

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

HAZEL COADS, et al.,

Plaintiffs,

v.

NASSAU COUNTY, et al.,

Defendants.

Nassau County Clerk's
Index No. 611872/2023

ACTION I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

NEW YORK COMMUNITIES FOR CHANGE,
MARIA JORDAN AWALOM, MONICA DIAZ, LISA
ORTIZ, and GUILLERMO VANETTEN,

Plaintiffs,

v.

COUNTY OF NASSAU, THE NASSAU COUNTY
LEGISLATURE, THE NASSAU COUNTY BOARD
OF ELECTIONS, BRUCE BLAKEMAN, in his official
capacity as Nassau County Executive, MICHAEL C.
PULTZER, in his official capacity as Clerk of the
Nassau County Legislature, HOWARD J. KOPEL, in
his capacity as Presiding Officer of the Nassau County
Legislature, JOSEPH J. KEARNY, in his official
capacity as commissioner of the Nassau County Board
of Election, and JAMES P. SCHEUERMAN, in his
official capacity as commissioner of the Nassau County
Board of Elections,

Defendants.

Nassau County Clerk's
Index No. 602316/2024

ACTION II

**PLAINTIFFS' CONSOLIDATED PROPOSED FINDING OF FACTS AND
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PRELIMINARY STATEMENT

The plaintiffs in these two coordinated actions challenge the legality of the 2023 redistricting plan enacted by the Nassau County Legislature for the County’s legislative districts (the “Enacted Map”). The plaintiffs in both actions contend that the Enacted Map violates the requirement in Section 34 (4) of the Municipal Home Rule Law (the “MHRL”) that “[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring . . . particular candidates or political parties” (MHRL § 34 [4] [e]). The *NYCC* Plaintiffs additionally contend that the Enacted Map dilutes the voting strength of Black, Latino, and Asian communities in violation of the John R. Lewis Voting Rights Act of New York (the “NYVRA”), Election Law § 17-206 (2) (b) (ii), as well as the concurrent and broader protections against racial discrimination in redistricting provided by Section 34 (4) (b) of the MHRL.

The Enacted Map violates the MHRL’s strict prohibition on drawing districts with partisan intent. New York law permits “*no* level of intentional discouragement of competition or partisan favoritism” in redistricting.¹ The evidence shows that numerous districts in the Enacted Map were drawn with the intent to favor Republicans. For starters, the Enacted Map was developed in a one-sided, partisan process that was dominated by Republicans. For all of Defendants’ efforts to portray the process as bipartisan, the record lays bare that Democratic legislators and the public were excluded from any meaningful input while the Enacted Map was developed behind closed doors by partisan consultants working for the Republican Presiding Officer. The Enacted Map’s passage on a strict party-line vote—with every Democratic legislator voting against it—only underscores the exclusivity of the process.

¹ *Harkenrider v Hochul*, 204 AD3d 1366, 1370 [4th Dept 2022].

Statistical evidence confirms that this partisan process produced a partisan map. Every expert's statistical analysis shows that the Enacted Map gives Republicans an extreme advantage in securing the Legislature's median district—the district that a party must win to hold majority control of the chamber. The Enacted Map achieves this by packing Democratic voters into already Democratic districts while cracking them in strategically important districts. Contemporaneous e-mails exchanged among the mapmaking team containing analyses of the Enacted Map's partisan and racial effects show that the mapmakers knew at the time they were developing the Enacted Map that it gave an extreme advantage to Republicans. That the mapmakers withheld these analyses from the public and did nothing to mitigate the Enacted Map's discriminatory effects shows the mapmakers' impermissible intent.

The Enacted Map's unnecessary deviations from traditional redistricting criteria and good-government principles further indicate that the mapmakers acted with impermissible intent. Plaintiffs have presented an illustrative map that meets or exceeds the Enacted Map's compliance with all objective statutory redistricting criteria. Among other improvements, Plaintiffs' illustrative map shows that it is possible to create a redistricting plan is closer to equal population in every district, has more compact districts, and splits fewer villages than the Enacted Map, all while providing for two more majority-minority districts and avoiding the cracking of a large, compact Asian community in the Greater New Hyde Park area. All told, the comparison to Plaintiffs' illustrative map shows that the Enacted Map's decisions cannot be explained by proper adherence to the MHRL's redistricting criteria for county legislatures.

