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

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

Index No. 164002/2025

Petitioners,

-against-

Petitioners' Summation Memorandum

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-

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

Intervenor-Respondents.

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PRELIMINARY STATEMENT

Absent relief from this Court, the current configuration of Congressional District 11 ("CD-11") will continue to perpetuate the unlawful dilution of Black and Hispanic voting strength on Staten Island, in violation of Article III, Section 4(c)(1) of the New York Constitution. At the multi-day hearing in this matter, Petitioners' evidence proved that, despite exponential growth in the Black and Hispanic voting-age populations on Staten Island over the past several decades, these voters are routinely denied an equal opportunity to elect their candidate of choice at the congressional level. This inequity cannot persist under the New York Constitution. In 2014, the People of New York voted to enshrine in the state constitution protections against precisely the sort of minority vote dilution Petitioners have demonstrated here.

This first-of-its-kind case presents the first opportunity to define the legal standard for claims under Article III, Section 4(c)(1) of the New York Constitution, which precludes drawing congressional districts in a way that, "based on the totality of the circumstances, racial or minority language groups . . . have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." The Court, however, is not without guidance: In 2022, the Legislature enacted the John R. Lewis Voting Rights Act (the "NY VRA") with the express intent of implementing the Constitution's equal-opportunity mandate—specifically by extending the Constitution's protections to local political subdivisions. The NY VRA offers sweeping protections for the right to vote, exceeding the floor set by the federal Voting Rights Act ("VRA") and solidifying the State's position as a national leader in protecting the electoral franchise. In that way, the NY VRA mirrors the intended scope of Article III, § 4(c)(1), and it offers a framework under which this Court can evaluate Petitioners' claim—one that gives

effect to the will of New York voters, unlike the more restrictive standards under the federal VRA that Respondents and Intervenor-Respondents would prefer.

At the hearing on this matter, Petitioners met their burden to prove that the current configuration of CD-11 unconstitutionally dilutes the voting strength of Black and Hispanic voters by demonstrating, (1) with the testimony of political scientist Dr. Maxwell Palmer, that Black and Hispanic voters in CD-11 vote cohesively for a mutual candidate of choice that is usually defeated within the district; (2) also with Dr. Palmer's testimony, that voting within CD-11 is racially polarized, with the White majority likewise voting as a bloc to defeat the Black and Hispanic–preferred candidate; and (3) with the testimony of expert historian Dr. Thomas Sugrue, that the ability of Black and Hispanic Staten Islanders to participate fully in the electoral franchise is impaired under the totality of the circumstances. Petitioners also proved that the dilution of Black and Hispanic voters *can* be remedied. Seasoned demographer William S. Cooper offered one illustrative example of a map that would cure the constitutional defects that plague CD-11 under the current plan by joining Staten Island with lower Manhattan instead of Southwest Brooklyn. A district that follows this basic format (though the ultimate remedial district need not adhere strictly to Mr. Cooper's boundaries) has historical and modern precedent; is more competitive than the current CD-11; and it would allow Black and Hispanic Staten Islanders to form an electoral coalition with crossover voters from the White majority to elect their candidate of choice.

Time is of the essence. It is imperative that—consistent with Petitioners' previous briefing on the appropriate remedy, NYSCEF Doc. ("Doc.") 203—the Legislature adopts a new map that cures the vote dilution in CD-11 in time for the 2026 election. Because remedies are available, "the People of this state" cannot be subjected "to an election conducted pursuant to an unconstitutional reapportionment." *Harkenrider v. Hochul*, 38 N.Y.3d 494, 521, 197 N.E.3d 437,

454 (2022). For the reasons stated herein, as well as those discussed in Petitioners' prior briefing in this matter, Docs. 63 & 156, Petitioners respectfully ask that the Court swiftly declare the 2024 Congressional Map unlawful, enjoin Respondents from using the map in future elections, and order that CD-11 be redrawn in a manner that remedies the dilution of Black and Hispanic voting strength before the 2026 election.

BACKGROUND

I. The New York Constitution expansively protects against vote dilution.

In 2014, "the People of the State of New York amended the State Constitution to adopt historic reforms of the redistricting process," *Harkenrider*, 38 N.Y.3d at 501, including changes that "guarantee[] the application of substantive criteria that protect minority voting rights," Assembly Mem. In Support, 2013 N.Y. Senate-Assembly Concurrent Resolution S2107, A2086.

The Constitution's prohibition on vote dilution is contained in Article III, Section 4(c)(1). It provides that "districts shall not be drawn to have the purpose of, nor shall they result in, the denial or abridgement" of minority voting rights. N.Y. Const. art. III, § 4(c)(1). In addition, "[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." *Id.* These provisions apply specifically to New York's state assembly, senate, and congressional districts. *Id.* art. III, § 4(b). The Redistricting Amendments list the express prohibition on vote dilution along with other redistricting criteria, including equal population size, contiguity, compactness, maintaining competition and the "cores of existing districts," as well as a prohibition on partisan or incumbency-based gerrymandering. *See id.* § 4(c)(2)–(5).

By enshrining constitutional protections against minority vote dilution, New York voters seized upon the U.S. Supreme Court's recognition that states may go further than the requirements

of the federal Voting Rights Act in order to protect minority voters. *See Bartlett v. Strickland*, 556 U.S. 1, 23 (2009) (plurality op.); *see also* N.Y. Elec. Law § 17-200 ("[T]he protections for the right to vote provided by the constitution of the state of New York . . . substantially exceed the protections for the right to vote provided by the constitution of the United States.").

II. The Legislature enacted the 2024 Congressional Map following a tumultuous redistricting process.

The Redistricting Amendments reformed the congressional and state legislative redistricting processes and mandated specific substantive criteria for district maps. In addition to prohibiting racial vote dilution in redistricting, the Redistricting Amendments created an independent redistricting commission ("IRC"), which submits proposed redistricting plans to the Legislature for consideration, as well as detailed procedures by which the Legislature could approve, reject, or modify plans submitted by the IRC. *See* N.Y. Const. art. III, § 4(b).

In the first redistricting cycle following the enactment of the Redistricting Amendments—the cycle immediately following the 2020 Census—the IRC process failed. After the IRC's first proposed set of districting maps was rejected by the Legislature, the IRC deadlocked and failed to send a second set of maps to the Legislature, as required by the New York Constitution. N.Y. Const. art. III, § 4(b); *see Harkenrider*, 38 N.Y.3d at 504–05. As a result, and following a legal challenge to the map eventually passed by the Legislature, the congressional map in place for the 2022 elections (the "2022 Congressional Map") was drawn by a special master at the behest of the Steuben County Supreme Court with minimal opportunity for public comment and scrutiny. *Harkenrider*, 38 N.Y.3d at 524. The special master admitted in his report that he did not actively avoid the dilution of minority voting strength. Instead, he hoped that dilution would be avoided simply because "the largest minority groups . . . are almost always highly geographically

concentrated." Rep. of the Special Master at 11, *Harkenrider v. Hochul*, Index No. E2022-0116CV (N.Y. Sup. Ct., Steuben Cnty., May 21, 2022), NYSCEF Doc. No. 670.

Following additional litigation, the Court of Appeals ordered the IRC to redraw the 2022 Congressional Map to fix the procedural defects by requiring the IRC to submit a second congressional map to the Legislature. *Hoffmann v. N.Y. State Indep. Redistricting Comm'n*, 41 N.Y.3d 341, 370 (2023). The IRC submitted a second congressional map to the Legislature that made very few substantive changes and no changes at all to the configuration of CD-11.[1] The Legislature rejected the IRC's map, *see* 2024 NY Senate Bill S8639, 2024 NY Assembly Bill A9304, and ultimately drew its own, but did not make any sweeping substantive changes.[2] The 2024 Congressional Map, which was passed by the Legislature on February 28, 2024, did not alter the configuration of CD-11. *See* 2024 NY Senate Bill S8653A, 2024 NY Assembly Bill 9310A. Although the enactment of the 2024 Congressional Map fixed the procedural defects identified in *Hoffman*, it did not remedy the unlawful racial vote dilution in CD-11.

III. Congressional District 11 fails to account for significant changes in Staten Island's racial demographics over the last several decades.

A. Staten Island has become increasingly diverse in recent decades.

Staten Island spans 57.5 square miles but is the smallest borough by population. When Staten Island was first annexed by New York City in 1898, it was "mostly rural area." PX-1 ¶ 9 (Sugrue Report). In the twentieth century, however, its population began to grow, spurred in large

[1] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=congress_specialmastercorrected_20220604&propB=cong_nyirc_20240215&opacity=2&selected=74.12227663802202,40.583456106019945#%26map=10.46/40.6097/-74.0286 (last visited Jan. 16, 2026).

[2] *New York Redistricting and You*, https://newyork.redistrictingandyou.org/?districtType=cd&propA=cong_nyirc_20240215&propB=cong_legamend_20240226&opacity=0&selected=-74.12227663802202,40.583456106019945#%26map=7.48/41.322/-74.234 (last visited Jan. 16, 2026).

part by transit links to other parts of New York City. The most important developments were the Staten Island Ferry, which connects Staten Island to Manhattan, and the Verrazano Narrows Bridge, which connects Staten Island to Brooklyn. PX-1 ¶ 10 (Sugrue Report).

Prior to the 1980s, Staten Island was overwhelmingly White. PX-1 ¶ 9 (Sugrue Report). The Island was home to a small population of Black citizens, but they were confined to the North Shore, particularly the Stapleton area and Sandy Ground. PX-1 ¶ 9 (Sugrue Report). Both neighborhoods carried deep historical significance for the Black community. Stapleton is "home to Stapleton AME Church, the borough's oldest Black Church," and Sandy Ground is "the oldest free Black settlement on the East Coast, founded by former enslaved people from Maryland in 1828 – the year after New York State abolished slavery." PX-1 ¶ 9 (Sugrue Report).

Staten Island's demography began to meaningfully change in the 1980s. PX-1 ¶ 12 (Sugrue Report). New transportation options between Staten Island and mainland New York City, including the opening of the Verrazzano-Narrows Bridge in 1964, helped facilitate waves of immigration to the borough through the late twentieth and early twenty-first centuries. Between 1980 and 2020, Staten Island's population ballooned by approximately 40%. PX-1 ¶¶ 12–13 (Sugrue Report). During this period, the White population on Staten Island dropped from 85% to 56%, while the combined Black and Hispanic population increased from approximately 11% to nearly 30%. PX-1 ¶¶ 12–13 (Sugrue Report). While the growth of the Black and Hispanic populations has been significant, it has been unevenly distributed across the Island. Most of Staten Island's Black and Hispanic residents live in the North Shore, in neighborhoods such as St. George, Tompkinsville, Stapleton, and Clifton. See PX-1 ¶ 16 (Sugrue Report).

B. The current configuration of CD-11 does not account for the district's recent demographic changes.

Even though Staten Island's population began to grow in the twentieth century, it has never

had enough residents to comprise its own congressional district. PX-5 ¶ 36 (Cooper Report). Thus, to equalize population, the Legislature has always joined Staten Island with neighboring sections of either Brooklyn or Manhattan. Under the 2024 Map, CD-11 encompasses all of Staten Island and the southwestern-most portion of Brooklyn across the Verrazzano Bridge, including Fort Hamilton, Dyker Heights, New Utrecht, Bath Beach, and part of Bensonhurst. PX-5 at 8, fig. 1 & Ex. F-1 (Cooper Report).

Staten Island's congressional district has remained roughly the same—joining Staten Island with neighborhoods in southern Brooklyn—since the early 1980s. This configuration of CD-11, however, does not account for the stark changes in the Island's demographic makeup since that time. As a result, Staten Island's Black and Hispanic residents remain in a district where they consistently and systematically have less opportunity to influence elections and elect their representatives of choice.

Joining Staten Island with Brooklyn is not the only historical configuration of the Staten Island-based congressional district. In 1972, following the 1970 Census, the New York Legislature enacted a congressional map that joined Staten Island with southern Manhattan in what was CD-17 at the time. *See* PX-5 at 14, fig. 7 (Cooper Report). The district remained in this configuration until the contentious 1982 redistricting battle, following the state's loss of five House seats due to population changes.[3] With the two houses of the Legislature controlled by opposite parties, the parties compromised to redraw the Staten Island–based congressional district to include the Bay Ridge section of Brooklyn instead of the southern tip of Manhattan.[4] The move was transparently

[3] *See* Maurice Carroll, *Plan by Democrats Effaces Old 'Silk Stocking' District*, N.Y. Times (Feb. 20, 1982), https://www.nytimes.com/1982/02/20/nyregion/plan-by-democrats-effaces-old-silk-stocking-district.html#:~:text=Political%20practicality%20says%20the%20Democrat.
[4] *Id.*

partisan, securing Republican advantage on Staten Island for decades to come and effectively unseating the popular Democratic Representative Leo Zeferetti in Brooklyn.[5]

Joining Staten Island with Manhattan has a modern precedent, too. During the last redistricting cycle, the Legislature redrew Assembly District 61, which encompasses Staten Island's North Shore, to include the southernmost neighborhoods of Manhattan as well. *See* PX-5 at 13, fig. 6 (Cooper Report). The Legislature inexplicably failed to adopt a similar configuration for CD-11, which, as explained in detail below, would have afforded Staten Island's Black and Hispanic residents an equal opportunity to elect their candidates of choice.

SUMMATION

I. The legal elements of Petitioners' claim under Article III, Section 4(c)(1) of the New York Constitution.

Petitioners have challenged the configuration of Congressional District 11 under Article III, Section 4(c)(1), which protects against racial vote dilution in redistricting by expressly requiring that all congressional "[d]istricts shall be drawn so that, based on the totality of the circumstances, racial or minority language groups do not have less opportunity to participate in the political process than other members of the electorate and to elect representatives of their choice." That provision does not specifically identify the elements of a racial vote dilution claim, and all parties agree that this is the first claim of its kind to be litigated in a New York state court. Therefore, this Court must decide the appropriate legal standard under which to evaluate Petitioners' constitutional claim.

For the reasons explained in Petitioners' briefing and below, the Court should conclude that both the language and the context of the vote dilution protections enshrined in the New York Constitution support the conclusion that they sweep more broadly than federal law. Article III,

[5] *Id.*

Section 4(c)(1), unlike federal law, is sufficiently broad to afford relief to petitioners who show vote dilution that can be remedied with a new district that permits a minority population to elect its candidate of choice, even without constituting a majority of the district's population. The NY VRA—which likewise does not require proof that a majority-minority single-race district can be drawn in the challenged area—thus offers a better framework than Section 2 of the federal VRA to decide whether Petitioners have established racial vote dilution under the Constitution. Here, Petitioners have satisfied the elements of a racial vote dilution claim under the NY VRA: they have established that candidates preferred by Black and Hispanic Staten Islanders are "usually defeated"; that voting is racially polarized in Congressional District 11; and that under the totality of the circumstances—a term used expressly in Article III, Section 4(c)(1) of the Constitution—the ability of Black and Hispanic voters, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. *See* N.Y. Elec. Law § 17-206(2)(b)(ii).

A. The parties' proposed legal frameworks

The parties have advocated for evaluating Petitioners' claim under different legal standards. Respondents and Intervenors contend that the Court should find that the framework under Section 2 of the VRA governs Petitioners' claim, and Petitioners are therefore required to meet the preconditions identified in *Thornburg v. Gingles*, 478 U.S. 30 (1986), to prove racial vote dilution. In *Gingles*, the U.S. Supreme Court identified three "necessary preconditions" ("*Gingles* preconditions") for a Section 2 vote dilution claim: (1) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group must be "politically cohesive"; and (3) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id*. at 50–51. The first *Gingles* precondition requires the minority group to constitute at least 50% of the voting age population of a potential new district. *See Bartlett*, 556 U.S. at 18–20.

By contrast, the NY VRA does *not* require Petitioners to show the first *Gingles* precondition. Petitioners contend the same is true for Article III, Section 4(c)(1), meaning that they do not need to show that Black and Hispanic voters could form a majority in a new CD-11.[6] Petitioners contend instead that Article III, Section 4(c)(1) protects minority "coalition" and "crossover" districts—districts where different minority groups can create coalitions to influence elections and elect their candidates of choice with the assistance of crossover voters from the White majority. They agree, however, that they must show that there is consistently a Black and Hispanic preferred candidate in the focus area (current CD-11) and that that candidate is usually defeated—a requirement mirrored in the NY VRA. *See* N.Y. Elec. Law § 17-206(2)(b)(ii).

Except for the requirement to demonstrate the first *Gingles* precondition, the two standards before the Court largely mirror one another. Respondents' view that Petitioners must demonstrate *Gingles* preconditions 2 and 3, *see Allen v. Milligan*, 599 U.S. 1, 18 (2023) (quoting *Gingles*, 478 U.S. at 51), is mirrored in the NY VRA's "usually defeated" requirement and the requirement to show racially polarized voting. *Cf.* N.Y. Elec. Law § 17-206(2)(b)(ii). And the final element—demonstrating the totality of the circumstances—is common to both the federal VRA, the NY VRA, and Article III, Section 4(c)(1).

B. The Court should conclude that Article III, Section 4(c)(1) does not require Petitioners to demonstrate the first *Gingles* precondition.

