available here because the federal VRA does not require influence districts (nor have Petitioners even brought a claim under the federal VRA). The U.S. Supreme Court "has long assumed that one compelling interest" under the Equal Protection Clause "is complying with the operative provisions of the [federal VRA]," including Section 2, *id.*, in "an effort to harmonize the[ ] conflicting demands" of the Equal Protection Clause and Section 2, *Abbott*, 585 U.S. at 587. That said, the Court appears poised to cut back (at least to some extent) on this assumption in *Louisiana v. Callais*, where the Court ordered and heard reargument on the question of whether a State's drawing of a minority majority district pursuant to Section 2 does satisfy the Equal Protection Clause, *see* 606 U.S. ____, 2025 WL 1773632 (June 27, 2025). Nevertheless, because Section 2 does not require the "creat[ion of] an influence district," *LULAC*, 548 U.S. at 446 (plurality op.), and because Petitioners do not allege a Section 2 claim here, VRA compliance cannot serve as a compelling interest in this case.

ii. <u>*No Narrow Tailoring*</u>. Even if the creation of minority influence districts served a compelling interest in "remediating specific, identified instances of past discrimination," Petitioners' remedy would still be unconstitutional because it is not "narrowly tailored—meaning *necessary*—to" alleviate demonstrated past discrimination by the political subdivision. *SFFA*, 600 U.S. at 206–07 (citation omitted; emphasis added); *see Fisher*, 570 U.S. at 311.

Petitioners' theory lacks *any* tailoring to the remediation of any past instances of racial discrimination in the 11th Congressional District. Petitioners make no attempt to tie Article III,

Section 4's supposed mandate to redraw the 11th Congressional District into an influence district to any showing that the State engaged in racially discriminatory conduct in the past or that there are ongoing consequences of such discrimination either generally or with respect to the 11th Congressional District, in particular. *Supra* Part I.A.2. Instead, in Petitioners' view, all that they must show to mandate the race-based redrawing of the 11th Congressional District into a minority influence district is that the preferred candidates of Black and/or Latino voters will "usually [be] defeated" and that there is either (a) "racially polarized" voting in the district or (b) an impairment of Black and/or Latino voters' ability to influence an election under the NYVRA's all-things-considered, totality-of-the-circumstances inquiry. Mem.19–39. But whether the preferred candidate of a minority group is "usually defeated" does not itself show discrimination. *Supra* Part I.B.1. Further, racially polarized voting is a common occurrence, which also does not show discrimination. *See Cooper*, 581 U.S. at 304 n.5. And the NYVRA's totality-of-the-circumstances inquiry is readily satisfied without any showing of specific instances of past discrimination. *Supra* p.30. Thus, Petitioners' position would require the race-based redrawing of the 11th Congressional District into an influence district independent of any showing that this was necessary to remedy specific instances of racial discrimination in the district itself.

The remedies offered in the NYVRA further highlight Petitioners' failure to show that the race-based redrawing of the 11th Congressional District into an influence district is "necessary." *SFFA*, 600 U.S. at 206–07. The NYVRA offers multiple remedies to "ensure that voters of race, color, and language-minority groups have equitable access to fully participate in the electoral process." N.Y. Elec. Law § 17-206(5). For instance, a jurisdiction could mandate "additional voting hours or days," or "additional polling locations." *Id.* § 17-206(5)(viii), (ix). A jurisdiction could also "requir[e] expanded opportunities for voter registration," or "requir[e] additional voter

education." *Id.* § 17-206(xii), (xiii). Notably, the Appellate Division expressly stated that these other "possible remedies under the NYVRA" are not "race-based" and "do not sort voters based on race"—unlike "race-based [re]districting." *Clarke*, 237 A.D.3d at 36; *see Clarke v. Town of Newburgh*, __ N.E.3d ___, 2025 WL 3235042, at *4 (N.Y. Nov. 20, 2025) (noting that "several of the potential remedies mentioned by the NYVRA," such as "longer polling hours or enhanced voter education," do not require "alterations of an [existing] election system"). Petitioners have made no effort to show that these alternative, non-race-based remedies would fail to provide Black and Latino voters in the 11th Congressional District a greater opportunity to "influence" the outcome of elections there—remedies that could further Petitioners' asserted interest without requiring a redrawing of the 11th Congressional District based on race. Accordingly, for this reason as well, Petitioners have failed to show that it is "necessary" to redraw the 11th Congressional District into an influence district.