The Enacted Map also impermissibly dilutes the voting strength of Black, Latino, and Asian residents of Nassau County in violation of the NYVRA and the MHRL, which incorporates the protections of both the NYVRA and the federal Voting Rights Act (the "VRA"). As this Court

recognized, the NYVRA “seeks to protect all voters from racial discrimination in voting and to provide greater protections beyond what is offered by the VRA.”² The NYVRA’s protections against racial vote dilution are inclusive of the VRA’s protections. To prove a racial vote-dilution claim under the VRA, plaintiffs must satisfy the three “*Gingles* preconditions”: that (1) the minority group or groups are sufficiently numerous and compact to form a majority in a single member district; (2) the minority group or groups are politically cohesive; and (3) voting is racially polarized such that the preferred candidates of minority voters are usually defeated.³ When a plaintiffs satisfies the *Gingles* preconditions, a court evaluating a VRA claim “must then examine the totality of the circumstances,” including by assessing a non-exclusive set of factors known as the “Senate Factors.”⁴ In contrast, the NYVRA provides for a finding of liability under *either* proof within the framework of *Gingles* preconditions *or* through a totality of the circumstances that includes a set of non-exclusive factors patterned on the Senate Factors (Election Law § 17-206 [2] [b] [ii]).

A redistricting plan that violates the VRA’s racial vote-dilution prohibitions would therefore also violate the NYVRA and the MHRL. Plaintiffs thus present the proposed findings of fact and conclusions of law for their racial vote-dilution claim under the NYVRA and MHRL primarily using the framework applied to racial vote-dilution claims under the VRA, which the U.S. Supreme Court recently re-affirmed in *Allen v Milligan* (599 US 1 [2023]).

Under that framework, Plaintiffs have shown that the Enacted Map impermissibly dilutes the voting strength of Nassau County’s Black, Latino, and Asian communities. First, Plaintiffs

² NYSCEF Doc No. 334, decision and order, in Action II, Sup Ct, Nassau County, index No. 602316/2024.

³ *Natl. Assn. for Advancement of Colored People, Spring Val. Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 368, 377-378 [SD NY 2020] (citing *Thornburg v Gingles*, 478 US 30, 50-51 [1986]), *affd sub nom. Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213 [2d Cir 2021].

⁴ *Id.*

have demonstrated that Black, Latino, and Asian voters are sufficiently numerous and compact to form a majority of the citizen voting age population in at least six reasonably configured legislative districts, compared to only four in the Enacted Map. Second, Plaintiffs have demonstrated that Black, Latino, and Asian voters are politically cohesive both within each group and across all three groups. Third, Plaintiffs have demonstrated that voting is racially polarized—in Nassau County as a whole and in the specific areas of the County where additional majority-minority districts could be drawn—and that white bloc voting usually defeats the preferred candidates of voters of color.

Plaintiffs have further proved that under the totality of circumstances, the political process in Nassau County is not equally open to Black, Latino, and Asian voters and that their electoral opportunities are impaired. Whether framed in the similar language of the VRA or the NYVRA, the totality-of-circumstances inquiry confirms that social and historical conditions in Nassau County hinder communities of color from participating effectively in the electoral process today. Thus, whether the evidence of racially polarized voting is considered in conjunction with the totality of circumstances (as the VRA requires) or whether these two categories of evidence are treated as separate bases for finding liability (as the NYVRA provides), Plaintiffs have proven that the Enacted Map violates New York’s protections against racial vote dilution.

Finally, Plaintiffs have shown that the Enacted Map violates the NYVRA because it impairs the ability of Asian voters to “influence the outcome of elections” (Election Law § 17-206 [2] [a]). The Enacted Map divides a large and politically cohesive Asian community in the Greater New Hyde Park area into multiple oddly shaped legislative districts. Given that the preferred candidates of Asian voters are usually defeated by the preferred candidates of white voters, the unnecessary cracking of that community denies Asian voters the opportunity to engage in the rough and tumble politics of building winning political coalitions. Plaintiffs have proven it is

possible to keep the Asian community of interest whole in one compact, reasonably configured district where they can play a substantial, if not decisive, role in the electoral process.