The Court should conclude that Article III, Section 4(c)(1) does not require Petitioners to demonstrate the first *Gingles precondition*, and it should adopt Petitioners' proposed standard under which to demonstrate unconstitutional racial vote dilution.

[6] The NY VRA also differs from Section 2 of the VRA by requiring that Petitioners demonstrate *either* racially polarized voting *or* the totality of the circumstances factors, not both; however, because Petitioners here have proved both racially polarized voting and that the totality of the circumstances establish that Black and Hispanic voters have less ability to influence elections and elect candidates of their choice, that distinction between the two standards is not implicated.

No party disputes that the Constitution's equal-opportunity mandate—that minorities shall "not have less opportunity to participate in the political process" than others, N.Y. Const. art. III, Section 4(c)(1)—precludes diluting the voting strength of racial minority groups. Respondents and Intervenors have argued that this equal opportunity mandate implicitly incorporates the federal law requirement that a single minority group must constitute the *majority* voting population in an alternative district—a requirement the Supreme Court grafted onto Section 2 of the federal VRA. *See generally Bartlett*, 556 U.S. 1. But the New York Constitution clearly lacks such a precondition. Article III, Section 4(c)(1) protects the right of racial and language minority groups to have the same opportunity as their neighbors to elect candidates of their choosing, and there are many ways the Legislature might go about depriving minority groups of that equal opportunity. The Legislature might, for example, divide members of different racial groups that might otherwise form an electoral coalition to elect minority-preferred candidates in the district. A district that is configured to eliminate opportunities for minority voters to form electoral coalitions—including coalitions with crossover voters from the majority group (typically White voters)—deprives those voters of an "equal opportunity" to elect candidates of their choice. If another reasonably configured district that complies with the Constitution's other redistricting criteria would allow minority voters the "opportunity . . . to elect" candidates of their choice by forging such electoral alliances, a violation has been established. That is Petitioners' claim precisely.

Put simply: the text of the New York Constitution lacks the "majority-minority district" requirement that Respondents and Intervenors would have the Court graft onto it here. While Petitioners recognize that such a requirement exists under *federal* law, there are several reasons the Court should find that New Yorkers did not intend to so narrowly cabin vote-dilution claims under the Redistricting Amendments.

First, the language of the vote dilution provision in the New York Constitution is distinct from Section 2 and supports Petitioners' argument that it does not require showing that a single minority group is sufficiently large to form a majority in a new district. The use of the plural word "groups" in Article III, Section 4(c)(1) differentiates the New York Constitution from Section 2 (which refers only to members of "a class") in a manner that courts have concluded indicates a broader protection against minority vote dilution than Section 2 currently provides. *See, e.g.*, *Nixon v. Kent County*, 76 F.3d 1381, 1386–87 (6th Cir. 1996). After *Gingles*, the *en banc* Sixth Circuit underscored that the text of Section 2 does not permit lawsuits seeking coalition districts where one minority group comprises less than a majority, explaining that if Congress had "intended to sanction [such] suits, the statute would" refer to "the *classes* of citizens protected." *Id.* at 1386–87 (emphasis added); *see* Doc. 95 at 4. That plural language—which was illustrative in the context of the Sixth Circuit case—is very similar to the language New Yorkers adopted when they voted to adopt Article III, Section 4(c)(1), which prohibits diluting the ability of "racial or minority language *groups*" from "elect[ing] representatives of their choice." (emphasis added). New York's decision to meaningfully vary from the federal VRA's narrower scope compels likewise departing from the correspondingly narrower *Gingles* preconditions that come with it.[7]

[7] Intervenors argued that *Nixon* is inapposite because the case involved a coalition district claim—that is, where two or more minority groups together would comprise the majority in a redrawn district. Doc. 161 at 8–9. That argument misses the point: the textual variation between Section 2 of the VRA, and Article III, Section 4(c)(1), as spelled out in *Nixon*, conveys New Yorkers' intent to do away with *Gingles*' single majority-minority district requirement. Intervenors also misconstrue the remedy Petitioners seek here. The remedial district Petitioners advance allows two minority *groups*, Black and Hispanic voters, to leverage their combined voting strength to *elect* candidates of their choice by forging alliances with White crossover voters. This is precisely the sort of remedy the Constitution contemplates. Respondents, meanwhile, appear to misunderstand the textual difference Petitioners highlight: the Constitution's use of the plural minority "groups" instead of the singular "group," which, as *Nixon* explains, would have been selected if the intent was to incorporate Section 2's *Gingles I* requirement. *See* Doc. 175 at 11–12.

Indeed, the State Respondents—Governor Hochul, Senate Majority Leader and President *Pro Tempore* Stewart-Cousins, Assembly Speaker Heastie, and Attorney General James—agree that petitioners bringing constitutional vote dilution claims are not restricted by the requirements of federal law. "[T]he relevant provisions of Section 4(c)(1) are intended to provide broader rights for affected groups of voters to bring challenges with respect to voting rights than those provided under federal law." State Resp'ts' Br. at 3. Reading Article III, Section 4(c)(1) in line with the federal VRA would render Section 4(c)(1) "a redundancy and the will of New York voters in voting for them would be read out of the State Constitution." *Id*.

New York courts have also recognized the broader protection that the New York Constitution provides. In *Harkenrider v. Hochul*, for example, the court found that "according to many experts," Article III's "prohibition against discriminating against minority voting groups . . . expanded the[] protection" against vote dilution as compared to the federal VRA. 76 Misc. 3d 171, 176, 173 N.Y.S.3d 109, 112 (Sup. Ct. Steuben Cnty. 2022), *aff'd as modified*, 204 A.D.3d 1366 (4th Dept. 2022).

Second, the Legislature's later passage of the NY VRA further underscores why the federal VRA offers the wrong framework for Petitioner's constitutional vote dilution claims, and why the NY VRA's broader standards omitting the first *Gingles* factor should guide the Court here. Neither Respondents nor Intervenors dispute that the NY VRA offers broader relief than the federal VRA—specifically in that it does not require plaintiffs to satisfy the first *Gingles* factor. *See Clarke v. Town of Newburgh*, 237 A.D.3d 14, 38 (2d Dept. 2025) ("[T]he NYVRA specifically allows for remedies that might allow for minorities to elect their candidates of choice or influence the outcome of elections without their constituting a majority in a single-member district."), *aff'd*, No. 84, 2025 WL 3235042 (N.Y. Nov. 20, 2025). But they miss that the NY VRA points to *the New*

York Constitution as the basis for permitting such relief. The Legislature enacted the NY VRA in express "recognition of . . . the constitutional guarantee[] . . . against the denial or abridgement of the voting rights" of racial minority groups—that is, Article III, Section 4(c)(1), under which provision Petitioners assert their claim here. N.Y. Elec. Law § 17-200. In other words, Section 17-200 tells us what it is doing: expounding directly on the State Constitution's broader voting rights protections.

And like the NY VRA, the state constitutional protection against racial vote dilution is designed to ensure equal "opportunity" for minority voters to elect candidates of their choice. The NY VRA's definition of vote dilution—which eschews the first *Gingles* requirement and exceeds the minimum requirements of the federal VRA—in turn sets out the Legislature's view that equal "opportunity" does not include a requirement that plaintiffs prove that a majority-minority district is an available alternative. In this way, the NY VRA acts as "a legislative interpretation" of the Constitution itself. *See Lallave v. Martinez*, 635 F. Supp. 3d 173, 188 (E.D.N.Y. 2022) ("[A] later act can be regarded as a legislative interpretation of an earlier act in the sense that it aids in ascertaining the meaning of the words as used in their contemporary setting, and is therefore entitled to great weight in resolving any ambiguities and doubts." (quoting *Erlenbaugh v. United States*, 409 U.S. 239, 243–45 (1972)).

Finally, the fact that Article III, Section 4(c) notes that state redistricting criteria remain "[s]ubject to the requirements of the federal constitution and statutes," does not mean that state constitutional racial vote dilution claims must identically mirror Section 2 of the VRA. That language simply recognizes that the federal constitution and federal law set "a floor" for the minimum protections states must afford voters, *see People v. Stultz*, 2 N.Y.3d 277, 284 n.12 (2004), but it does not prescribe the substantive standards under which racial vote dilution claims

must be established. The U.S. Supreme Court has expressly recognized that states may afford greater protections to minority voters than federal law, and it has recognized the benefits of doing so. *Bartlett*, 556 U.S. at 24 ("States that wish to draw crossover districts are free to do so where no other prohibition exists."). Article III, Section 4(c) recognizes the federal floor, but nothing in its plain language does anything to bind or restrict the Constitution's reach to federal redistricting standards. Nor do the standards that New York imposes conflict with federal standards; they simply provide greater protections—as the Supreme Court has recognized they may.

II. Petitioners satisfy the necessary elements of their constitutional claim.

Based on the foregoing, the Court should hold that Petitioners have satisfied the New York Constitution's standard for minority vote dilution by proving that:

(1) voting patterns of members of the protected class within the political subdivision are racially polarized;

(2) candidates or electoral choices preferred by members of the protected class would usually be defeated; and,

(3) 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.[8]

[8] Adopting a standard that requires Petitioners to demonstrate both racially polarized voting and the totality of the circumstances factors would not violate Respondents' Due Process rights. First, as Petitioners have made clear, they did not rely exclusively on this Court's adoption of the precise articulation of the racial vote dilution standards in the NY VRA. *See* Doc. 63 at 19 n.5 ("Even if the Court adopts a different constitutional standard than the one set forth in the NY VRA, Petitioners would readily satisfy it."). Second, this Court's articulation of such a racial vote dilution standard would not prejudice Respondents in any way. All parties fully litigated and had the opportunity to present evidence, analysis, and witnesses to bear on all of the necessary elements of a vote dilution claim, including racially polarized voting and totality of the circumstances factors. Any claim from Respondents that they were not given a full opportunity to present evidence on the dispositive issues in this matter therefore fails.

Additionally, Petitioners' Illustrative Map demonstrates that the dilution of Black and Hispanic voters in CD-11 can be remedied by redrawing the district to join Staten Island with lower Manhattan instead of Southwest Brooklyn. Petitioners are therefore entitled to relief. *See Clarke*, 237 A.D.3d at 39.

A. Voting is racially polarized voting within CD-11.

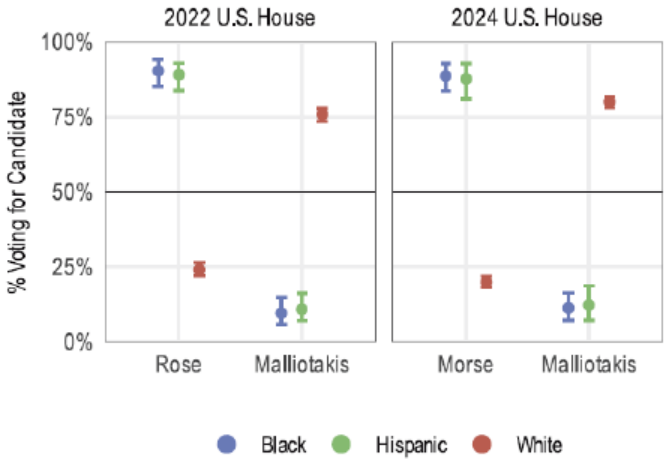
1. Relevant legal principles

The first element Petitioners established is that voting in CD-11 is racially polarized, with White voters voting cohesively to defeat the Black and Hispanic–preferred candidate. "Racially polarized voting" means "voting in which there is a divergence in the candidate, political preferences, or electoral choice of members in a protected class from the candidates, or electoral choice of the rest of the electorate." N.Y. Elec. Law § 17-204(6). Racially polarized voting is proven through evidence of "bloc voting." "Bloc voting by [minority voters] tends to prove that the [minority] community is politically cohesive, that is, it shows that [minorities] prefer certain candidates whom they" would elect if given the opportunity. *Gingles*, 478 U.S. at 68. At the same time, "the white majority [also] votes sufficiently as a bloc to enable it . . . usually to defeat the [minority groups'] preferred candidate." *Id.* at 51. Evidence offered in support of racially polarized voting analysis is "weighed and considered consistent with several well-defined princip[les]." *Serratto v. Town of Mount Pleasant*, 86 Misc. 3d 1167, 1172, 233 N.Y.S.3d 885, 890 (Sup. Ct., Westchester Cnty. 2025); *see* N.Y. Elec. Law § 17-206(2)(c). Courts weigh statistical evidence most heavily, and "evidence concerning elections for members" of the challenged district is the most probative. N.Y. Elec. Law § 17-206(2)(c).

2. Petitioners' evidence

Voting in CD-11 is heavily racially polarized. Petitioners' expert Dr. Maxwell Palmer examined voting patterns in CD-11 using official election data and Census data, and employing

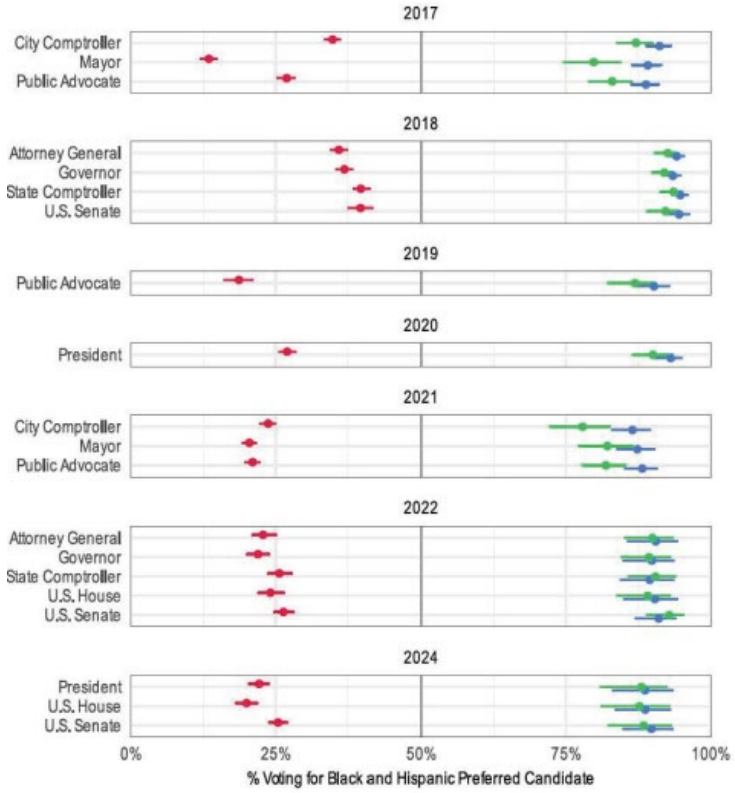
ecological inference, he found that White voters have consistently voted as a bloc to defeat the Black and Hispanic–preferred candidate. *See* PX-3 ¶¶ 5–6, 9–11 (Palmer Report); Tr. 157:11-18 (Palmer). Dr. Palmer's analysis of CD-11 demonstrates that Black and Hispanic Staten Islanders have remained "extremely cohesive" over nearly a decade of elections. PX-3 ¶ 15 (Palmer Report). In the two most recent congressional elections—2022 and 2024—Black voters had "a clear preferred candidate," and Hispanic voters shared that choice. PX-3 ¶ 15 (Palmer Report); *see* Tr. 163:13–64:3 (Palmer) (discussing these elections). Across these elections, the Black and Hispanic–preferred candidate (Democrat Max Rose in 2022 and Democrat Andrea Morse in 2024) averaged 89.55% of the Black vote and 88.4% of the Hispanic vote. PX-3 ¶ 15, fig. 1; *id.* at 10, tbl. 1 (Palmer Report). White voters in CD-11, however, voted as a bloc to defeat the Black and Hispanic–preferred candidate in both elections. PX-3 ¶ 15, fig. 1, *id.* at 10, tbl. 1 (Palmer Report).



PX-3 ¶ 15, fig. 1 (Palmer Report); *see* Tr. 163:13–64:3 (Palmer) (testifying to these results).

Broadening the lens beyond congressional elections, Dr. Palmer's analysis revealed high levels of racial polarization in CD-11 across *all* state and federal elections he studied over nearly a decade, from 2017 to 2024. In all 20 elections he examined, Black voters supported their preferred candidates with 90.5% of the vote on average. PX-3 ¶ 17 (Palmer Report). Hispanic

voters "supported their preferred candidates with 87.7% of the vote." PX-3 ¶ 18 (Palmer Report). White voters, meanwhile, voted just as cohesively against the Black and Hispanic–preferred candidate with an average of 73.7% of the vote. PX-3 ¶ 19 (Palmer Report). In other words, they supported Black and Hispanic–preferred candidates with only 26.3% of the vote. PX-3 ¶ 19 (Palmer Report).



PX-3 ¶ 19, fig. 2 (Palmer Report); *see* Tr. 165:4–20 (Palmer) (testifying to these results).