B. Judicially Adopting Petitioners' Rewrite Of Article III, Section 4 Would Violate The Elections Clause Of The U.S. Constitution

Granting Petitioners any remedy in this case would require this Court to adopt Petitioners' theory that Article III, Section 4 incorporates the NYVRA's standards, *supra* Part I.A.2, making this Court the first to read language identical to Section 2 of the federal VRA as including an influence-district mandate: or indeed, read later-enacted statutory language into any provision of the New York Constitution. Doing so would impermissibly "add[ ] words" to the New York Constitution, *Am. Transit Ins. Co.*, 3 N.Y.3d at 76, by judicially creating an atextual requirement to redraw a legislatively adopted congressional map. Such an interpretation would clearly exceed "the ordinary bounds of judicial review" and violate the Elections Clause of the U.S. Constitution. *Moore*, 600 U.S. at 36–37.

1. The Elections Clause provides that "[t]he Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State *by the Legislature thereof*." U.S. Const. art. I, § 4 (emphasis added). Thus, "the Elections Clause expressly vests power to carry out its provisions in '*the Legislature*' of each State," which is "a deliberate choice that [courts] must respect." *Moore*, 600 U.S. at 34 (citation omitted; emphasis added). Accordingly, when "state court[s] interpret [ ] [ ] state law in cases implicating the Elections Clause"—such as cases adjudicating state law challenges to congressional maps—they must take care to "not transgress the ordinary bounds of judicial review," thereby "arrogat[ing] to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36.

The U.S. Supreme Court recently provided guidance on the proper role of state courts in adjudicating state-law challenges to congressional redistricting maps in *Moore*. There, North Carolina voters and voting-rights organizations challenged North Carolina's congressional map as an unlawful partisan gerrymander under that State's constitution. *Id.* at 11. The legislative defendants in the case claimed that the Elections Clause "insulates state legislatures [drawing congressional maps] from review by state courts for compliance with state law," *id.* at 19, while other parties argued that state courts have plenary authority to review congressional maps and "free rein" to say what state law is, *id.* at 34. Accordingly, the parties presented the Court with two extreme theories: one that would undermine state courts' authority to ensure that redistricting maps comply with state law, and another that would essentially nullify the Elections Clause's protections for state Legislatures' constitutional role in redistricting. *See id.* at 34–37.

Moore carved out a middle path, warning state courts not to use novel or strained interpretations of state law to exert too much authority over the congressional-redistricting process. *See id.* While "the Elections Clause does not exempt state legislatures from the ordinary

constraints imposed by state law," it also does not mean that "state courts . . . have free rein" when determining whether a congressional map satisfies state law. *Id.* at 34. Specifically, state courts must "ensure that [their] interpretations of [state] law do not evade federal law," *id.*, by "read[ing] state law in such a manner as to circumvent federal constitutional provisions," *id.* at 34–35. Otherwise, state courts would "transgress the ordinary bounds of judicial review such that they arrogate to themselves the power vested in state legislatures to regulate federal elections." *Id.* at 36. Should a state court "so exceed the bounds of ordinary judicial review as to unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution," the U.S. Supreme Court stands ready "to exercise judicial review." *Id.* at 37.

Justice Kavanaugh's concurrence in *Moore* directly addressed the question of the appropriate "standard a federal court should employ to review a state court's interpretation of state law in a case implicating the Elections Clause" in order to determine whether such an interpretation exceeds the bounds of "ordinary state court review." *Id.* at 38 (Kavanaugh, J., concurring). He considered three possible standards, which all "convey[ed] essentially the same point: Federal court review of a state court's interpretation of state law in a federal election case should be deferential, but deference is not abdication." *Id.* at 38 & n.1. Justice Kavanaugh ultimately urged the Court to "adopt Chief Justice Rehnquist's straightforward standard" from *Bush v. Gore*. *Id.* at 39–40. Under this standard, state courts must not "'impermissibly distort[ ]' state law 'beyond what a fair reading required.'" *Id.* at 38 (citation omitted). As Chief Justice Rehnquist explained, this standard "does not imply a disrespect for state *courts* but rather a respect for the constitutionally prescribed role of state *legislatures*," because giving "definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually

departed from the statutory meaning, would be to abdicate [the Court's] responsibility to enforce the explicit requirements of [the federal Constitution]." *Bush v. Gore*, 531 U.S. 98, 115 (2000) (Rehnquist, C.J., concurring). Justice Kavanaugh made clear that this standard "should apply not only to state court interpretations of state statutes, but also to state court interpretations of state constitutions," and that, in reviewing state-court interpretations of state law, courts "necessarily must examine the law of the State as it existed prior to the action of the state court." *Moore*, 600 U.S. at 39 (Kavanaugh, J., concurring) (citation omitted). Applying this "straightforward standard," *id.* at 39, will "ensure that state court interpretations of" state law governing federal election cases "do not evade federal law," *id.* at 34 (majority op.).