For the reasons below, the Court should find in favor of Plaintiffs and enjoin the Enacted Map as violating both the NYVRA and the MHRL.

PROPOSED FINDINGS OF FACT

I. THE DEMOGRAPHICS OF NASSAU COUNTY

1. After the 2020 United States Census, Nassau County's population increased to 1,395,774 with a prison-adjusted figure of 1,396,925 (PX 2, Cervas Opening Report at ¶ 18).

2. This total reflected a 10-year increase of 56,043 persons since the 2010 census (*id.*).

3. Nassau County's prison-adjusted population increase from 2010 to 2022 is attributable to growth in Nassau County's minority populations (*id.* at ¶ 21).

4. From 2010 to 2020, Nassau County's minority population increased by 153,936 (a 33.2% increase) while the non-Hispanic white population fell by 97,893 (an 11.2% decrease) (*id.* at ¶ 21, Table 1 at p. 12).

5. Nassau County's Asian population grew by 65,011, Nassau County's non-white Hispanic population grew by 61,086, and Nassau County's non-Hispanic Black population grew by 8,291 during this decade (*id.*).

6. As a result, from 2010 to 2020, Nassau County's non-Hispanic white population fell to 55.8% of the total population (from 65.4%) and Nassau County's minority population grew to 44.2% of the total population (from 34.6%) over the same 10-year period (*id.* Table 2 at p. 24).

7. According to 2020 figures, Nassau County has a non-Hispanic white Citizen Voting Age Population ("CVAP") of 64.1% (a decrease from 73.4% in 2010) and a minority CVAP of 35.9% (an increase from 26.6% in 2010) (*id.*).

8. Because of population changes since the enactment of the previous redistricting plan in 2013, the 2013 redistricting is now malapportioned (PX 2, Cervas Opening Report at ¶¶ 18-19).

9. The ideal district population after the 2020 census increased to 73,522 (*id.*). To comply with the MHRL requirement that population deviations between districts not exceed five percent, no district can contain fewer than 71,684 persons or more than 75,360 persons (*id.* at ¶ 19).

10. After the 2020 census, the smallest and largest districts in the 2013 Redistricting Plan now contain 69,297 and 76,572 persons respectively, with the smallest district falling below the ideal by 5.75% and the largest exceeding it by 4.15% (*id.* at ¶ 18). This resulted in an overall deviation of 9.89%, exceeding the maximum allowable deviation under the MHRL (*id.* at ¶¶ 18-19).

II. THE NASSAU COUNTY LEGISLATURE AND TIMELINE OF PUBLIC PROCEEDINGS FOR THE 2022-2023 REDISTRICTING PROCESS

11. The Nassau County Legislature was created in 1994 after a federal court ruled that the Nassau County Board of Supervisors was unconstitutional because it violated the principle of one person, one vote⁵ (PX 84, History of the Nassau County Legislature website; PX 3, Sugrue Opening Report at ¶ 134).

12. Regular elections for the Legislature have been held in each odd-numbered years (PX 242, Kopel deposition tr at 48:11–49:4).

13. The next elections for the Nassau County Legislature are scheduled to take place in 2025 (NYSCEF Doc No. 98, answer at ¶ 69, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

⁵ *Jackson v Nassau County Bd. of Supervisors*, 818 F Supp 509, 531-535 [ED NY 1993].

14. The Nassau County Charter (the “Charter”) provides for the legislative map to be redrawn every ten years after the decennial U.S. Census (Nassau County Charter § 112 [2]).

15. The Charter provides for a temporary districting advisory commission (“TDAC”) to recommend one or more plans to the Legislature. The TDAC is a bipartisan commission—with five members appointed by the Legislature’s presiding officer, five by the minority leader, and a non-voting chairperson appointed by the County Executive (Nassau County Charter § 113 [1] [a]).

16. The Charter permits the Legislature to reject, adopt, revise, or amend a plan recommended by the TDAC or adopt any other redistricting plan so long as the plan complies with all constitutional and statutory requirements (Nassau County Charter § 114).

17. A map proposed by the TDAC must receive the votes of at least six commissioners to be recommended to the Legislature by the TDAC, but the Charter does not prohibit the Legislature from considering or adopting any redistricting plan drawn by the Commissioners (*id.* at § 113 [3]), regardless of whether it receives at least six votes (*id.* at §114; PX 242, Kopel deposition tr at 41:14–24).