The effect of this bloc voting is unmistakable: of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times. PX-3 ¶ 20 (Palmer Report); Tr. 168:8–10 (Palmer). And the few minority-preferred candidates that won prevailed by very narrow margins. *See* PX-3 at 12, tbl. 3 (Palmer Report). These victories are also quite dated. Of the city, state, and district-wide elections that Dr. Palmer analyzed, no Black and Hispanic–preferred

candidate has prevailed within CD-11 since 2018, and voting within the district has become increasingly racially polarized since. PX-3 ¶ 20, fig. 3 (Palmer Report).[9]

Respondents and Intervenors offered two experts—Dr. Voss and Dr. Alford—to dispute Dr. Palmer's analysis, but they failed to discredit Dr. Palmer's conclusion that voting in CD-11 is racially polarized. Intervenors offered Dr. Voss, who did not dispute Dr. Palmer's results or his conclusions from ecological inference, but rather the methodology he employed and the data on which he relied in the first place. Dr. Alford, meanwhile, accepted Dr. Palmer's methodology and its results, and disputed only Dr. Palmer's interpretation of those results—specifically, whether the disparity in voting patterns he observed was attributable to race rather than partisanship. At trial, these criticisms collapsed under scrutiny.

First, Dr. Voss took issue with the scope of Dr. Palmer's testimony. He critiqued Dr. Palmer's decision to limit his analysis to precinct data from the precincts within the existing CD-11. He testified that one congressional district does not contain enough data on which to base an ecological inference. Tr. 617:5–16 (Voss); IRX-3 ¶ III.I, app. B at 18 (Voss Report). At the same time, however, Dr. Voss conceded that there is "no consensus" in the scientific community regarding how much data is necessary to conduct a reliable ecological inference. Tr. 641:10–14 (Voss). And Dr. Palmer was unequivocal that he had more than enough data to conduct a reliable ecological inference because CD-11 offered precinct data from 300-400 precincts. Tr. 161:1–12 (Palmer). Dr. Voss's opinion that a single congressional district never offers enough data for

[9] Dr. Palmer was cross-examined on his decision not to include the 2018 and 2020 U.S. House races in his analysis. *See* Tr. 197:11–199:13 (Palmer). Dr. Palmer explained that he made this choice because those elections were conducted "under different [district] boundaries." Tr. 197:14–15 (Palmer). Even accounting for those elections, however, the Black and Hispanic candidate of choice prevailed within CD-11 in only six of 22 elections. Tr. 237:16–25 (Palmer). And it is still the case that no Black and Hispanic–preferred candidate has prevailed within the district since 2018. *See id.*; *see also* PX-3 ¶ 20, fig. 3 (Palmer Report).

ecological inference is overly simplistic, for "[d]istricts vary widely [in] the way that precincts are drawn," particularly in rural versus urban areas, and what matters "is the amount of information available." Tr. 238:7–17 (Palmer).

But even accepting Dr. Voss's opinion on the appropriate scope of the analysis at face value, it changes nothing about Dr. Palmer's bottom-line conclusion that voting in CD-11 is racially polarized. Dr. Voss re-ran Dr. Palmer's ecological inference using precinct data for all the congressional districts that comprise New York City (congressional districts 5 through 15), and he obtained materially similar results. *See* IRX-3, app. B at 20–21, tbl. 6 (Voss Report). He agreed that his ecological inference—which, in the interests of time, he limited to only the 2022 gubernatorial election—showed that Black voters in CD-11 voted cohesively for one candidate, Governor Hochul, with 95% of their vote. Tr. 647:5–6 (Voss). Hispanic voters cohesively supported the same candidate with 75% of the vote. Tr. 647:7–9 (Voss). White voters in CD-11, meanwhile, supported Governor Hochul's opponent with 80% of the vote. Tr. 647:10–16 (Voss); IRX-3, app. B at 21, tbl. 6 (Voss Report). Though a slightly lower estimate than Dr. Palmer's, Dr. Palmer reviewed Dr. Voss's conclusions and testified that these results still show "strong evidence of racially polarized voting" in CD-11. Tr. 175:14–76:4 (Palmer); *see also* PX-4 ¶ 20 (Palmer Rebuttal). Either way the Court looks at it—whether it accepts the district-wide scope of Dr. Palmer's analysis or looks to Dr. Voss's city-wide approach—the conclusion is the same: voting in CD-11 is racially polarized, with the White majority bloc voting cohesively to usually defeat the Black and Hispanic–preferred candidate.

Second, Dr. Voss challenged Dr. Palmer's decision not to modify his ecological inference—which has, for decades, been the "gold standard" to assess racially polarized voting, *see Ala. State Conf. of NAACP v. Alabama*, 612 F. Supp. 3d 1232, 1275 n.27 (M.D. Ala. 2020)—

by adding a "covariate" to the model to adjust for aggregation bias. Dr. Voss claimed that, had Dr. Palmer adjusted his approach in this fashion, his results would have shown less polarization between White and Hispanic voters. At trial, Dr. Voss's conclusions on this score were exposed to be unsubstantiated and unreliable, and the Court should disregard them.

For starters, despite testifying that adjusting the EI model with covariates would have been "best practices," Tr. 647:21–23 (Voss), Dr. Voss was unable to identify a *single* expert that has deployed ecological inference in the way he describes even *once* in the redistricting context. *See* Tr. 649:2–10 (Voss). Dr. Palmer—an experienced expert that has testified in 12 redistricting trials—was aware of none. Tr. 177:16–22 (Palmer); *see* PX-4 ¶¶ 9–11 (Palmer Rebuttal). That includes the Intervenors' and Respondents' own expert witnesses—Dr. Trende and Dr. Alford, both of whom have previously conducted ecological inference in the same manner Dr. Palmer did here to estimate racial voting patterns in redistricting cases, but neither of whom have ever utilized the approach that Dr. Voss describes. *See* PX-4 ¶¶ 10–11 (Palmer Rebuttal). The only support Dr. Voss offers to corroborate his approach is a brand-new ecological inference tool produced by a political media organization, VoteHub.com, which analyzes the 2024 election results *only*, utilizing a novel methodology that has neither been published nor peer reviewed. IRX-3 ¶ III.F; app. B at 12–16 (Voss Report).[10]

Moreover, despite leveraging his revised methodology to conclude that Dr. Palmer likely overestimated racially polarized voting in CD-11, Dr. Voss failed to offer defensible evidence of his own to support that conclusion. He stated quite plainly—on several occasions during direct and

[10] Indeed, the author of that report—with whom Dr. Voss was familiar via "election twitter" only, Tr. 654:9–12 (Voss)—completed his undergraduate education less than a year ago. *See* Zachary Donnini, LinkedIn, https://www.linkedin.com/in/zachary-donnini-078aa1205?trk=public_post_feed-actor-name.

cross-examination—that the estimates of racial voting patterns in CD-11 that he includes in his report, *see* IRX-3, app. B at 13, tbl. 3, 14 tbl. 4 (Voss Report), are not "authoritative" estimates. Tr. 594:24–95:2, 655:1–5, 22–25, 656:1–15 (Voss). In other words, *Dr. Voss himself does not believe the estimates he reports accurately estimate voter choice in the relevant region.*

In fact, trial testimony revealed that Dr. Voss's analysis was not even on the right track. Ecological inference produces two sets of estimates: estimates for *voter choice* among racial groups, as well as *turnout* among racial groups. *See* Tr. 660:4–7 (Voss). One way to gauge the accuracy of *voter choice* estimates is whether the corresponding *turnout* estimates are consistent with what is otherwise known about voter behavior. *See* Tr. 659:25–60:3 (Voss). Dr. Palmer testified on direct examination that he ran this simple diagnostic on the ecological inference model (with a covariate) that Dr. Voss disclosed, and the results did not "make much sense." Tr. 178:3–12 (Palmer). For example, Dr. Voss's model predicted 75% turnout among Hispanic voters—and 95% turnout among voters who identified as races other than White, Black, Hispanic, or Asian—in certain elections. Dr. Palmer testified that these results are "nonsensical." Tr. 178:6–12 (Palmer). Dr. Palmer's testimony is confirmed by sheer common sense—95% turnout among *any* racial group of voters is essentially unheard of. Despite predicting that his analysis might contain "anomalies," Dr. Voss testified that he was unable to calculate his turnout estimates before submitting his report in this case. Tr. 664:16–665:3 (Voss). But when pressed on cross-examination, Dr. Voss admitted that he had since run the same analysis as Dr. Palmer, and he agreed his results were indeed anomalous. Tr. 665:4–8 (Voss). For that reason, Dr. Palmer concluded that Dr. Voss's adjustment of adding a covariate to his code produced "[un]reliable" results—a conclusion Dr. Voss was ultimately unable to dispute. *See* Tr. 178:11–12 (Palmer).

Ultimately, Dr. Voss did little more than throw spaghetti at Dr. Palmer's "gold standard" analysis, suggesting that if one adjusted Dr. Palmer's EI model in novel and untested ways, it may or may not produce meaningfully different estimates of racial voting patterns, which may or may not reflect racially polarized voting. The Court should disregard Dr. Voss's thoroughly discredited conclusions.

***Third*,** Respondents offered the testimony of Dr. Alford, who provided the Court the same conclusion he has put forward in scores of other redistricting cases—which courts *routinely* reject. Dr. Alford accepted the results of Dr. Palmer's ecological inference entirely and conducted no analysis of his own beyond verifying Dr. Palmer's results. *See* Tr. 707:12–08:3 (Alford). Dr. Alford's sole conclusion is that the racial voting patterns that Dr. Palmer observed are attributable to partisanship—not race. Tr. 681:4–13 (Alford); *see* RX-2 at 13–15 (Alford Report). But as Dr. Palmer testified, Dr. Alford answers the wrong question: "[T]he question should be how are voters voting. That is, what are their preferences, not where do the preferences come from." Tr. 186:1–3 (Palmer). And "the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting." PX-4 ¶ 4 (Palmer Rebuttal). Courts have broadly agreed, and they have discounted Dr. Alford's unchanging opinion as a result. *See* Tr. 725:6–27:4 (Alford); *see also Robinson v. Ardoin*, 605 F. Supp. 3d 759, 840 (M.D. La. 2022), *vacated & remanded on other grounds*, 86 F.4th 574 (5th Cir. 2023); *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1305–07 (11th Cir. 2023), *appeal docketed*, No. 23-13914 (11th Cir. Nov. 28, 2023), *argued* Jan. 23, 2025; *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020). This Court should do the same.

In sum, Petitioners have satisfied their burden to show racially polarized voting in CD-11, with the White majority voting as a bloc to defeat the Black and Hispanic candidate of choice.

B. The totality of the circumstances demonstrate that Black and Hispanic Staten Islanders have less opportunity to participate in the political process than the borough's White population.

1. Relevant legal principles

Petitioners next established that, under the totality of the circumstances, the ability of Black and Hispanic voters, individually and collectively, to elect candidates of their choice or influence the outcome of elections is impaired. A "'totality of the circumstances' inquiry in a voter dilution case 'is fact intensive and requires weighing and balancing [the] various facts and factors'" identified in the NY VRA. *Serratto*, 86 Misc. 3d at 1174 (quoting *Alpha Phi Alpha Fraternity Inc.*, 700 F. Supp. 3d at 1252). Courts evaluating the totality of the circumstances under the NY VRA often rely on decisions interpreting the totality of the circumstances factors under the Federal VRA—known as the Senate Factors.[11] Those decisions make clear that the totality of the circumstances analysis is "local in nature," *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 243 (4th Cir. 2014), and requires "an intensely local appraisal," *White v. State Bd. of Election Comm'rs*, 795 F. Supp. 3d 794, 831 (N.D. Miss. 2025) (quoting *Gingles*, 478 U.S. at 79)). Courts examine these factors in the jurisdiction at issue—here, Staten Island. Evidence of what occurs outside that jurisdiction is "ordinarily irrelevant in assessing the totality of the circumstances." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment).

Both the New York Constitution and NY VRA employ the term "totality of the circumstances." *See* N.Y. Const. art. III, § 4(c)(1); N.Y. Elec. Law § 17-206(2)(b)(ii). The NY VRA delineates the relevant factors specifically, *see* N.Y. Elec. Law § 17-206(3), and for the reasons stated above, those factors should inform the constitutional "totality of the circumstances"

[11] The totality of the circumstances factors under the NY VRA largely mirror the Senate Factors under Section 2 of the VRA. *See Gingles*, 478 U.S. at 36–37.

analysis as well. *Supra* Summation § I. Specifically, the factors "that may be considered shall include, but not be limited to":

(a) the history of discrimination in or affecting the political subdivision;

(b) the extent to which members of the protected class have been elected to office in the political subdivision;

(c) the use of any voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy that may enhance the dilutive effects of the election scheme;

(d) denying eligible voters or candidates who are members of the protected class to processes determining which groups of candidates receive access to the ballot, financial support, or other support in a given election;

(e) the extent to which members of the protected class contribute to political campaigns at lower rates;

(f) the extent to which members of a protected class in the state or political subdivision vote at lower rates than other members of the electorate;

(g) the extent to which members of the protected class are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection;

(h) the extent to which members of the protected class are disadvantaged in other areas which may hinder their ability to participate effectively in the political process;

(i) the use of overt or subtle racial appeals in political campaigns;

(j) a significant lack of responsiveness on the part of elected officials to the particularized needs of members of the protected class; and

(k) whether the political subdivision has a compelling policy justification that is substantiated and supported by evidence for adopting or maintaining the method of election or the voting qualification, prerequisite to voting, law, ordinance, standard, practice, procedure, regulation, or policy.

N.Y. Elec. Law § 17-206(3). No "specified number of factors [is] required in establishing that . . . a violation has occurred." *Id*.

2. Petitioners' evidence

The evidence at trial definitively showed that, in view of the totality of the factors above, Black and Hispanic Staten Islanders' ability to "elect candidates of their choice or influence the outcome of elections is impaired." *Id.* § 17-206(2)(b)(ii). Petitioners' expert, Dr. Thomas Sugrue,[12] presented evidence of a long history of discrimination in Staten Island, including residential segregation which remains to this day; a history of racial violence and hate crimes; significant and ongoing disparities in education, employment, criminal justice, housing, income and voter turnout; the presence of racial appeals in campaigns in Staten Island; and the extremely limited electoral success of Black and Hispanic candidates. All of these factors limit Black and Hispanic political participation and ability to influence elections. Dr. Sugrue's report follows historical research methodology, and he cites and relies on academic literature relevant to the totality of the circumstances factors that he addresses in his report. Tr. 49:1–15 (Sugrue). By all measures, Dr. Sugrue's expert report and testimony is reliable, based on credible academic research and methodology, and for these reasons, is entitled to significant weight.

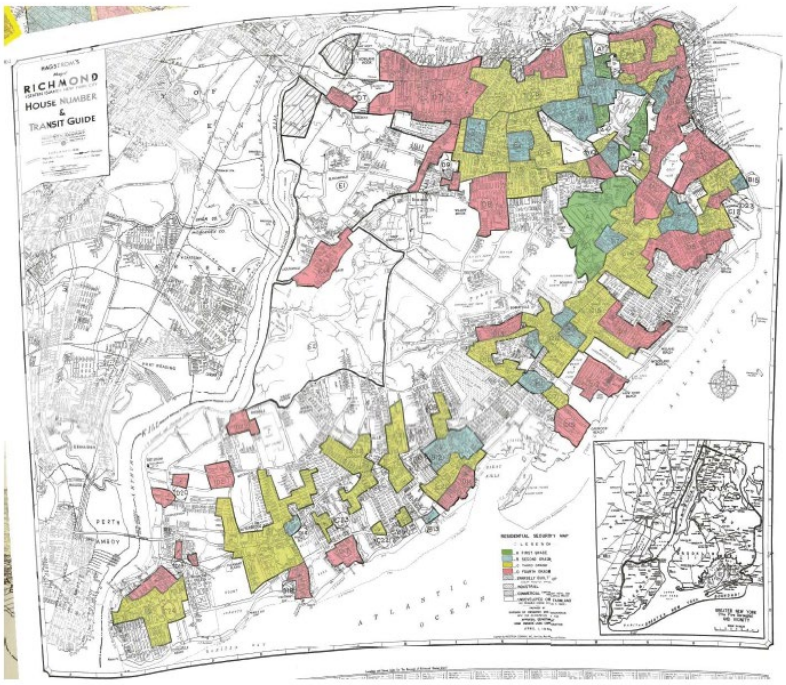
The vast majority of Petitioners' evidence was either unopposed by Respondents and Intervenors or supported by the evidence Intervenors' expert, Mr. Joseph Borelli, provided in his reports and at trial. Mr. Borelli is a partisan politician with no prior experience in racial vote dilution or civil rights cases. Tr. 778:24–79:17 (Borelli). Prior to his engagement in this case, Mr. Borelli had never performed an analysis of the totality of the circumstances factors under the New

[12] Dr. Sugrue is an award-winning, tenured, NYU historian, whose scholarship has focused on discrimination, urban history, and civil rights for more than thirty years. PX-1 ¶¶ 1–4 & app. 1. Dr. Sugrue has performed the totality of the circumstances analysis multiple times in racial vote dilution cases, and every court has found him qualified and several have relied on his testimony and analysis. Tr. 41:24–42:18 (Sugrue); *see also United States v. City of Eastpointe*, 378 F. Supp. 3d 589, 593–95 (E.D. Mich. 2019); *United States v. City of Euclid*, 580 F. Supp. 2d 584, 606–07 (N.D. Ohio 2008).