2. Here, this Court adopting Petitioners' Article-III-Section 4-Equals-NYVRA theory (or, indeed, any theory that inserts an influence-district mandate into Article III, Section 4) to invalidate and require the redrawing of a legislatively adopted congressional map mid-decade is precisely the kind of "impermissibl[e] distort[ion]" of state law "in a federal election case," *id.* at 38 & n.1 (Kavanaugh, J., concurring), that would "[dis]respect[ ] the constitutionally prescribed role of state *legislatures*," *Bush*, 531 U.S. at 115 (Rehnquist, C.J., concurring), and violate the Elections Clause under *Moore*.

Petitioners ask this Court to discard a legislatively adopted congressional map based on a radical departure from New York's principles of constitutional interpretation. *Supra* Part I.A. Judicially inserting a "minority influence district" requirement into Article III, Section 4 is an "[un]fair reading," *Moore*, 600 U.S. at 38 (Kavanaugh, J., concurring) (citation omitted), of state law that would impermissibly allow New York state courts "to arrogate to themselves the power vested *in state legislatures* to regulate federal elections," *id.* at 36 (majority op.) (emphasis added). Unlike the NYVRA, nothing in Article III, Section 4 references the right to "influence" elections.

Supra pp.13–14, 17. Rather, accepting Petitioners' theory would require this Court to read the later-enacted NYVRA's text into the New York Constitution, an unprecedented bit of judicial redrafting with no analogue in any prior New York case. Petitioners' theory thus requires the Court to "transgress the ordinary bounds of judicial review," *Moore*, 600 U.S. at 36, and "'impermissibly distort[ ]' state law 'beyond what a fair reading required,'" *id.* at 38 (Kavanaugh, J., concurring) (citation omitted). So distorting New York law would "unconstitutionally intrude upon the role specifically reserved to state legislatures by Article I, Section 4, of the Federal Constitution" and undoubtedly violate the Elections Clause. *Id.* at 36–37 (majority op.).

III. Laches Bars The Petition

Laches requires dismissal where a petitioner has engaged in a "lengthy neglect or omission to assert a right" that results in "prejudice to an adverse party." *Saratoga Cnty. Chamber of Com, Inc. v. Pataki*, 100 N.Y.2d 801, 816 (2003); *see* CPLR 103(a); *Sheerin v. N.Y. Fire Dep't Articles 1 & 1B Pension Funds*, 46 N.Y.2d 488, 496–97 (1979). Applying laches is appropriate where the delay was "entirely avoidable and undertaken without any reasonable explanation," especially in "time sensitive" "elections matters." *League of Women Voters of N.Y. State v. N.Y. State Bd. of Elections*, 206 A.D.3d 1227, 1228–30 (3d Dep't 2022); *see Nichols v. Hochul*, 206 A.D.3d 463, 464 (1st Dep't 2022). New York courts routinely dismiss elections-related claims as untimely for relatively short delays. *See, e.g.*, *MacDonald v. County of Monroe*, 191 N.Y.S.3d 578,591–92 (Sup Ct. Monroe Cnty. 2023) (two-month delay); *Nichols v. Hochul*, 76 Misc.3d 379, 384–85 (Sup Ct. N.Y. Cnty. 2022), *aff'd as modified*, 206 A.D.3d 463 (three-and-a-half-month delay); *League of Women Voters*, 206 A.D.3d at 1228 (same); *Amedure v. State*, 210 A.D.3d 1134, 1138–39 (3d Dep't 2022) (nine-month delay). Here, laches bars the Petition because Petitioners waited until late October 2025 to challenge the 11th Congressional District's boundaries, which boundaries "have remained static since 1980," Pet.15, under a theory that purportedly existed the moment

New York ratified the 2014 Amendments, *see id.* ¶¶ 99–101; *see* N.Y. Const. art. III, § 4(c) (effective January 1, 2015). At minimum, Petitioners could have brought their claim after the *Harkenrider* Map was adopted on May 20, 2022, or after the 2024 Congressional Map was adopted on February 28, 2024, as neither map altered the District's boundaries. *See* Pet. ¶¶ 58–59. Petitioners offer no explanation for their "entirely avoidable" delay, *League of Women Voters*, 206 A.D.3d at 1230, which "prejudice[s] [ ] voters[,] candidates," and the Legislature, *id.*

CONCLUSION

This Court should dismiss Petitioners' Petition or, alternatively, reject Petitioners' claim on the merits.

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December 8, 2025

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CERTIFICATION

I hereby certify that the foregoing memorandum of law complies with the word count limitations set forth in 22 NYCRR § 202.8-b(a). According to the word-processing system used to prepare this memorandum of law, it contains 13,987 words, excluding parts of the document exempted by Rule 202.8-b(b).

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