18. In accordance with the Charter, the Legislature established the TDAC for the 2022-2023 redistricting cycle in April 2022 (NYSCEF Doc No. 93, answer at ¶ 51, in Action I, Sup. Ct. Nassau County, index No. 611872/2023).

19. No map received six or more votes from the TDAC and instead the Republican and Democratic TDAC delegations voted on November 21, 2022, to advance separate maps for the Legislature’s consideration (NYSCEF Doc No. 93, answer at ¶ 53, in Action I).

20. During a January 17, 2023, meeting of the Nassau County Legislature’s Rules Committee, the Committee voted to advance both the Republican and Democratic TDAC-proposed maps to the full Legislature (NYSCEF Doc No. 93, answer at ¶ 54-56, in Action I). The

Republican proposed map advanced on a 4-3 party line vote and the Democratic proposed map advanced on a unanimous 7-0 vote (*id.* at ¶ 56).

21. On February 9, 2023, Presiding Officer Richard Nicoletto published a new proposed map (NYSCEF Doc No. 98, answer at ¶ 127, in Action II). Mr. Nicoletto is a Republican (NYSCEF Doc No. 93, answer at ¶ 58, in Action I).

22. On February 16, 2023, the full Legislature held a hearing on Mr. Nicoletto's map (*id.*).

23. On February 17, 2023, Mr. Nicoletto published a new version of the proposed map (*see* PX 242, Kopel deposition tr at 270:14–18).

24. On February 21, 2023, Mr. Nicoletto published a revised proposed map (NYSCEF Doc No. 93, answer at ¶ 58, in Action I).

25. On February 27, 2023, Mr. Nicoletto's February 21, 2023 proposal came before a hearing of the Legislature (NYSCEF Doc No. 93, answer at ¶ 63, in Action I).

26. At the February 27, 2023, hearing, the Legislature adopted Mr. Nicoletto's February 21 proposed map along a party-line vote with all Republicans voting in favor of passage of the Enacted Map and all Democrats voting in opposition (NYSCEF Doc No. 93, answer at ¶ 69, in Action I).

27. On February 28, 2023, Nassau County Executive Bruce Blakeman signed the Enacted Map into law (NYSCEF Doc No. 98, answer at ¶ 153, in Action II). On the same day, the petitioning period for candidates for the Nassau County Legislature began (*id.*).

III. THE PARTIES AND EXPERT WITNESSES

A. The NYCC Plaintiffs

28. Plaintiff New York Communities for Change (“NYCC”) is a non-profit community organization that pursues economic, environmental, and racial justice through direct action, legislative advocacy, and community organizing. NYCC was founded in December 2009. Ensuring that communities of color in Nassau County have voting access and are able to cast a meaningful ballot is part of NYCC’s mission and undergirds all NYCC’s work. Among its work to ensure voting access, NYCC conducts voter registration, voter mobilization, and voter protection activities. The challenged redistricting plan for the Nassau County Legislature hinders NYCC’s mission by giving less weight to the votes of the County’s Black, Latino, and Asian voters and discouraging eligible voters in those communities from voting.

29. NYCC has a chapter in Nassau County and significant membership among the communities of color in the County. Its membership includes Black, Latino, and/or Asian voters who are registered to vote in Nassau County and enrolled in the Democratic Party and, at minimum, in current Legislative Districts 1, 2, 3, 5, 6, and 9 under the Enacted Map and who could reside in properly drawn remedial districts under a legally compliant map.

30. NYCC’s members include at least one Black voter registered in Nassau County who is a resident of Enacted Legislative District 1 in the Village of Hempstead and is enrolled in the Democratic Party. This member would reside in Illustrative District 1 under the Cervas Illustrative Plan.

31. NYCC’s members include at least one Black voter registered in Nassau County who is a resident of Enacted Legislative District 3 in the community of Elmont and is enrolled in the Democratic Party. This member would reside in Illustrative District 3 under the Cervas Illustrative Plan.

32. NYCC's members include at least one Latino voter registered in Nassau County who is a resident of Enacted Legislative District 5 in the Village of Freeport and is enrolled in the Democratic Party. This member would reside in Illustrative District 5 under the Cervas Illustrative Plan.