York Constitution, the New York Voting Rights Act, or Section 2 of the VRA. Tr. 779:7–14 (Borelli). While Mr. Borelli has personal and professional experiences on Staten Island as both a resident and elected representative, his testimony was replete with the sort of personal anecdotes common to lay witnesses, not experts. *See, e.g.*, Tr. 756:10–22 (Borelli) (Mr. Borelli discussing his own neighborhood and selling his "grandmother's house to a Pakistani family who moved in a couple of years ago"). Mr. Borelli's lack of expert experience is evident throughout his report and the methodology through which he came to his conclusions, which in many instances, was not based on any review of the relevant academic literature and contain no citations to that literature. PX-2 ¶ 64 (Sugrue Rebuttal). These limitations underscore the importance of expert testimony, like Dr. Sugrue's, that assesses the totality of the circumstances factors impartially, using accepted research methods. For these reasons, the court should afford Mr. Borelli's testimony and report little weight.

Factor (a): the history of discrimination. There is no meaningful dispute as to whether there is a history of discrimination on Staten Island. Dr. Sugrue identifies an extensive body of evidence—undisputed by Intervenors and Respondents—that demonstrates this discriminatory history. For example, Dr. Sugrue traced a history of redlining on Staten Island, identifying particular neighborhoods in Staten Island that were historically redlined, Tr. 61:5–23 (Sugrue). Figure 5 of Dr. Sugrue's opening expert report shows these Staten Island neighborhoods.

Figure 5: Federal Home Loan Bank Board Richmond County, New York, Home Security Map, 1940[33]



PX-1 at 22, fig. 5 (Sugrue Report).

Tracing the history of residential discrimination to the present, Dr. Sugrue also identified a "wide body of scholarship by historians, sociologists, public health experts and other social scientists, demonstrating that areas that [were] redlined are more likely today to have various negative socioeconomic indicators, problematic environmental outcomes and problematic health outcomes." Tr. 61:24–62:7 (Sugrue). Mr. Borelli confirmed at trial that nothing in his report "challenges this body of scholarship," Tr. 796:25–97:6 (Borelli), or the incidents of discrimination Dr. Sugrue identified, Tr. 788:17–18 (Borelli).

Dr. Sugrue also demonstrated that the history of residential segregation on Staten Island has led to continued racial residential segregation today. Dr. Sugrue explained, and Mr. Borelli did not dispute, that Hispanics and Whites are moderately segregated on Staten Island today, while Blacks and Whites are highly segregated, Tr. 58:22–59:5 (Sugrue); Tr. 797:10–98:18 (Borelli),

with the majority of both groups living North of the Staten Island expressway, or what many minority Staten Islanders refer to as the "Mason-Dixon line." Tr. 55:9–20 (Sugrue). Dr. Sugrue also presented evidence of numerous examples of racial violence and hate crimes on Staten Island, all of which was unrebutted. PX-1 ¶¶ 55–75; Tr. 788:17–20 (Borelli). While Mr. Borelli claimed that he did not "attempt to whitewash [Staten Island's] history" in his report, Tr. 787:9–13 (Borelli), he conceded at trial that he failed to mention numerous hate crimes against Black people on Staten Island of which he was aware. While his report mentioned two hate crimes against Blacks on Staten Island in 2025, he confirmed that he had reviewed the NYPD Hate Crimes Dashboard going as far back as 2020 and did not discuss in his report the 27 *additional* incidents of hate crimes against Blacks on Staten Island during that period. Tr. 784:15–85:8 (Borelli).

Mr. Borelli's repeated claim that similar racial discrimination to that identified by Dr. Sugrue was purportedly also happening elsewhere in New York during the same historical period, *see, e.g.*, Tr. 788:7–10 (Borelli), misunderstands the relevant inquiry under the totality of the circumstances analysis. Courts look to the history of the particular jurisdiction at issue to determine whether the totality factors are satisfied; evidence of other jurisdictions is "irrelevant in assessing the totality of the circumstances in [the disputed] district." *Gingles*, 478 U.S. at 101 (O'Connor, J., concurring in the judgment) (analyzing totality of the circumstances under Section 2 of the VRA). The undisputed evidence presented at trial bearing on the appropriate jurisdiction—an "intensely local appraisal" of Staten Island, *id*. at 78, 79—makes clear that Black and Hispanic Staten Islanders have faced a history of discrimination that has had a lasting effect on their ability to participate in the political process.

Factor (b): minority electoral success in the jurisdiction. As the evidence presented at trial demonstrated, Black and Hispanic Staten Islanders have experienced very limited electoral

success. The sum total of all the successful Black and Hispanic candidates that have ever been elected to office in Staten Island's history can be counted on one hand. PX-2 ¶¶ 48–49 (Sugrue Rebuttal). For example, Dr. Sugrue explained, and Mr. Borelli did not dispute, that although Black people have lived on Staten Island for more than 200 years, the first Black candidate to obtain electoral success was Debi Rose, elected to the City Council in 2009. Since then, only three Black candidates have been elected to any office on Staten Island. Tr. 70:17–71:12 (Sugrue); PX-2 ¶¶ 48–49 (Sugrue Rebuttal). The single example of Latina political success is Representative Nicole Malliotakis, but she is decidedly not Black and Hispanic voters' candidate of choice. PX-3 ¶ 15, fig. 1 (Palmer Report). Staten Islanders have never elected a Black member of Congress, Hispanic City Councilperson, or a Hispanic judge. PX-2 ¶¶ 48–52 (Sugrue Rebuttal).

Mr. Borelli's claims that Blacks and Hispanics have experienced great political success fails as a matter of common sense and is further undermined by his erroneous reporting of purported additional electoral success. In his report, he claims that Judge Tashanna Golden and Judge Raymond Rodriguez are additional examples of Black and Hispanic electoral success, IRX-2 at 30 (Borelli Report), but as he admitted at trial, that is incorrect. Tr. 774:14–19 (Borelli). Judge Golden was appointed to the housing court in Brooklyn, and Judge Rodriguez was appointed to the New York City Criminal Court. Tr. 73:2–9 (Sugrue); PX-2 ¶¶ 50–51 (Sugrue Rebuttal).

Factor (c): the use of voting qualification, prerequisite to voting, law or policy that may enhance the dilutive effects of the election scheme. Dr. Sugrue presented evidence of the historical use of literacy tests on Staten Island beginning in the 1920s and continuing through the latter half of the twentieth century. PX-1 ¶¶ 88–89 (Sugrue Report). Mr. Borelli does not dispute their use on Staten Island; among other things, his report identifies that "New York required a literacy test in 1921" and notes that "by 1970 the literary test re-emerged as an obstacle to voting"

for Hispanics due to the "increased migration of Spanish speaking people to the mainland United States" during this period. IRX-2 at 31–32 (Borelli Report). This factor is undisputed.

Factor (f): Blacks and Hispanics "in the state or political subdivision vote at lower rates than other members of the electorate." The evidence at trial makes clear that this factor weighs in Petitioners' favor. Dr. Palmer presented evidence that Black and Hispanic voter turnout estimates lag far behind that of whites since at least 2020. As Figure 6 below demonstrates, for each year of data measured there were significant disparities between White as compared to Black and Hispanic voter turnout in Staten Island.

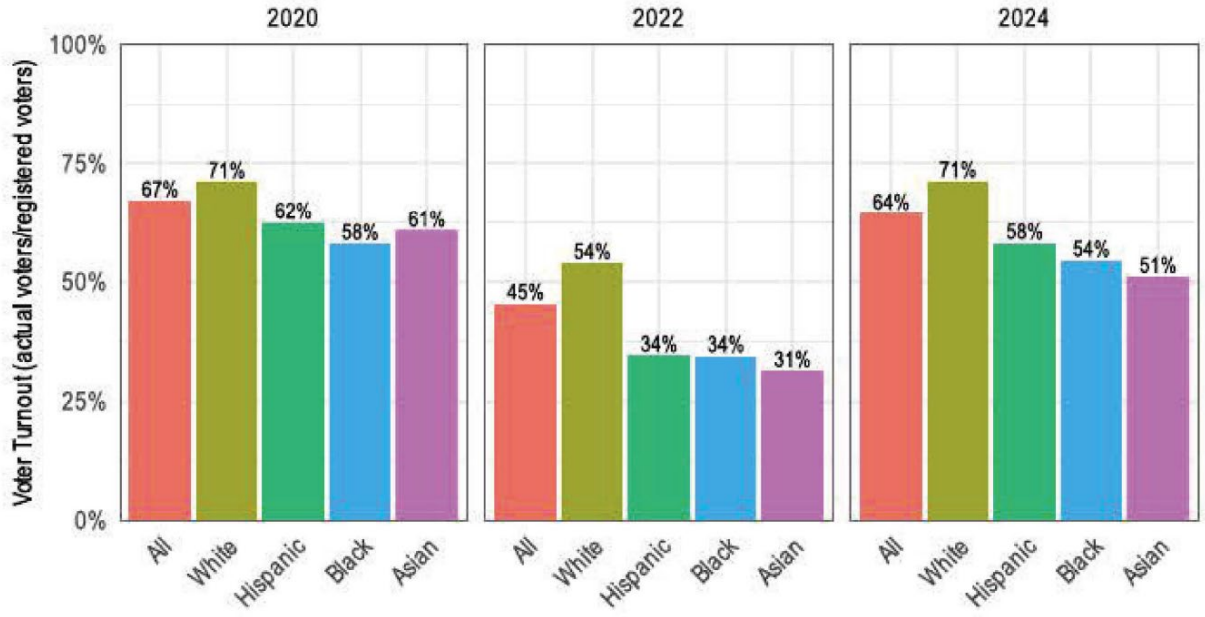


Figure 6: Estimated Voter Turnout by Race and Election in Staten Island

PX-3 at 9, fig. 6 (Palmer Report). For example, there were disparities of 13% and 17% for Hispanics and Blacks respectively as compared to Whites in 2024, and there was a 20% disparity for both Hispanics and Blacks as compared to whites in 2022. PX-3 (Palmer Report). Mr. Borelli presented no evidence to dispute this data. Indeed, the voter turnout data that Mr. Borelli relied upon supports this conclusion. He presented nationwide voter turnout data demonstrating a greater

than 19% disparity between White and Hispanic voter turnout and a greater than 12% disparity between White and Black voter turnout in 2022. Tr. 811:3–22 (Borelli).

Factor (g): Blacks and Hispanics "are disadvantaged in areas including but not limited to education, employment, health, criminal justice, housing, land use, or environmental protection" on Staten Island. The undisputed evidence at trial demonstrated significant disadvantages for Black and Hispanic Staten Islanders as compared to Whites in education, employment, criminal justice and housing. And as Dr. Sugrue made clear at trial, there is a "wide body of scholarship," Tr. 69:4–14 (Sugrue); *see also* Tr. 66:4–6, 67:21–68:3 (Sugrue), showing that "[e]ach of these socioeconomic factors"—"educational attainment, income, poverty[,]. . . unemployment and homeownership"—are "strongly related to one's ability to participate fully in the political process. And on every one of these metrics, there are significant disparities between Blacks, Latinos and Whites on Staten Island." Tr. 70:5–12 (Sugrue). Mr. Borelli failed to provide any academic literature or other evidence that rebuts the connection between these socioeconomic factors and political participation. *See* Tr. 66:13–17, 68:4–7 (Sugrue); PX-2 ¶ 30 (Sugrue Rebuttal).

Education. Dr. Sugrue demonstrated significant and persistent disparities between Black and White Staten Islanders in educational attainment, a finding that Mr. Borelli's own data confirmed. For example, Figure 7 of Dr. Sugrue's report confirmed that Black and Hispanic Staten Islanders are much more likely to have less than a high school diploma as compared to White Staten Islanders, and Whites are much more likely to have graduated from college.

Figure 7: Highest Educational Attainment: Blacks, Latinos, and Whites, Staten Island, 2019-2023

	White	Black	Latino
Less than high school diploma	7.2%	11.1%	20.5%
High school graduate	29.6%	33.7%	33.6%
Some college or associate's degree	24.3%	26.2%	22.7%
Bachelor's degree or higher	39.0%	28.8%	23.1%

PX-1 at 39, fig. 7 (Sugrue Report). The evidence presented by Mr. Borelli demonstrated the same. He provided charts on educational attainment by race that made clear, among other things, that in 2024 there was a 28% and 47% disparity, respectively, between Black and Hispanic college graduation rates as compared to White college graduation rates.

2024 Educational Attainment by Race[104]

Race & Educational Attainment	Total	Percent	Percent of White
White - High school graduate or higher	186,170	92.9%	100.00%
White - Bachelor's degree or higher	83,716	41.8%	100.00%
Black - High school graduate or higher	27,572	90.2%	97.09%
Black - Bachelor's degree or higher	9,182	30.0%	71.77%
Asian - High school graduate or higher	39,590	75.7%	81.49%
Asian - Bachelor's degree or higher	17,841	34.1%	81.58%
Latino - High school graduate or higher	49,975	82.8%	89.13%
Latino - Bachelor's degree or higher	13,304	22.0%	52.63%

IRX-2 at 38 (Borelli Report).

In an attempt to minimize these vast disparities, Mr. Borelli claimed that significant progress in education has been made, Tr. 806:20–07:1 (Borelli); but at trial Mr. Borelli confirmed that his own data did not support this claim either. He conceded that in many instances, including when examining Black and Hispanic college graduation rates, and Hispanic high school graduation rates, the disparities in education have actually *increased* in recent years. Tr. 807:8–08:8 (Borelli).

Dr. Sugrue identified "a wide body of scholarship going back decades now by social scientists who show a strong relationship between educational attainment and political participation." Tr. 66:4–6 (Sugrue); *see also* PX-2 ¶ 30 (Sugrue Rebuttal). He described that educational attainment provides voters with, among other things, "access to information and knowledge about political issues," as well as "social capital that gives some advantages in the voting process." Tr. 66:6–11 (Sugrue).

Employment. Only Dr. Sugrue presented evidence on employment figures on Staten Island, which demonstrate, using the most recent five-year ACS estimates, Blacks and Hispanics face higher unemployment rates on Staten Island than whites: 5 percent for Whites as compared to 6.7 and 6.8 percent for Hispanics and Blacks. PX-1 ¶ 78, fig. 8 (Sugrue Report).

Criminal Justice. Dr. Sugrue presented substantial evidence of "persistent disparate treatment of Staten Islanders by police in . . . recent years, especially in [the] NYPD's use of 'stop and frisk' tactics," which Mr. Borelli entirely failed to rebut. PX-1 ¶ 84 (Sugrue Report). For example, in 1998 and 2007, Dr. Sugrue identifies studies by the U.S. Civil Rights Commission and the RAND Corporation that established the disproportionate targeting of Black and Hispanic Staten Islanders. In 1998, despite being only 9 percent of the borough's population, Blacks were 51.6 percent of those stopped and frisked. PX-1 ¶ 84 (Sugrue Report). Whites, who were more than 75 percent of the population at that time, were only subject to 32.4 percent of the stops. PX-1 ¶ 84 (Sugrue Report). In 2007, those disparities remained: a RAND report found that whereas 20 percent of whites had been stopped, 29 percent of Blacks had. PX-1 ¶ 85 (Sugrue Report). And in 2014, Staten Island was the site of an internationally infamous case of police brutality in which New York City Police officers arrested Eric Garner for selling untaxed cigarettes in Tompkinsville

and proceeded to hold Garner in an unlawful chokehold while Garner stated "I can't breathe" eleven times before he died. PX-1 ¶ 87 (Sugrue Report).

Housing. Dr. Sugrue presented unrebutted evidence of vast homeownership disparities on Staten Island. Whereas 76.8% of White Staten Islanders own their homes, only 43.7% of Hispanics do and only 35.8% of Black Staten Islanders do. PX-1 ¶ 79, fig. 9 (Sugrue Report). These figures represent disparities of more than 33% and 41% for Hispanics and Blacks respectively as compared to Whites.

Figure 9: Housing Tenure by Race and Ethnicity, Staten Island, 2019-2023[121]

	White	Latino	Black
Homeowner	76.8%	43.7%	35.8%
Renter	23.2%	56.3%	64.2%

PX-1 ¶ 79 (Sugrue Report). Mr. Borelli confirmed at trial that he offered nothing to dispute this conclusion. Tr. 808:13–25 (Borelli). To the extent Mr. Borelli claims that Black and Hispanic homeownership rates are higher than those in other New York City boroughs, that claim is irrelevant to the Court's evaluation of this totality factor—"the totality of the circumstances [inquiry] . . . [requires] 'an intensely local appraisal,'" *White*, 795 F. Supp. 3d at 831 (quoting *Gingles*, 478 U.S. at 79)).

Factor (h) Black and Hispanic voters are "disadvantaged in other areas which may hinder their ability to participate effectively in the political process." Both Dr. Sugrue and Mr. Borelli presented evidence of differences in income between Blacks, Hispanics, and Whites at trial, and both sets of evidence make clear that Black and Hispanic Staten Islanders face significant income disparities relative to Whites. For example, Mr. Borelli presented three charts showing median household income by race in 2010, 2020, and 2024. *See* IRX-2 at 44 (Borelli Report). Black and Hispanic mean household income never exceeds 66% of White household income. IRX-

2 at 44 (Borelli Report); Tr. 809:5–14 (Borelli). Dr. Sugrue's data confirmed this finding and demonstrated that White per capita income was more than $20,000 more than Black and Hispanic Staten Islanders'.

Figure 8: Socio-Economic Status by Race and Ethnicity, Staten Island, 2019-2023

	White	Latino	Black
Per capita income	$52,572	$31,647	$30,784
Unemployment rate	5.0%	6.7%	6.8%
Below Poverty line	6.8%	16.3%	24.6%

PX-1 ¶ 78, fig. 8 (Sugrue Report).