33. NYCC's members include at least one Asian voter registered in Nassau County who is a resident of Enacted Legislative District 9 in the community of New Hyde Park who is enrolled in the Democratic Party. This member would reside in Illustrative District 10 under the Cervas Illustrative Plan.

34. Plaintiff Maria Jordan-Awalom is a Latina resident of the Village of Freeport in Enacted Legislative District 6. She is registered to vote in Nassau County, enrolled in the Democratic Party, and plans to vote in future elections. Ms. Jordan-Awalom would reside in Illustrative District 5 under the Cervas Illustrative Plan.

35. Plaintiff Monica Diaz is a Latina resident of the community of Uniondale in Enacted Legislative District 2. She is registered to vote in Nassau County, enrolled in the Democratic Party, and plans to vote in future elections. Ms. Diaz would reside in Illustrative District 2 under the Cervas Illustrative Plan.

36. Plaintiff Lisa Ortiz is a Black resident of the community of Lakeview in Enacted Legislative District 14. She is registered to vote in Nassau County, enrolled in the Democratic Party, and plans to vote in future elections. Ms. Diaz would reside in Illustrative District 6 under the Cervas Illustrative Plan.

37. Plaintiff Guillermo VanEtten is a Latino resident of the community of Mill Brook in South Valley Stream in Enacted Legislative District 7. He is registered to vote in Nassau County,

enrolled in the Independence Party, and plans to vote in future elections. Mr. VanEtten would reside in Illustrative District 7 under the Cervas Illustrative Plan.

B. The Coads Plaintiffs

38. Plaintiff Hazel Coads is a resident of Nassau County in Enacted Legislative District 14. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

39. Plaintiff Stephanie Chase is a resident of Nassau County in Enacted Legislative District 14. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

40. Plaintiff Marvin Amazan is a resident of Nassau County in Enacted Legislative District 1. She is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

41. Plaintiff Susan E. Cools is a resident of Nassau County in Enacted Legislative District 6. She is a registered voter affiliated with the Republican Party and she plans to vote in future elections.

42. Plaintiff Suzanne A. Freier is a resident of Nassau County in Enacted Legislative District 16. She is a registered voter unaffiliated with any party and she plans to vote in future elections.

43. Plaintiff Carl R. Gerrato is a resident of Nassau County in Enacted Legislative District 8. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

44. Plaintiff Esther Hernandez-Kramer is a resident of Nassau County in Enacted Legislative District 15. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

45. Plaintiff John Hewlett Jarvis is a resident of Nassau County in Enacted Legislative District 11. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

46. Plaintiff Sanjeev Kumar Jindal is a resident of Nassau County in Enacted Legislative District 18. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

47. Plaintiff Hermione Mimi Pierre Johnson is a resident of Nassau County in Enacted Legislative District 3. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

48. Plaintiff Neeraj Kumar is a resident of Nassau County in Enacted Legislative District 9. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

49. Plaintiff Karen M. Montalbano is a resident of Nassau County in Enacted Legislative District 6. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

50. Plaintiff Eileen M. Napolitano is a resident of Nassau County in Enacted Legislative District 13. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

51. Plaintiff Olena Nicks is a resident of Nassau County in Enacted Legislative District 2. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

52. Plaintiff Deborah M. Pasternak is a resident of Nassau County in Enacted Legislative District 12. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

53. Plaintiff Carmen J. Pineyro is a resident of Nassau County in Enacted Legislative District 5. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

54. Plaintiff Danny S. Qiao is a resident of Nassau County in Enacted Legislative District 10. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

55. Plaintiff Laurie Scott is a resident of Nassau County in Enacted Legislative District 19. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

56. Plaintiff Raja Kanwar Singh is a resident of Nassau County in Enacted Legislative District 17. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

57. Plaintiff Amil Virani is a resident of Nassau County in Enacted Legislative District 7. He is a registered voter affiliated with the Democratic Party and he plans to vote in future elections.

58. Plaintiff Mary G. Volvevich is a resident of Nassau County in Enacted Legislative District 4. She is a registered voter affiliated with the Democratic Party and she plans to vote in future elections.

59. Plaintiff Nassau Democratic County Committee (also known as the Nassau County Democratic Committee) is a county committee as defined in Election Code Section 2-104. It has members who reside in each district of the Enacted Map.