Factor (i) Racial Appeals are common in campaigns in Staten Island. Dr. Sugrue explained that racial appeals are characterized by "[n]egative stereotypical imagery that . . . activate[s] voters' negative racial attitudes[,] includ[ing] depictions of African Americans as criminals or welfare recipients." PX-1 ¶ 91 (Sugrue Report) (quoting LaFleur Stephens-Dougan, *The Persistence of Racial Cues and Appeals in American Elections*, 24 Ann. Rev. Pol. Sci. 301, 303 (2021)). Such appeals are often subtle and involve "[r]acially coded language" and "terms that invoke racial themes without ever explicitly mentioning race, including 'law and order,' 'tough on crime,' and 'inner city.'" PX-1 ¶ 91 (Sugrue Report) (quoting Stephens-Dougan, *supra* at 303–04). By contrast, Mr. Borelli failed to include any definition of racial appeals in his report, but he conceded at trial that he presented no academic literature about racial appeals that would call Dr. Sugrue's definition into question. Tr. 805:17–23 (Borelli). Dr. Sugrue presented evidence of numerous racial appeals in Staten Island campaigns, *see* PX-1 ¶¶ 91–104 (Sugrue Report), including two such appeals in Representative Malliotakis' 2020 congressional campaign, PX-2 ¶¶ 39–42 (Sugrue Rebuttal), and concluded that "[t]here is a long history of racial appeals in Staten Island politics." PX-1 ¶ 91 (Sugrue Report).

On the other hand, Mr. Borelli concluded that such appeals are not common in Staten Island campaigns, but the novel methodology he used in attempting to identify racial appeals makes clear that his conclusion is entitled to no weight. In Mr. Borelli's report he explained that his methodology for attempting to identify racial appeals was to search for the word "racism" and the word "issues" in the newspaper database newspapers.com in election years from 2000 to 2024. IRX-2 at 53 (Borelli Report).[13] In Mr. Borelli's report and at trial, Mr. Borelli failed to identify a single scholarly source that supported his methodology for identifying racial appeals. Tr. 802:9–12 (Borelli). As Dr. Sugrue explained, "[n]o professional historian could responsibly conduct newspaper research on a topic that touches on advertisements, media, campaigns, and racially charged language or images by using just two keywords." PX-2 ¶ 38 (Sugrue Report). Dr. Sugrue testified that Mr. Borelli's approach "would not capture any number of . . . possible examples" of racial appeals, Tr. 77:3–78:7 (Sugrue)—as evidenced by Mr. Borelli's failure to identify the multiple racial appeals that were described in the articles he cited in his own report.

For example, Mr. Borelli's report discussed the Young Leaders, a Black community group on Staten Island that was founded in the wake of Eric Garner's murder. IRX-2 at 48 (Borelli Report). Mr. Borelli described the Young Leaders as a "group[] that support[s] minority rights" and a group that "held several rallies around the borough in an effort to get voters engaged in the 2020 election." IRX-2 at 48 (Borelli Report). He also cited to an article in *The City* about the Young Leaders, entitled "Their Anti-Racism Marches Were Twisted in a $4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote." IRX-2 at 48 n.119 (Borelli Report). That article described that "[f]ootage of one peaceful [Young Leaders] march — interspersed with

[13] At trial, Mr. Borelli testified that he also searched for the word "racist" but failed to mention doing so in his report. Tr. 800:3–6 (Borelli).

doctored images of police cars ablaze — became the centerpiece of an attack ad touting Assemblymember Nicole Malliotakis and trashing Rep. Max Rose in her successful bid to oust the freshman Democrat from the [sic] Staten Island's House seat." PX-2 ¶ 41 (Sugrue Rebuttal). As Dr. Sugrue explained at trial, "this is a textbook racial appeal," something "I could use in a class to illustrate racial appeals to my students." Tr. 79:19–22 (Sugrue). The advertisement did precisely what the academic literature describes as a racial appeal by linking the Young Leaders' with "[n]egative stereotypical imagery . . . includ[ing] depictions of African Americans as criminals," PX-2 ¶ 41 (Sugrue Rebuttal), even though there was "nothing riotous, criminal, or threatening" about the peaceful marches that they led. Tr. 80:3–6 (Sugrue). Nonetheless, Mr. Borelli failed to identify this advertisement as a racial appeal.

In that same campaign, the Congressional Leadership Fund spent at least $4 million on televising ads focused on the Young Leaders' marches, including another ad "show[ing] some of the Young Leaders . . . and footage of their June 3 march in New Dorp, spliced with violent scenes, while a narrator spoke of 'criminals hailed as freedom fighters.'" PX-2 ¶ 41(Sugrue Report) (quoting Clifford Michel, *Their Anti-Racism Marches Were Twisted in a $4 Million GOP Attack Ad Campaign. Now, They Just Want to Get Out the Vote*, The City (Nov. 22, 2020)). Mr. Borelli also failed to identify this racial appeal.

C. The Black and Hispanic candidate of choice is usually defeated within CD-11.

1. Relevant legal principles

Petitioners have also demonstrated that the Black and Hispanic candidate of choice is "usually defeated" by the White-preferred candidate. This requirement is common to both the federal VRA and NY VRA, and there is no reason to impose a different standard here. *See NAACP, Inc. v. City of Niagara Falls*, 65 F.3d 1002, 1007 (2d Cir. 1995) (discussing requirement that VRA plaintiffs prove that the White majority will "usually . . . defeat the minority's preferred candidate"

(quoting *Gingles*, 478 U.S. at 50–51)); *see Coads v. Nassau County*, 86 Misc. 3d 627, 651–52, 654 (Sup. Ct. Nassau Cnty. 2024) (explaining that the NY VRA's "usually defeated" threshold "mirrors the third *Gingles* precondition").

Congressional "redistricting analysis must take place at the district level." *Abbott v. Perez*, 585 U.S. 579, 616 (2018). It therefore follows that a petitioner's burden is to show that the minority-preferred candidate is "usually defeated" in the area comprising the challenged district. In *Cooper v. Harris*, 581 U.S. 285 (2017), for example, the Supreme Court evaluated bloc-voting in two congressional districts, and in turn, focused on evidence concerning past elections in those districts—specifically, voting patterns "in the area that would form the core of the redrawn" district. *Id*. at 302–07. The plaintiffs were not required to provide proof that minority-preferred candidates similarly fail to succeed statewide or regionally.

Intervenors and Respondents invent a different—and entirely novel—approach in an effort to evade the fact that Black and Hispanic candidates of choice are usually defeated in CD-11 and within Staten Island. They would have the Court impose a requirement that Petitioners demonstrate that the minority–preferred candidate is "usually defeated" by White majority bloc voting not just in the core of the challenged district, but across the *entire* jurisdiction—here, New York's entire 2024 Congressional Map, or at least all of New York City. Doc. 115 at 21, 26; Doc. 122 at 36–37. The only support they offer is that "the NYVRA's vote-dilution analysis is not district specific by its statutory text," allowing plaintiffs to "reach all over the relevant jurisdiction" to form minority coalitions. Doc. 115 at 21. But that is decidedly not this case, which alleges unconstitutional vote dilution in a single congressional district. *See Coads*, 86 Misc. 3d at 654 ("[T]he legal significance of racial bloc voting depends on the factual circumstances and must be based upon a practical, commonsense examination of all the evidence."). The expert that Intervenors offered on this

issue—Dr. Sean Trende—did not offer any further support for the rule they try to advance. Dr. Trende conceded that he was not actually interpreting the meaning of the New York Constitution or NY VRA—as this Court must—or providing analysis to bring a successor lawsuit; he merely speculated on the possible consequences of a ruling for Petitioners. Tr. 435:14–36:2 (Trende).

To that end, without any textual footing for their novel approach to the "usually defeated" standard, Intervenors resorted to a parade of horribles—or using Dr. Trende's terminology, a "doom loop." Tr. 397:14–25 (Trende). Dr. Trende postulated that if the "usually defeated" inquiry is conducted at the district-level only, it would prompt a never-ending loop of lawsuits whereby one group of disaffected voters sues to redraw their district. Tr. 410:15–11:2 (Trende); *see also* Doc. 115 at 23–24. But as Dr. Trende agreed, any follow-on suit brought under the NY VRA would have to either (i) establish racially-polarized voting or (ii) meet the totality of the circumstances test, while also showing that a group's candidate of choice is "usually defeated." Tr. 436:13–19, 437:25–38:7 (Trende). And he was unable to offer *any* evidence beyond pure speculation that this hyperbolic "doom loop" is anything other than speculation.

Tellingly, Dr. Trende did not testify that this "doom loop" would be at all likely if the Court orders relief in *this* case. This is not surprising—Dr. Palmer testified that, under the Illustrative Map, "White voters are less cohesive" and "more supportive of Black and Hispanic[–preferred] candidates." Tr. 169:12–14, 16–17 (Palmer). Under these conditions, there is no plausible argument that White voters (who would, at least under the Illustrative Map, still constitute a majority voting bloc) could successfully leverage their own vote-dilution claim against a newly drawn CD-11.

Dr. Trende therefore speculated that doom loops might take shape elsewhere—specifically in Brooklyn or upstate New York. *See* Tr. 407:8–08:6 (Trende). Specifically, he testified that he

"dr[ew] some maps that . . . create[d] a district where the White preferred candidate would win" in Brooklyn and Queens. Tr. 408:3–6 (Trende). But he readily conceded that he performed none of the analysis necessary to determine if vote-dilution claims might lie in those areas, including whether voting is racially polarized in those areas or whether the totality of the circumstances would show unequal electoral opportunity—even though he has performed the former analysis in other cases. Tr. 438:8–24 (Trende). Nor did he determine if White voters have a clear candidate of choice in any congressional district outside CD-11. Tr. 439:5–14 (Trende).

Instead, Dr. Trende relied blindly upon *counsel* for the Intervenors' summation of the expert report of Dr. Voss—which Dr. Trende did not even review before submitting his own report—to conclude that current CD-5, CD-8, and CD-9 have racially polarized voting that might support future lawsuits. *See* Tr. 440:9–25 (Trende); IRX-1 at 10 (Trende Report). But there is a major problem with that blind reliance: Dr. Voss himself recanted on the stand the precise conclusion Dr. Trende relied upon. *See* Tr. 667:1–73:2 (Voss). When asked whether his report made any conclusion as to racially polarized voting in these districts, his response was: "I hope I didn't." Tr. 667:7-10 (Voss). And when asked if he would like to "back off" the precise language in his report to that effect, his response was: "Yeah." Tr. 668:1–2 (Voss). He then proceeded to agree with Petitioners' counsel, at length, that White voters were *not* cohesive in the two recent elections he reviewed in those districts, as significant portions of White voters in those districts supported candidates of different parties. *See* Tr. 669:3–73:2 (Voss). Indeed, he testified that, in two of those districts, it is possible that more than *half* of White voters supported the Black and Hispanic candidate of choice in one of the two elections he examined. Tr. 672:7–73:2 (Voss). Ultimately, Dr. Voss's testimony was consistent with Dr. Palmer's conclusion that the evidence did *not* show racially polarized voting in CD-5, 6, and 9. PX-4 ¶ 21 (Palmer Rebuttal).

Dr. Voss's recantation cuts the legs out from under Dr. Trende's string of hypotheticals, as even Dr. Trende agreed. *See* Tr. 441:11–13 (Trende) (agreeing that problems with Dr. Voss's report might change his conclusions as to the risk of a so-called "doom loop").[14] Accordingly, Dr. Trende's "doom loop" opinions "are simply speculation[]," and the interpretation of a "statute cannot depend on the resolution of that kind of hypothetical approach." *Subway-Surface Supervisors Ass'n v. N.Y.C. Transit Auth.*, 56 A.D.2d 53, 58 (1977). The Court should not base its construction of New York law upon such baseless and speculative fearmongering, which rapidly dissolved under basic questioning. *See Acevedo v. Citibank, N.A.*, 83 Misc. 3d 706, 731, 209 N.Y.S.3d 753, 775 (Sup. Ct. Bronx Cnty. 2024) (rejecting statutory construction arguments "based on a hypothetical situation not reflective of the reality of this proceeding"), *aff'd*, 242 A.D.3d 442 (1st Dept. 2025); *cf. Brightonian Nursing Home v. Daines*, 890 N.Y.S.2d 818, 823 (Sup. Ct., Monroe Cnty. 2009) (explaining the invalidity of a statute cannot rely upon "'hypothetical' or 'imaginary' cases").

Moreover, it is Intervenors' approach that produces untenable outcomes. Intervenors' and Respondents' approach would render protections against minority vote dilution (at least at the congressional level) effectively obsolete throughout the state of New York—or at least New York City. By their telling, so long as *some* portion of the state's minority population can elect their candidate of choice, there is no remedy if minority voters elsewhere in the state lack that opportunity. That is not the law. The Supreme Court has squarely "rejected the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater

[14] Unsurprisingly, no witness suggested that White voters in Brooklyn would be able to demonstrate that the totality of the circumstances factors would supporting a finding that they have unequal electoral opportunities. *See* N.Y. Const. art. III, § 4(c)(1).

opportunity to others." *League of United Latin Am. Citizens v. Perry* ("*LULAC*"), 548 U.S. 399, 429 (2006). The Court should not chart a different course here.

2. Petitioners' evidence

Viewed through the proper lens, Petitioners' evidence at trial plainly showed that the Black and Hispanic candidate of choice is "usually defeated" in CD-11. Dr. Palmer focused on the existing boundaries of CD-11 to ensure his results appropriately reflected bloc voting and electoral prospects "at the district level," *Abbott*, 585 U.S. at 616, specifically "in the area that [will] form the core of" the new CD-11, *Cooper*, 581 U.S. at 304. In that area, Dr. Palmer found that voting is deeply (and in recent years, increasingly) racially polarized. PX-3 ¶¶ 15–19 (Palmer Report). And of the 20 elections Dr. Palmer analyzed, the Black and Hispanic–preferred candidate won only five times, and by very narrow margins. PX-3 ¶ 20 (Palmer Report); Tr. 167:10–68:23 (Palmer) (testifying to these results).

Intervenors' argument that the minimal electoral success Dr. Palmer identified defeats Petitioners' claim, Doc. 115 at 26, is contrary to precedent. And Dr. Trende's testimony that minority-preferred candidates are occasionally (even if not recently) "capable" of winning elections in CD-11 is not the standard. *See* Tr. 434:8–12 (Trende). "Evidence of minority candidates' success does not necessarily negate a finding of bloc voting." *NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 380 (citation modified). The one election the Black and Hispanic–preferred candidate won in 2017 prevailed with *less* than a majority vote in a multi-candidate election. Tr. 168:14–17 (Palmer). And the remaining narrow victories Dr. Palmer identified all occurred during the same 2018 election cycle. Tr. 168:8–13 (Palmer); *see* PX-3 ¶ 20, fig. 3 (Palmer Report). Voting patterns in CD-11 have become increasingly polarized since then, as evidenced by an uninterrupted string of elections between 2019 and 2024 in which there is significant racially

polarized voting and the Black and Hispanic–preferred candidate has been routinely defeated. *See* PX-3 ¶ 20, fig. 3 (Palmer Report). This evidence straightforwardly supports a finding that the Black and Hispanic–preferred candidate is "usually defeated" in CD-11.

D. It is feasible to draw an alternative district that remedies racial vote dilution and that complies with traditional redistricting criteria.

1. Relevant legal principles

Finally, Petitioners established that it is feasible to enact an "alternative" map that "would allow the minority group to 'have equitable access to fully participate in the electoral process.'" *Clarke*, 237 A.D.3d at 39 (quoting N.Y. Elec. Law § 17–206(5)(a)); *see also Serratto*, 86 Misc. 3d at 1172 (same).

That is not a heavy burden. Petitioners need not detail the precise boundaries of an alternative map—or identify the single best iteration of an alternative map—because, ultimately, the New York Constitution provides that "the legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." *See* N.Y. Const. art. III, § 5; *see also* Doc. 203. It is therefore enough for Petitioners to show that such an alternative map *could* be drawn in a way that remedies the challenged racial vote dilution, *see* N.Y. Const. art. III, § 4(c)(1), and that adheres to the other traditional redistricting criteria prescribed by New York law. Those prescribed criteria include equal population, *see id.* art. III, § 4(c)(2); contiguity, *see id.* art. III, § 4(c)(3); compactness, *see id.* art. III, § 4(c)(4); not discouraging competition or favoring one party over another, *see id.* art. III, § 4(c)(5); and consideration of communities of interest and political subdivisions, *see id.* Respondents and Intervenors' arguments about *who* should draw the new map in the first instance—a special master, the IRC, or the Legislature—changes none of this. *See generally* Docs. 205–06.

Similarly, while Respondents and Intervenors spent much of their time at the hearing appraising the relative merits of the 2024 Map and the Illustrative Map, those critiques fundamentally misunderstand the issue before the Court at this stage. Specifically, the Court need only even consider the feasibility of an alternative, remedial map if it first finds that Petitioners have satisfied the elements of their constitutional vote dilution claim. *See supra* Summation § II.A–C (explaining how Petitioners have done so). At that point, the Court will have found that the 2024 Map is unlawful—so how it then measures up against the Illustrative Map under other redistricting criteria is purely academic. For example, the fact that an existing district that unconstitutionally dilutes minority voting power is more compact than an illustrative district does not somehow remedy the current district's unlawfulness. The question for the Court is can the Legislature (or other map-drawer) draw a suitable new map that *both* remedies Petitioners' injury and complies with New York law—regardless of precisely how it chooses to do so. The evidence shows that the Court should answer that narrow and limited question in the affirmative.

2. Petitioners' evidence shows an alternative map would be straightforward to draw.

Petitioners' evidence at trial shows that there is no doubt that the Legislature (or other map drawer) could draw a suitable alternative CD-11 that (1) redresses Petitioners' racial vote dilution injury; and (2) respects other traditional redistricting criteria as set forth in the New York Constitution. Expert demographer Bill Cooper presented one possible formulation of such a map—*see generally* PX-5 ¶¶ 20–25, 42–63 (Cooper Report); Tr. 247–300 (Cooper)—while explaining that many such formulations exist, *see* PX-5 ¶ 25 (Cooper Report) ("[T]he Illustrative Map is just one of many possible plan variations."); Tr. 371:1–10 (Cooper) (agreeing the Legislature would

draw a new map and that the Illustrative Map "is just one way" to do so).[15] Specifically, his report set forth a version of CD-11 combining Staten Island and Lower Manhattan that would allow Black and Hispanic voters the opportunity to elect their candidates of choice, and that otherwise complies with New York redistricting criteria. *See* PX-5 § IV & Ex. H-1 (Cooper Report). While Respondents quibble with certain choices Mr. Cooper made in the Illustrative Map, those criticisms are misguided and ignore that the Legislature (or other decision-maker) is free to make other choices when drawing a remedial district—indeed an illustrative map "[v]ery rarely . . . become[s] a final plan" in most redistricting cases. Tr. 371:1–10 (Cooper). As Mr. Cooper agreed, the Illustrative Map is not a "take it or leave it option," and is just "one way" to grant relief, Tr. 371:7–10 (Cooper), even while it supplies "proof of concept" that a remedial map is readily achievable, Tr. 247:21–23 (Cooper).

a. Petitioners provided an illustrative map that would redress Petitioners' racial vote dilution injury and result in a competitive district.

There is no dispute between the parties that an alternative map could be drawn that results in a competitive district. Respondents' own expert, Mr. Thomas Bryan, opined that that under the Illustrative Map, CD-11 would "become[] a dead heat" district, RX-1 ¶ 194 (Bryan Report); *see also id.* ¶ 201 (Bryan Report), meaning that candidates from different parties—backed by different coalitions of voters—could win in any given election. Mr. Bryan thus *concedes* that a new map

[15] Mr. Cooper is one of the nation's foremost demography and map drawing experts in redistricting cases. He has testified in more than 60 cases over the span of 40 years. Tr. 243:5–244:2 (Cooper). Courts routinely find his testimony highly credible, and no court has ever refused to recognize his expertise or discounted his testimony as unreliable. *See* Tr. 244:3–20 (Cooper). As Mr. Cooper explained, these cases have spanned the nation. *See* Tr. 373:5–18 (Cooper). Moreover, courts have repeatedly credited his testimony over the same experts presented by Respondents and Intervenors. *E.g.*, *Milligan*, 599 U.S. at 31 (summarizing the district court's rationale for crediting Mr. Cooper over Mr. Bryan); *Nairne v. Ardoin*, 715 F. Supp. 3d 808, 850 (M.D. La. 2024) (similar as to Dr. Trende), *aff'd sub nom. Nairne v. Landry*, 151 F.4th 666 (5th Cir. 2025).

could grant Petitioners the relief they seek—a more competitive, less polarized district that permits Black and Hispanic voters to have influence in who can be elected to Congress from CD-11.

Dr. Palmer's testimony and report reinforced this point, explaining that an alternative map—such as the Illustrative Map—would lead to less racially polarized voting in CD-11 and be competitive. For example, his report explained that on average 41.8 percent of White voters in the illustrative CD-11 would vote for the Black and Hispanic candidate of choice—a stark contrast to the present, highly polarized map. PX-3 ¶ 25 (Palmer Report). And as he further explained, under the Illustrative Map, the Black and Hispanic candidate of choice succeeds in many—but not all—elections, resulting in a competitive district where different coalitions of voters have a shot at winning. *See* PX-5 ¶ 26, fig. 5, tbl. 3 (Palmer Report). Dr. Palmer and Mr. Bryan therefore agree that an alternative map could de-polarize voting in CD-11, requiring different political coalitions "to pull, haul, and trade to find common political ground" to succeed. *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994); *see also Bartlett*, 556 U.S. at 23. Because Respondents and Intervenors do not even dispute the point—and presented expert testimony confirming it—the Court should conclude that Petitioners have shown that an alternative map would redress their injury and satisfy the requirements of Article III, Section 4(c)(1) (prohibiting racial and linguistic vote dilution), and for similar reasons Article III, Section 4(c)(5) (requiring districts not to be drawn to discourage competition).

b. The Illustrative Map and other evidence shows that compliance with the remaining traditional redistricting criteria under New York law is feasible.

The Court should next find that the remaining redistricting criteria are satisfied, as Mr. Cooper explained. PX-5 ¶¶ 50–63 (Cooper Report); Tr. 263:13–64:13, 296:14–97:8 (Cooper).

Equal population. The parties do not dispute that the Illustrative Map ensures that CD-10 and CD-11 maintain equal populations as required by the Constitution. *See* N.Y. Const. art. III,

§ 4(c)(2) ("To the extent practicable, districts shall contain as nearly as may be an equal number of inhabitants."); *see also* PX-5 ¶ 26 (Cooper Report); Tr. 263:24–64:1, 296:14–17 (Cooper). Nor do the parties dispute that alternative maps could easily be drawn that preserve equal population. The Court should therefore conclude that it is feasible to draw an alternative map that maintains equal population between districts.

Contiguity. The New York Constitution also requires that districts be contiguous. *See* N.Y. Const. art. III, § 4(c)(3). "A contiguous district requires that all parts of the district be connected," which "is usually measured by whether it is possible to travel to all parts of the district without ever leaving the district." *Harkenrider*, 76 Misc. 3d at 186–87. A district may be contiguous even if sections are connected by water. *See id.* at 187.

The evidence established that it is clearly feasible to draw a contiguous alternative district, whether by combining Staten Island and Lower Manhattan—as the Illustrative Map does—or through a redrawn Staten Island-Brooklyn district. Tr. 264:2–10, 296:18–20 (Cooper). Mr. Cooper's testimony further established that there would be nothing remarkable about relying upon the Staten Island Ferry to link the two parts of a Staten Island-Lower Manhattan District over New York Bay. Tr. 261:9–62:2 (Cooper) (explaining that Staten Island and Manhattan have previously been joined in congressional districts). Such a transit link connected similar congressional districts for much of the twentieth century and presently connects Assembly District 61, confirming that such an approach is suitable and poses no contiguity issues. *See* Tr. 261:9–62:2 (Cooper); PX-5 ¶¶ 38–41 (Cooper Report).[16]

[16] The Court may take judicial notice of the fact that the congressional district containing Staten Island—while changing in number—was joined with Manhattan every year from at least 1902 to 1950, as reflected in this University of Richmond tool. *See* U. of Richmond, *Electing The House of Representatives*, https://perma.cc/TRF3-F96E.

Respondents and Intervenors do not dispute that it is possible to draw an alternative, contiguous district, or that a Staten Island-Lower Manhattan district would be contiguous via New York Bay and the Staten Island Ferry. *See* Docs. 115 & 122 (raising no argument as to contiguity); *see also* IRX-1 (Trende Report) (no argument on contiguity from Dr. Trende); RX-1 ¶ 134 (Bryan Report) (Mr. Bryan conceding the Illustrative Map is contiguous by water). Their criticism on this score is twofold, but ultimately irrelevant.

First, Respondents and Intervenors criticize any configuration of CD-11 that relies upon the Staten Island Ferry—rather than the Verrazano Bridge—to connect the Staten Island portion of CD-11 with another borough. But their criticisms are legally immaterial and supported by little more than idle speculation. For example, Dr. Trende opined that "this bridge versus ferry issue" might weigh on "contiguity" but he conceded that he did not know whether that is true in New York. Tr. 452:1–10 (Trende). Dr. Trende was not even sure if the term "contiguity" appears in his report. Tr. 475:13–18 (Trende). And it does not—not once. *See generally* IRX-1 (Trende Report) (no mention or analysis of contiguity). And he conceded that there are "two exits to get off [Staten] Island"—the ferry and bridge—both of which are used in current assembly districts. Tr. 419:18–21 (Trende).

More importantly, Respondents' and Intervenors' preference for a bridge-connection versus a ferry-connection is just that—a preference. New York law views both as valid ways to meet the contiguity requirement. *See, e.g.*, *In re Schneider v. Rockefeller*, 31 N.Y.2d 420, 430, 340 N.Y.S.2d 889, 897 (1972) ("[T]he requirement of contiguity is not necessarily violated because a part of a district is divided by water."); *Harkenrider*, 76 Misc. 3d at 187 (explaining contiguity can be satisfied through boat link); *cf. Badillo v. Katz*, 73 Misc. 2d 366, 368, 341 N.Y.S.2d 648, 651 (Sup. Ct. Bronx Cnty. 1973) (concluding as to city districts that "the portions of the districts in

Richmond County abutting on the water are also contiguous with the districts lying in the other counties" by water); *cf*. N.Y. City Charter § 52(2) (requiring that districts at the city level "shall be contiguous, and whenever a part of a district is separated from the rest of the district by a body of water, there shall be a connection by a bridge, a tunnel, a tramway or by regular ferry service"). And ultimately it is for the Legislature—not Respondents or Intervenors—to determine which is more suitable for a remedial district, as either would produce a contiguous district. *Cf. In re Reynolds*, 202 N.Y. 430, 443, (1911) (recognizing that "[t]he only counties contiguous to Richmond are New York and Kings").

Second, they contend that the Whitehall ferry terminal may in fact be located within CD-10 in Mr. Cooper's Illustrative Map. *See* Tr. 366:6–18 (Cooper) (Mr. Cooper conceding that might be the case, but explaining "it's easily remedied"). Even if true, that is irrelevant for a host of reasons. For one, a separate ferry route *still* links Staten Island to Lower Manhattan via terminals in St. George and Battery Park City—areas indisputably within the Illustrative Map.[17] More importantly, Mr. Cooper confirmed that it would be simple to revise the Illustrative Map—or to draw another map entirely—that includes the Whitehall terminal within CD-11, as there is virtually no population in the relevant census block. *See* Tr. 371:24–72:12 (Cooper) (explaining the Legislature could "easily" draw a map with both Staten Island Ferry terminals within CD-11). Respondents and Intervenors offered no contrary evidence to this obvious fact.

Compactness. The evidence also showed that it is feasible to draw a remedial district that is "as compact in form *as practicable*." N.Y. Const. art. III, § 4(c)(4) (emphasis added). "Practicable," in turn means "reasonably capable of being accomplished" or "feasible in a

[17] The Court may take judicial notice of this public and indisputable fact. *See Routes & Schedules: St. George*, N.Y.C. Ferry, https://perma.cc/LS79-G5S3 (last visited Jan. 16, 2026).

particular situation." *Practicable*, *Black's Law Dictionary* (12th ed. 2024). In other words, compactness must be weighed in view of other requirements in New York law, such as the prohibition on vote dilution, that impact how "feasible" compactness is. *See also* Tr. 249:18–22 (Cooper) (Mr. Cooper explaining redistricting criteria require "constant balancing"). And as Mr. Cooper explained—and as Mr. Trende agreed—compactness is a practical inquiry, rather than a simple numeric test. *See* Tr. 250:16–25 (Cooper); 459:25–60:12 (Trende). Here, the practical reality is that the borough of Staten Island will be just as compact under *any* congressional district configuration. PX-5 ¶¶ 54–58 (Cooper Report); Tr. 374:14–75:9 (Cooper). Because it lacks sufficient population, it must be joined with a neighboring borough across a body of water—most sensibly either Lower Manhattan or Brooklyn—where it is simple and straightforward to draw another compact portion of the borough to join with Staten Island. Tr. 374:14–75:9 (Cooper). Current and past districts show that either formulation would permit the Legislature to draw a relatively compact district; that effectively guarantees the Legislature could draw a remedial map that remains as compact as practicable while also redressing Petitioners' vote dilution injury.

The Illustrative Map shows just one sensible way a compact district could be drawn by the Legislature. Its Reock and Polsby-Popper scores—which the experts uniformly agreed do not provide a bright line measure of compactness, Tr. 250:16–19 (Cooper); Tr. 452:17–53:22 (Trende) (Dr. Trende agreeing there is no "bright line rule" or minimum score for compactness)—confirm Mr. Cooper's view the Illustrative Map is compact. *See* Tr. 264:11–13 (Cooper) (Mr. Cooper testifying the Illustrative Map is "[u]nquestionably" compact). As Mr. Cooper testified, the compactness scores for the Illustrative Map fall within the norm for New York and the nation. Tr. 267:22–68:1 (Cooper). Indeed, the Reock and Polsby-Popper scores for the Illustrative Map score higher than multiple existing districts in New York—districts that presumably satisfy the

New York Constitution's compactness requirement. *See* PX-5, Ex. G (showing the 2024 Plan has numerous districts with lower Reock and Polsby-Popper scores than the Illustrative Map). When combined with New York's historical practices and Mr. Cooper's assessment of the land portions of the Illustrative Map, there is ample basis to conclude that the Illustrative Map provides one example of a compact district. Tr. 265:7–72:5 (Cooper).

In contrast, not a single expert from the Respondents or Intervenors testified that it would be *impossible* to draw a suitably compact remedial map, choosing instead to simply critique the Illustrative Map—notwithstanding Petitioners' and Mr. Cooper's repeated confirmation that it showed just one available configuration of many. *See* PX-5 ¶ 25 (Cooper Report) (noting there are "many possible plan variations"); *see also* Tr. 247:12–47:23, 371:1–72:12 (Cooper) (explaining the Legislature could make many choices as to how to draw a remedial district). Dr. Trende nitpicked Mr. Cooper's methodology for assessing compactness but refused to squarely testify that the Illustrative Map is not compact. Tr. 451:12–20 (Trende) (refusing to opine on whether the Illustrative Map is compact).[18] He also conceded that—notwithstanding his criticism of Mr. Cooper's choice to assess the compactness of individual borough components—Mr. Cooper did in fact calculate district-wide Reock and Polsby-Popper scores. *See* Tr. 461:2–11 (Trende); *see also* PX-5 ¶ 35, fig. 11 (Cooper Report). In contrast to Mr. Cooper, however, Dr. Trende was not sure whether other districts in New York have lower Reock and Polsby-Popper scores. Tr. 461:8–24

[18] Dr. Trende's refusal to testify—one way or another—as to whether particular districts are reasonably compact has previous led courts to discount his opinion as unhelpful. *See, e.g.*, *Singleton v. Allen*, 782 F. Supp. 3d 1092, 1263 (N.D. Ala. 2025) ("Without some explanation of what, in Dr. Trende's view, makes a district reasonably compact, we cannot assign much weight to his opinion that the illustrative districts are not reasonably configured."); *cf. Nairne*, 715 F. Supp. 3d at 850 ("Accordingly, the Court rejects Dr. Trende's approach to addressing compactness and accepts Cooper's approach."). In contrast, Mr. Cooper was in fact willing to state a view—based on his expertise—as to the compactness of the Illustrative Map. *See* Tr. 264:11–13 (Cooper).

(Trende). He acknowledged that there is no requirement for illustrative districts to have similar or higher compactness scores than existing districts. Tr. 453:23–54:1 (Trende). And he further agreed that, in other cases, he had proposed illustrative districts with materially similar scores. Tr. 458:22–59:6 (Trende).[19]

Mr. Bryan, for his part, testified that the Illustrative Map did not satisfy the "eyeball test" in his subjective view. Tr. 510:15–21 (Bryan). But he based that conclusion exclusively on his own interpretation of a federal district court decision, *see* RX-1 ¶¶ 145–47 (Bryan Report), and a proposed district in that case, which he later agreed "looks nothing like Staten Island." Tr. 582:7–22 (Bryan). That compares apples to oranges—as Mr. Bryan *also* conceded. *See* Tr. 582:23–83:4 (Bryan) (agreeing with Dr. Trende "that compactness becomes an apples to oranges comparison when you go across different states and areas"). And he further agreed that both the Illustrative Map and 2024 Plan, at bottom, reach out across bodies of water to grab population from another borough. Tr. 580:21–81:6 (Bryan). The fact that the Illustrative Map does so in a slightly different manner—one employed for past congressional districts and a current assembly district—does not render that formulation non-compact, as Mr. Cooper explained. Tr. 374:25–75:19 (Cooper). Indeed, Mr. Bryan conceded that he did not even apply the eyeball test to past iterations of the congressional district that joined Staten Island and lower Manhattan. *See* Tr. 584:10–22 (Bryan).