C. The Defendants

60. Defendant County of Nassau is a county in the State of New York (NYSCEF Doc No. 98, answer at ¶ 16, in Action II).

61. Defendant the Nassau County Legislature is the legislative branch of the government of Nassau County. It comprises nineteen representatives—one from each of Nassau County’s nineteen legislative districts. The Legislature is charged with reapportioning the County legislative districts following each federal decennial census. On February 27, 2023, the Legislature adopted the Enacted Map that is challenged in this action (NYSCEF Doc No. 98, answer at ¶ 17, in Action II).

62. Howard J. Kopel is the Presiding Officer of the Nassau County Legislature. He is sued in his official capacity (NYSCEF Doc No. 98, answer at ¶ 21, in Action II).

63. Defendant Bruce Blakeman is the County Executive of Nassau County (NYSCEF Doc No. 98, answer at ¶ 19, in Action II).

64. On February 28, 2023, Mr. Blakeman signed the Enacted Map into law as Local Law 1-2023. He is sued in his official capacity (NYSCEF Doc No. 98, answer at ¶ 24, in Action II).

65. Defendant the Nassau County Board of Elections is an agency charged with administering elections in Nassau County (NYSCEF Doc No. 97, answer for Defendants Nassau County Board of Elections and Joseph J. Kearney at ¶ 18, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

66. Defendant Joseph J. Kearney is the Republican Commissioner for the Nassau County Board of Elections. He is sued in his official capacity (NYSCEF Doc No. 97, answer at ¶ 22, in Action II).

67. Defendant James P. Scheuerman is the Democratic Commissioner for the Nassau County Board of Elections. He is sued in his official capacity (NYSCEF Doc No. 97, answer at ¶ 23, in Action II).

68. Defendant Michael C. Pulitzer is the Clerk of the Nassau County Legislature. He is sued in his official capacity (NYSCEF Doc No. 98, answer at ¶ 20, in Action II).

IV. PROCEDURAL HISTORY

A. The Plaintiffs Filed Suit

69. On July 26, 2023, the *Coads* Plaintiffs filed their complaint in this action in Supreme Court, Nassau County, alleging that Local Law 1 of 2023 (the “Enacted Map”) violated Municipal Home Rule Law § 34(4) (NYSCEF Doc No. 1, complaint, in Action I, Sup. Ct. Nassau County, index No. 611872/2023).

70. On December 14, 2023, the *NYCC* Plaintiffs sent a letter to the Clerk of Nassau County by certified mail providing notice of their claim that the Enacted Map violated the NYVRA (NYSCEF Doc No. 98, answer at ¶ 167, in Action II). The letter was received by the Nassau County Clerk on December 18, 2024 (*id.*).

71. On February 7, 2024, *NYCC* Plaintiffs filed a complaint in this action in Nassau County Supreme Court alleging that Local Law 1 of 2023 violated Election Law § 17-206 (2) and Municipal Home Rule Law § 34 (4) (NYSCEF Doc No. 2, complaint, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

72. In an order entered on February 28, 2024, both matters were reassigned to this Court pursuant an Order of the Hon. Norman St. George, First Deputy Chief Administrative Judge

(NYSCEF Doc No. 23, order - administrative at 1, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

B. The Defendants Resist Discovery

73. On March 7, this Court joined the *Coads* and *NYCC* actions for discovery purposes (NYSCEF Doc No. 60, order at 2, in Action II, Sup Ct, Nassau County, index No. 602316/2024). In an order entered on March 12, 2024, this Court denied Defendants' motion to dismiss the *Coads* action; ruled that discovery should proceed pursuant to a set schedule; and ordered Defendants to produce certain documents and communications to Plaintiffs by March 15, 2024 (NYSCEF Doc No. 69, order at 5-6, in Action II, Sup Ct, Nassau County, index No. 602316/2024). In an order entered on April 23, 2024, this Court denied Defendants' motion to dismiss the *NYCC* action (NYSCEF Doc No. 100, decision and order at 2, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