At bottom, neither Dr. Trende nor Mr. Bryan meaningfully disputed Mr. Cooper's testimony that the Illustrative Map is compact. Nor did they explain why alternative remedial

[19] Dr. Trende also offered idle commentary suggesting that congressional districts traversing Puget Sound might pose compactness problems, even if connected by ferry. Tr. 415:19–16:7 (Trende). In fact, *two* such districts exist in Washington—CD-2 (which connects the northeastern shore of Puget Sound with the San Juan islands) and Washington CD-6 (which connects Seattle to Vashon Island). *See* Wash. State Redistricting Comm'n, *District Maps & Handouts*, https://perma.cc/BJ62-HCRF. As the history of CD-11 itself confirms, connecting a district by ferry is far from fatal to its compactness. *See* PX-5 § III.

approaches are not practicable either. Ultimately, the question for the Court is not whether the Illustrative Map alone is suitably compact but rather whether the Legislature, if given the opportunity, *could* draw a compact district that (unlike the current map) does not unlawfully dilute Black and Hispanic votes. The Illustrative Map offers one basic configuration of such a district and there is no question that others could be drawn.

Preexisting district boundaries and subdivisions. As the Illustrative Map shows, a remedial district here can also "maint[ain] . . . [the] cores of existing districts" and localities. N.Y. Const. art. III, § 4(c)(5). The Illustrative Map, for example, retains all of Staten Island and simply pulls the additional population necessary to form a complete congressional district from lower Manhattan instead of Brooklyn. The Constitution only requires map-drawers to "consider the maintenance" of such core retention, and the Illustrative Map plainly does. *See* PX-5 ¶ 49 (Cooper Report) (describing "significant" core retention in the Illustrative Map). Consistent with the Constitution's requirement that core retention merely be "consider[ed]," Mr. Cooper explained why core retention cannot be applied too rigidly as a criterion, lest unlawful or flawed districts like the current CD-11 be locked in for perpetuity. *See* Tr. 251:15–52:10, 372:18–25 (Cooper).

The Illustrative Map also shows that it is possible for a remedial district to maintain other kinds of political subdivisions, including neighborhoods and voting precincts. *See* PX-5 ¶¶ 59–63 (Cooper Report); Tr. 249:6–9, 271:1–11 (Cooper). Indeed, the Illustrative Map shows it is possible to *reduce* the number of neighborhoods split by the current configurations of CD-11 and CD-10. *See* PX-5 ¶¶ 61–62, fig. 12. Mr. Bryan agreed that Mr. Cooper's Illustrative Map included a "comparable number of [neighborhood] splits." Tr. 513:5–7 (Bryan). While Mr. Bryan criticized the Illustrative Map for splitting a larger number of precincts (VTDs), he did not dispute Mr. Cooper's testimony that *fewer people* were impacted by those splits than the 2024 Plan. Tr.

295:16–20 (Bryan). Nor did he dispute Mr. Cooper's testimony that neighborhoods are more important subdivisions in a city like New York than voting precincts, which are redrawn every decade. Tr. 249:6–9, 300:10–14 (Cooper). In any event, nothing in New York law prescribes strict limits on VTD splits—a map drawer need only consider them alongside other political subdivisions. N.Y. Const. art. III, § 4(c)(5). The Illustrative Map plainly does and there is no reason the Legislature could not do likewise.

Communities of interest. Finally, Petitioners have shown that an alternative map could respect communities of interest which—like political subdivisions—the New York Constitution requires map drawers to simply "consider." *Id*. Generally, "[c]ourts will find the existence of a community of interest where residents share substantial cultural, economic, political and social ties." *Diaz v. Silver*, 978 F. Supp. 96, 123 (E.D.N.Y. 1997). While Respondents and Intervenors criticized how the Illustrative Map treats communities of interest, that once more misses the point. The question before the Court is not which map *best* considers communities of interest—that is ultimately a question for the Legislature if the Court declares the 2024 Map unlawful. And Respondents and Intervenors introduced no evidence or testimony showing that the Legislature could not give due consideration to such communities when drawing a new map.

In any event, the Illustrative Map shows how a Staten Island-Manhattan configured district could give due consideration to communities of interest and even improve upon the existing plan. For example, testimony and evidence introduced at the hearing noted the strong economic links between Staten Island and Manhattan, including the fact that more Staten Islanders have their place of work in Manhattan than Brooklyn. Tr. 280:9–18 (Cooper); PX-9 (Destination Analysis). Similarly, Mr. Cooper testified to how a Staten Island-lower Manhattan district would have the

salutary effect of bringing nearly all of Assembly District 61 into a single congressional district. Tr. 294:10–95:2 (Cooper).

Most notably, significant evidence showed how the Illustrative Map would preserve the existing connection between two significant Chinese-American neighborhoods—Chinatown and Sunset Park—which courts have previously pointed to as serving a community of interest. *See Diaz*, 978 F. Supp. at 124 (accepting evidence that "Asian communities of Sunset Park and Chinatown" are "mostly of Chinese background" and "regularly work together, attend the same health clinics, and shop in the same stores" to assume a community of interest). The Illustrative Map then goes further, joining these neighborhoods with two more heavily Chinese neighborhoods—Bath Beach and Bensonhurst. PX-5 ¶¶ 24, 44 (Cooper Report); Tr. 291:1–16 (Cooper) (explaining how the Illustrative Map joins together various Chinese-American communities). In doing so, the Illustrative Map addresses a significant criticism of the 2024 Map—that it divides Bensonhurst as a neighborhood and splits Chinese-American neighborhoods between CD-11 and CD-10. *See* PX-10 (Statement of OCA-NY). Indeed, record evidence shows that prominent organizations lobbied *against* the current configuration of District 11, which combines Staten Island with Bath Beach and a divided portion of Bensonhurst. *See* PX-10 (Statement of OCA-NY). As Dr. Wah Lee of OCA-NY (formerly Organization for Chinese Americans) testified to the IRC, "**Bensonhurst and Bath Beach should NOT be with Staten Island**," because "Staten Island does not share a similar concentration of Asians, nor the culture of Asian businesses as Bath Beach/Bensonhurst, nor do residents in Bath Beach/Bensonhurst travel on a regular basis to Staten Island and vice versa." PX-10 at 2 (Statement of OCA-NY). This testimony is consistent with accounts from a recent New York Communities of Interest Report, recounting evidence that Chinese-American Brooklynites protested "splinter[ing]" Asian voters in

Sunset Park, Dyker Heights, Bay Ridge, and Bensonhurst across different city districts. PX-12 at 54 (2023 Report on Communities of Interest in New York). That the Illustrative Map fixes this issue serves as strong evidence that a remedial district could at minimum *preserve*—and likely *improve*—the existing consideration of communities of interest.[20]

The only critique of this fact came from Mr. Bryan, who criticized the Illustrative Map for excluding certain Asian populations in lower Manhattan from CD-10. *See* Tr. 515:9–22 (Bryan). But Mr. Bryan's testimony about how to best preserve Chinese-American communities of interest was undercut by his concession that—while he did review *some* testimony to the IRC—he did *not* review letters from Chinese community organizations about joining their communities together in a congressional district. *See* Tr. 560:2–19, 564:1–25 (Bryan). Mr. Bryan likewise overlooked the evidence in the Communities of Interest Report, PX-12 at 54 (2023 Report on Communities of Interest in New York)—on which he expressly relies, RX-1 ¶¶ 154–56 (Bryan Report)—that directly corroborated Mr. Cooper's testimony and contradicted his own. *See* Tr. 568:15–570:12 (Bryan).[21]

In any event, Mr. Cooper explained that the line he drew around Chinatown was a result of his dutiful adherence to New York City's own neighborhood definition for Chinatown—he agreed the Legislature would be free to make a different choice if this Court orders relief. Tr. 371:11–23 (Cooper). That is because—as Mr. Cooper again agreed—the Illustrative Map is not "a

[20] For the same reason, the Court should take judicial notice of a letter from Homecrest Community Services to the IRC—also cited in *Harkenrider*—urging the IRC to join together Chinese-American communities in Sunset Park, Bensonhurst, and Bath Beach (among others), which are joined by "culture, language and socioeconomic factors." *Harkenrider*, 38 N.Y.3d at 543 (Wilson, J., dissenting) (citing IRC testimony available from https://perma.cc/4AC8-Y6YN)).

[21] This is apparently not the first time that Mr. Bryan has relied on sources that he has not thoroughly reviewed. *See Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at *61–62 (N.D. Ala. Jan. 24, 2022) (finding Mr. Bryan "unreliable" in part because he "cite[d] material that he had not reviewed").

take it or leave it option." Tr. 371:7–10 (Cooper). Respondents and Intervenors otherwise offered no meaningful rebuttal to the clear benefits the basic configuration proposed by Mr. Cooper would provide to Chinese-American communities bound by cultural, economic, and linguistic ties. *See also* Doc. 63 at 35–39; PX-10 (Statement of OCA-NY).

Finally, Respondents and Intervenors bemoaned the supposed cultural dissimilarity between lower Manhattan and Staten Island, including through recollections of CBGB—a venue that notably opened in 1973 when the East Village was in the same congressional district as Staten Island.[22] But as Mr. Cooper explained, there is no redistricting principle that requires congressional districts to be culturally homogenous or that prohibits them from having culturally distinct areas. Tr. 373:19–74:1 (Cooper). Indeed, New York's *existing* CD-10 combines the very neighborhoods at issue in lower Manhattan—the East Village, Tribeca, SoHo, and the like—with Brooklyn neighborhoods like Sunset Park, Borough Park, and Windsor Terrace. *See* PX-5, Ex. F-1 (Cooper Report). Such cultural melting pot districts are hardly remarkable—particularly in New York. Indeed, New York law itself simply requires a map drawer to "consider" such possible cultural communities of interest—it does not mandate cultural uniformity. N.Y. Const. art. III, § 4(c)(5).

At the end of the day, consideration of "communities of interest" is a task assigned to the Legislature, which is best able to "to balance the competing political concerns implicated in preserving various communities of interest." *Favors v. Cuomo*, No. 1:11-CV-5632 RR GEL, 2012 WL 928223, at *5–6 (E.D.N.Y. Mar. 19, 2012) (further explaining that "[l]egislators" have the best "understanding and experience" for weighing communities of interest, which often involve "political debates"); *cf. Mirrione v. Anderson*, 717 F.2d 743, 745–46 (2d Cir. 1983) (similar). It is

[22] *See* Lauren Boistvert, *On This Day in 1973, There Ain't No Foolin' Around When CGBG Opens Its Doors in Manhattan*, Vice (Dec. 10, 2025), https://perma.cc/KZ33-MCHG.

enough for this Court to conclude that a remedial map *could* give due consideration to communities of interest—with the Legislature ultimately responsible for discerning precisely how. Petitioners' evidence shows such consideration is plainly possible and, indeed, could result in even greater respect for certain communities of interest.

III. Respondents and Intervenors have not established any affirmative defense.

Respondents and Intervenors also assert, as affirmative defenses, that adopting the Illustrative Map as a remedial district would itself be unlawful, for different reasons. Intervenors say it reflects an unlawful *racial* gerrymander, Doc. 115 at 32–39; Doc. 161 at 15–29, while Respondents suggest it would impose an unlawful *partisan* gerrymander, Doc. 122 at 26–29. Each argument is wrong for the reasons below, but just as importantly they are both premature. There is no remedial map in place yet. *See* Tr. 371:1–10 (Cooper) (Mr. Cooper explaining that "[v]ery rarely would an illustrious plan ever become a final plan"). These affirmative defenses thus put the cart before the horse—Respondents and Intervenors must wait to see what any remedial district actually looks like before hastily declaring it unlawful. *See, e.g.*, *Black Voters Matter Capacity Bldg. Inst., Inc. v. Byrd*, No. 2022-CA-666, 2023 WL 5695485, at *10–11 (Fla. Cir. Ct. Sep. 02, 2023) (rejecting racial gerrymander defense because "there [is] no specific district under which this Court could evaluate whether racial gerrymandering occurred" and proponents could not show "that *any* remedial district" would "necessarily" be a racial gerrymander), *rev'd on other grounds,* 375 So. 3d 335 (Fla. Dist. Ct. App. 2023). The Court can thus reject them both as premature at this time, though each fails on the merits too.

A. Remedying vote dilution in CD-11 would not be a racial gerrymander.

Intervenors have contended that redrawing CD-11 to remedy the dilution of Black and Hispanic voters would inevitably constitute a racial gerrymander. Doc. 115 at 32–39; Doc. 161 at 15–29; Tr. 27:9–29:6 (Intervenor-Respondents' Opening Statement). According to Intervenors,

the Illustrative Map would be subject to strict scrutiny review because Petitioners have presented it with the "goal of giving Black and Latino voters the benefit of increased electoral 'influence' than under the prior map." Doc. 115 at 33. For that reason, and that reason alone, Intervenors insist the Court must conclude that the Equal Protection Clause prohibits any relief. Well-settled precedent forecloses Intervenors' simplistic and erroneous approach.

1. A remedial map will not automatically trigger strict scrutiny.

Intervenors' argument that a remedial map would trigger strict scrutiny review flouts decades of precedent and disregards the record before the Court. The U.S. Supreme Court "never has held that race-conscious state decisionmaking is impermissible in all circumstances." *Shaw v. Reno*, 509 U.S. 630, 642 (1993). "Redistricting legislatures will . . . almost always be aware of racial demographics; but it does not follow that race predominates in the redistricting process." *Miller v. Johnson*, 515 U.S. 900, 916 (1995) (citations omitted); *see also Shaw*, 509 U.S. at 646. The U.S. Supreme Court rejected the state's "contention that mapmakers must be entirely 'blind' to race" when drawing districts to comply with the Voting Rights Act, *Milligan*, 599 U.S. at 33 (plurality opinion), and reaffirmed "[t]he line that we have long drawn . . . between consciousness and predominance" of race, *id*.

Instead, "[f]or strict scrutiny to apply," a challenger "must prove that other, legitimate districting principles were 'subordinated' to race." *Diaz*, 978 F. Supp. at 116–17. The racial-predominance inquiry is a "holistic analysis" that cannot turn purely on the fact that a district is drawn to remedy otherwise unlawful dilution of minority voting strength. *See, e.g.*, *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 192 (2017) ("the use of an express racial target" is just one factor courts consider as part of a "holistic analysis" of racial predominance); *Easley v. Cromartie*, 532 U.S. 234, 241 (2001) ("Race must not simply have been a motivation for the drawing of a majority-minority district, but the 'predominant factor' motivating the legislature's

districting decision.") (citation modified). And as the U.S. Supreme Court has held, a district's compliance with traditional redistricting criteria indicates that race did not predominate in the drawing of a district and "may serve to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647; *see also Milligan*, 599 U.S. at 31 (plurality opinion) (finding that race did not predominate where mapmaker considered race but also considered traditional redistricting criteria); *Miller*, 515 U.S. at 928 (O'Connor, J., concurring) (requiring party asserting racial gerrymandering claim to demonstrate "substantial disregard of customary and traditional districting practices").

The implications of Intervenors' analysis are striking. They contend that strict scrutiny will inevitably apply to any remedial map adopted in response to this case solely because the Court's order means "the 'predominant'—and, indeed, sole—*rationale* for the new district lines . . . would be race-based." Doc. 161 at 16 (emphasis added). In other words, because minority vote dilution is the *reason* CD-11's boundaries must be redrawn, then race inevitably will be the predominant *factor* in crafting the remedial district. By that logic, however, racial vote dilution can *never* be remedied without triggering strict scrutiny on a collateral attack of racial gerrymandering. That is not—and never has been—the law. While accusing Petitioners of "muddy[ing] the predominant-rationale test," Doc. 161 at 17, they pointedly ignore that the Supreme Court has squarely rejected their own take on the doctrine. In *Allen v. Milligan*, the Court declined to adopt the "flaw[ed]" view that districts drawn to remedy vote dilution under Section 2 of the VRA necessarily trigger strict scrutiny because "they were designed to hit 'express racial targets,'" regardless of the mapmakers' treatment of other traditional, race-neutral redistricting criteria. 599 U.S. at 32–33. It recognized the fallacy in that approach: that "racial predominance [would] plague[] *every single*

illustrative map ever adduced" to show vote dilution can be remedied. *Id.* at 33. But as the Court aptly pointed out, "[t]hat is the whole point of the enterprise." *Id.*

It is hardly surprising that Intervenors omit this fatal authority. They apparently reject the "enterprise" of recognizing and remedying minority vote dilution. That is why Intervenors effectively ask the Court to eschew binding authority foreclosing their approach to instead play fortune teller with the Supreme Court's forthcoming decision in *Callais v. Landry*. But New York courts are not "in the business of forecasting the future of United States Supreme Court rulings." *People v. Lopez*, 85 Misc. 3d 171, 180 (Sup. Ct. N.Y. Cnty. 2024). As the law stands, the Fourteenth Amendment—itself arising out of Reconstruction Era–efforts to eradicate the scourge of racial discrimination—can accommodate state and federal efforts to safeguard equal opportunity in the electoral franchise.

Under the appropriate framework, it is hardly a foregone conclusion that race will predominate whenever the Legislature or the Court crafts a remedy in this case. The Illustrative Map Petitioners present does not rely on "the use of an express racial target." *Bethune-Hill*, 580 U.S. at 192. Rather, Mr. Cooper explained at trial that he drew a map that joined Staten Island with lower Manhattan in lieu of southwest Brooklyn. *See* Tr. 247:5–7 (Cooper). Mr. Cooper further testified expressly that he did not consider race when drawing the Illustrative Map. *See* Tr. 337:21–338:6 (Cooper). Just as he did in the *Allen* case, Mr. Cooper "work[ed] hard to give equal weight to all redistricting criteria," *see Milligan*, 599 U.S. at 31 (quotation omitted), and did not "subordinate" any factor to racial considerations. And as Petitioners describe in detail above, *supra* Summation § II.D.2, the Illustrative Map in fact respects all traditional redistricting criteria.

It is worth emphasizing that the Supreme Court has recognized that crossover districts like the one presented in the Illustrative Map "*diminish* the significance and influence of race by

encouraging minority and majority voters to work together toward a common goal," *Bartlett*, 556 U.S. at 23 (emphasis added). The record before the Court is devoid of evidence that race impermissibly predominates in the Illustrative Map.

2. A remedial map would satisfy strict scrutiny.

Even if strict scrutiny were to apply, a map that remedies the dilution of Black and Hispanic voters, like the Illustrative Map, would meet that standard. Whomever draws the remedial district in this case—and it should be the Legislature—will have a compelling reason to consider race in redrawing the map. The Supreme Court has long "assumed that complying with the [federal] VRA is a compelling state interest," *Abbott*, 585 U.S. at 587, and there is no reason to treat compliance with the New York Constitution any differently. Just like the federal VRA, state-level prohibitions on diluting minority voting strength trigger "competing hazards of liability" when it comes to race and redistricting. *See id.* And nothing in the Supreme Court's extensive body of law would justify finding that a state's interest in abiding its *own constitution* is somehow less compelling than respecting federal statutory law.

To justify treating state and federal protections for voting rights differently on this score, Intervenors insist that state legislatures—or in the case of Article III, Section 4(c)(1), the *People* of New York—lack the same authority as the federal government to protect their citizens' voting rights. *See* Doc. 161 at 24–25. This claim is particularly remarkable given states' near-plenary power over redistricting, *see North Carolina v. Covington*, 585 U.S. 969, 979 (2018) ("State legislatures have primary jurisdiction over legislative reapportionment."), as well as the broader principle that "[f]ederal law . . . generally defers to the states' authority to regulate the right to vote," *Ohio Democratic Party v. Husted*, 834 F.3d 620, 626 (6th Cir. 2016). Indeed, the Second Department has already upheld the NY VRA against a facial Equal Protection challenge, notwithstanding that it exceeds the federal VRA's minimum threshold by omitting the first *Gingles*

requirement. *Clarke*, 237 A.D.3d at 37–38 ("[T]he NYVRA need not contain the first *Gingles* precondition . . . to survive a facial challenge to its constitutionality under the Equal Protection Clause," for the Supreme Court "has never said that the *Gingles* test was required by the constitution, as opposed to resulting from a statutory interpretation of section 2.");[23] *see also Pico Neighborhood Ass'n v. City of Santa Monica*, 534 P.3d 54, 70 (Cal. 2023) (rejecting argument that, as applied to the California Voting Rights Act, "a majority-minority requirement—or something close to it in the form of a near-majority requirement—is necessary to avoid difficult constitutional questions under the equal protection clause").

A remedial map like the Illustrative Map would also satisfy narrow tailoring. In federal cases, "a State's consideration of race in making a districting decision is narrowly tailored and thus satisfies strict scrutiny if the State has 'good reasons' for believing that its decision is necessary in order to comply with the VRA." *Abbott*, 585 U.S. at 587. The body of evidence Petitioners offered affirmatively showing the dilution of Black and Hispanic voting strength in CD-11 plainly supplies such "good reasons" in support of a remedial map. *See Rose v. Sec'y, State of Georgia*, 87 F.4th 469, 477 (11th Cir. 2023) ("In the context of . . . single-member districts, if vote dilution is found, the traditional remedy is to redraw the boundaries of the already-existing single-member districts to remove the plan's dilutive effect." (citing *LULAC*, 548 U.S. at 495 (Roberts, C.J., concurring)).

Contrast the Illustrative Map with the very cases Intervenors consider instructive. First, in *Cooper*, the Supreme Court considered whether North Carolina had "a good reason" to think it

[23] Intervenors contend that Petitioners' reference to *Clarke* on this issue is "deeply confused." Doc. 161 at 25. Their critique is misplaced. While Petitioners agree that *Clarke* does not address the question whether following the NY VRA—or Article III, Section 4(c)(1)'s similar prohibitions against minority vote dilution—is a sufficiently compelling state interest to engage in race-based redistricting, it *does* hold that the NY VRA itself is not facially unconstitutional. There is, in turn, little reason to treat New York's voting rights laws any different than the federal VRA under the Equal Protection framework discussed here.

would be liable under the VRA if it failed to draw an additional majority-minority district. *See* 581 U.S. at 301; *see id.* at 300 (affirming district court's conclusion that race predominated, and strict scrutiny therefore applied, where map-drawer made decisions "(in his words) to ensure that the district's racial composition would 'add up correctly,'" even though they "deviated from the districting practices he otherwise would have followed). The Court held that the legislature lacked "good reasons" because there was "no evidence" of "effective white bloc-voting," which, like New York law, is required to show a violation of Section 2 of the VRA. *See id.* at 302. And in *Wisconsin Legislature v. Wisconsin Elections Commission*, the Supreme Court held that the Wisconsin Supreme Court misapplied strict scrutiny precedent where it approved an expressly race-based map while "believ[ing] that it had to conclude only that the VRA *might* support race-based districting—not that the statute required it." 595 U.S. 398, 403 (2022).

These cases involved quite different circumstances than those the Court or Legislature would face following a ruling in Petitioners' favor here. Petitioners have already offered a wealth of evidence demonstrating that the current configuration of CD-11 violates the New York Constitution's prohibition on minority vote dilution, *see supra* Summation § II.A–C—and an opinion from this Court granting Petitioners' relief plainly offers a "good reason" to believe a new map is required to comply with state law. That is enough to satisfy narrow tailoring.

B. A remedial map joining Staten Island with lower Manhattan would not constitute a partisan gerrymander.

Respondents, on the other hand, have argued that Petitioners' Illustrative Map (or, presumably, any other district the Court or the Legislature might adopt after a favorable ruling on the merits) would amount to an unconstitutional partisan gerrymander. This argument is without merit. The Illustrative Map was not drawn to increase Democratic performance; it was drawn to

increase Black and Hispanic voters' opportunity to elect their candidates of choice by forming a coalition with White crossover voters while complying with traditional districting criteria.

To prevail on a partisan gerrymandering claim, "[a challenger bears] the burden of proving beyond a reasonable doubt that [a] congressional district[] [was] drawn with a particular impermissible intent or motive—that is, to 'discourage competition' or to 'favor[] or disfavor[] incumbents or other particular candidates or political parties." *Harkenrider*, 38 N.Y.3d at 519 (quoting N.Y. Const. art. III, § 4). And "[s]uch invidious intent could be demonstrated directly or circumstantially through proof of a partisan process excluding participation by the minority party and evidence of discriminatory results." *Id*. In *Harkenrider*, for example, "invidious partisan purpose" was inferred from "evidence of the largely one-party process used to enact the 2022 congressional map, a comparison of the 2022 congressional map to the 2012 congressional map," and expert testimony that the map "was drawn to discourage competition." *Id*. The Illustrative Map presents none of these circumstances.

Respondents' argument that the Illustrative Map is a partisan gerrymander turns *Harkenrider* on its head. In that case, the Court invalidated the 2022 map where evidence demonstrated that it "was drawn to discourage competition," and the "State respondents' experts . . . concededly did not take into account the reduction in competitive districts." *Id*. at 520. The Illustrative Map, meanwhile, *increases* competition in CD-11. *See* Tr. 171:4–6, 17–19 (Palmer). Respondents themselves have characterized the illustrative CD-11 as a "toss-up" district. Doc. 122 at 27; RX-1 ¶ 194 (Bryan Report) (describing the Illustrative CD-11 as "becom[ing] a dead heat"). Ignoring *Harkenrider* entirely, Respondents have remarkably claimed that "Article III forbids drawing districts to encourage . . . competition." Doc. 122 at 27. That does not accurately reflect the law. *See* N.Y. Const. art. III, § 4(c)(5). And without the sort of evidence

present in *Harkenrider*, the mere fact that the Illustrative CD-11 improves prospects for Democrats, *see* Tr. 537:2–20 (Bryan), is simply not evidence of a partisan gerrymander. And that is particularly so in light of Mr. Cooper's unequivocal testimony that he did not so much as look at partisan data when drawing the Illustrative Map. *See* Tr. 363:22–64:15 (Cooper).

Respondents have also argued that the Illustrative Map is "inconsistent with a bona fide minority-protection remedy." Doc. 122 at 28. This argument entirely ignores that the remedy Petitioners propose is a district that would provide the substantial Black and Hispanic voting population already within Staten Island an equal opportunity to elect their candidates of choice. *See* PX-3 ¶ 26 (Palmer Report) (estimating performance of Black and Hispanic–preferred candidate in the Illustrative CD-11). The Black and Hispanic voting-age population in CD-11 already exceeded 20%, and under the Illustrative Map it climbs to approximately 25%. PX-6 ¶ 5, fig. 9 (Cooper Rebuttal). This population is both substantial and influential, and it is sufficient to elect candidates of choice with the assistance of White crossover voters.

At bottom, although "[r]ace and party are fundamentally linked in American politics[,] the fact that groups exhibit partisan polarization does not cancel out or supersede racially polarized voting." PX-4 ¶ 4 (Palmer Rebuttal); *see also* Tr. 185:14–23 (Palmer) ("[R]egardless of if voters of different groups prefer candidates of different parties or not, that is still evidence that they are preferring different candidates and . . . [it is] evidence of racially-polarized voting regardless of the partisan affiliation of the candidate."). And it cannot be the case that the Constitution's partisan-gerrymandering prohibition precludes otherwise necessary remedies for minority vote dilution that the Constitution also prohibits.

IV. The Court should declare the current CD-11 unlawful and order the Legislature to promptly redraw it.

As explained in Petitioners' remedy brief, once the Court finds that Petitioners have satisfied the foregoing elements, it should first *declare* the current map unconstitutional and *enjoin* Defendants from conducting elections under it. *See* Doc. 203 at 3. This is the default initial remedy in New York redistricting litigation and the Court's authority to grant it is well-established. *See* N.Y. Const. art. III, § 5; *Harkenrider v. Hochul*, 76 Misc. 3d 171, 194 (Sup. Ct. Steuben Cnty. 2022) (finding the 2022 Congressional map "to be void and not usable"); *see also Callais v. Landry*, 732 F. Supp. 3d 574, 613–14 (W.D. La. 2024) (similar).

The next question is how to timely remedy the unlawful configuration of CD-11 ahead of the upcoming primary elections. The Constitution answers this question: "[T]he legislature shall have a full and reasonable opportunity to correct the law's legal infirmities." N.Y. Const. art. III, § 5. The Legislature, in turn, has authority to "modif[y]" a congressional map "pursuant to court order." *Id.* § 4(e). Accordingly, the Court should issue an order instructing the Legislature to adopt a remedial map in time for the 2026 federal primary elections—but not necessarily the Illustrative Map. *See* Doc. 203 at 4–5. The State Respondents in this matter—Governor Hochul, AG James, Senate President *Pro Tempore* Stewart-Cousins, and Assembly Speaker Heastie—agree this is a valid approach. *See* Doc. 95 at 6. And direct remand to the Legislature is preferrable as a remedy because it both would permit the timely redrawing of a new map *and* ensure that any new map is drawn by politically accountable legislators who answer to voters.

-The next most appropriate remedy would be for the Court to remand the matter to the IRC for further proceedings by a firmly set date—a necessary requirement to ensure timely relief. *See* Doc. 203 at 5–6; *see also Hoffmann*, 41 N.Y.3d at 370 (ordering the IRC to act by February 28, 2024). The IRC, like the Legislature, has constitutional authority to draw maps. *See* N.Y. Const.

art. III, § 5-b(a). But there are clear drawbacks to this approach, too, compared to direct remand to the Legislature. Most obviously, referral to the IRC will significantly delay and complicate the drawing of a new map in time for the 2026 elections, potentially prejudicing the Legislature's right to a "full and reasonable opportunity" to amend the map. *See* Doc. 206 at 4 (conceding the IRC process may cause unnecessary delay). And, as *Hoffman* shows, there is a substantial likelihood the Legislature ends up drawing its own remedial map in any event.

Respondents contend that *Hoffman* supports their view, but the issue in that case was that the "IRC failed to discharge its constitutional duty" to promulgate a second set of maps after the *Harkenrider* decision. 41 N.Y.3d at 347. The Court of Appeals ordered that "the IRC . . . be compelled to reconvene to fulfill that duty." *Id.*; *see also id.* at 370 (ordering the IRC to "comply with its constitutional mandate" by submitting a second set of maps to the Legislature). And no party in *Hoffman* asked for direct remand to the Legislature—the entire point of that case was that the IRC had failed to fulfill its constitutional mandate to produce a second set of maps. *See id.* That is not the case here—all parties agree the IRC has now fulfilled that duty. The circumstances of this case therefore supply good cause to remand directly to the Legislature to ensure prompt relief.

Respondents' and Intervenors' remaining arguments on remedy are wrong, immaterial, or clear efforts to prejudice timely relief. For example, Respondents argue that the Court cannot order the Legislature to adopt the Illustrative Map. *See* Doc. 205 at 1. But that is irrelevant—Petitioners have agreed that the Court need not impose a specific map or conditions on the Legislature. *See* Doc. 203 at 5. Respondents and Intervenors also both argue that the Court could consider appointing a special master to redraw CD-11. *See* Doc. 205 at 3; Doc. 206 at 6. But the Court of Appeals has made very clear that appointment of a special master is a last resort when no time remains for the Legislature to provide a remedy. *See Hoffman*, 41 N.Y.3d at 361 ("Court-drawn

judicial districts are generally disfavored because redistricting is predominantly legislative."); *cf. Wise v. Lipscomb*, 437 US 535, 540 (1978) ("[I]t is . . . appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan."). Here, there is currently enough time for the Legislature to draw a map, even after any necessary appeals are taken—neither Respondents nor Intervenors directly dispute this point in their remedy briefs.

Even so, Respondents and Intervenors both seek to weaponize the election calendar to ward off the Court from providing effective relief. Respondents contend that any new map must be in place by February 6, Doc. 205 at 5, and both Respondents and Intervenors insist that any IRC-led redistricting process must be deferred until the 2028 election cycle, Doc. 205 at 5–6; Doc. 206 at 6–7. But the Constitution requires courts to give precedence to redistricting challenges and render a decision on an expedited timeline, reflecting an intent that unconstitutional maps must be remedied in time for the next election. N.Y. Const. art. III, § 5. And in any event, those arguments merely reinforce why direct remand to the Legislature is the most sensible path here—a point Respondents and Intervenors do not meaningfully dispute. And their effort to delay relief to the 2028 election cycle is a non-starter. For one, the Court in *Hoffman* ordered the IRC to act by February 28, 2024—a date which is still readily achievable here as well. *See* 41 N.Y.3d at 370. Further still, it is common for courts to adjust election administration deadlines—such as when candidates can first circulate designating petitions—to remedy unlawful maps. *See, e.g.*, *League of United Latin Am. Citizens, Dist. 19 v. City of Boerne*, 675 F.3d 433, 440 (5th Cir. 2012); *Arbor Hill Concerned Citizens v. County of Albany*, 357 F.3d 260, 263 (2d Cir. 2004). Indeed, the Court of Appeals in *Harkenrider* recognized that the relief it ordered would likely require moving certain

primary election dates—which is precisely what occurred. *See Harkenrider*, 38 N.Y.3d at 522. But plainly a delay in election deadlines is preferable to forcing voters on Staten Island to hold an election under an unlawful congressional map. *See id.* The alternative would be "to subject the People of this state to an election conducted pursuant to an unconstitutional reapportionment"—an outcome the Court of Appeals has decisively rejected. *Id.* at 521.

CONCLUSION

For the reasons provided above as well as those discussed in Petitioners' earlier briefing in this matter, Docs. 63 & 156, Petitioners have demonstrated that the 2024 congressional plan dilutes Black and Hispanic Staten Islanders' voting strength in CD-11 in violation of Article III, Section 4(c)(1) of the New York Constitution. Petitioners therefore respectfully request that this Court issue an order declaring the 2024 Congressional Map unconstitutional, enjoining Respondents from using the 2024 Map in future elections, and allowing "the legislature . . . a full and reasonable opportunity to" adopt a new map that remedies the dilution of Black and Hispanic voters in CD-11 by a date certain. N.Y. Const. art. III, § 5. Given the need to monitor the timing of the remedy and the potential for future litigation regarding the remedy, Petitioners also request that the Court "retain jurisdiction over this action and any challenges to the procedures of the legislature, the procedures of the independent redistricting commission and/or the resulting [congressional] map." *Nichols v. Hochul*, 77 Misc. 3d 245, 257 (Sup. Ct. N.Y. Cnty. 2022).

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Respectfully submitted,

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CERTIFICATIONS

I hereby certify that no generative artificial intelligence program was used in the drafting of any affidavit, affirmation, or memorandum of law contained within the submission.

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