74. Defendants produced certain documents and communications ordered by the Court with redactions and withheld documents. Plaintiffs challenged Defendants' privilege assertions in a letter in which both sides briefed their position on April 10, 2024 (NYSCEF Doc No. 78, letter to judge, in Action II, Sup Ct, Nassau County, index No. 602316/2024). On April 30, 2024, this Court heard oral argument concerning the parties' April 10 Letter and ordered Defendants to submit unredacted copies of the communications for *in camera* review (NYSCEF Doc No. 209, order at 2, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

75. In an order entered on June 10, 2024, this Court granted Francis X. Moroney's motion to quash a subpoena issued by the *NYCC* Plaintiffs and granted, in part, Richard Nicoletto's motion to quash a subpoena issued by the *NYCC* plaintiffs by limiting the scope of his deposition (NYSCEF Doc No. 199, decision and order at 31, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

76. On August 2, 2024, this Court entered two orders denying Sean Trende’s motion to quash a subpoena issued by the *NYCC* Plaintiffs to depose him as a fact witness and to issue a protective order and denying Misha Tseytlin’s motion to quash a subpoena issued by the *NYCC* Plaintiffs to depose him as a fact witness and to issue a protective order (NYSCEF Doc No. 204, order at 20–21, in Action II, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

77. On August 13, 2024, this Court entered an order ordering all the materials submitted for *in camera* review on May 6, 2024, discoverable and ordering Defendants to produce them to Plaintiffs by August 17, 2024 (NYSCEF Doc No. 209, order at 2, in Action II). Also on August 13, 2024, this Court compelled Dr. Trende and Mr. Tseytlin to appear for deposition by August 30, 2024 and ordered Defendants to disclose the identity of the individual redacted from the March 15, 2024 document production (NYSCEF Doc No. 210, order at 3, in Action II, Sup Ct, Nassau County, index No. 602316/2024). On August 15, 2024, this Court entered an order compelling Dr. Trende and Mr. Tseytlin to produce the documents requested by the *NYCC* plaintiffs in the subpoenas *duces tecum* and *ad testificandum* issued to each of them (NYSCEF Doc No. 221, order at 3-4, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

78. Defendants, Dr. Trende, and Mr. Tseytlin appealed each of the orders or portions thereof described in the above paragraph. On October 11, 2024, the Appellate Division, Second Department unanimously affirmed each of this Court’s orders on appeal (NYSCEF Doc No. 27, docket No. 2024-07766; NYSCEF Doc No. 21, docket No. 2024-07814; NYSCEF Doc No. 18, docket No. 2024-08410).

79. On October 21, 2024, Defendants, Dr. Trende, and Mr. Tseytlin filed Motions for Leave to Appeal to the New York State Court of Appeals each Decision and Order issued by the Second Department (NYSCEF Doc No. 28, docket No. 2024-07766; NYSCEF Doc No. 22, docket

No. 2024-07814; NYSCEF Doc No. 19, docket No. 2024-08410). On December 5, 2024, the Appellate Division, Second Department denied each of Defendants' Motions for Leave to Appeal to the New York State Court of Appeals (NYSCEF Doc No. 39, docket No. 2024-07766; NYSCEF Doc No. 24, docket No. 2024-07814; NYSCEF Doc No. 29, docket No. 2024-08410).

C. The Court Denies Summary Judgment

80. On October 21, 2024, Defendants moved for summary judgment (NYSCEF Doc No. 255, notice of motion at 2, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

81. On December 6, 2024, this Court denied Defendants' motion for summary judgment "in its entirety" (NYSCEF Doc No. 334, decision and order, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

D. The Court Holds a Bench Trial

82. The Court scheduled a bench trial to begin on December 17, 2024, and to continue until December 20, 2024, resuming from January 6, 2025, until January 10, 2025.

83. At a hearing on December 6, 2024, the Court stated it would hold the presentation of evidence open past January 10, 2025, if necessary to accommodate outstanding document discovery that Defendants, Dr. Trende, and Mr. Tseytlin were ordered to produce to Plaintiffs as well as outstanding fact depositions related to that discovery.

84. The parties each disclosed expert witnesses they intended to call during the trial.

1. The NYCC Plaintiffs' Expert Witnesses

85. The NYCC Plaintiffs called four expert witnesses to testify: Dr. Jonathan Cervas, Dr. Kassra A.R. Oskooii, Dr. Ari J. Stern, and Dr. Thomas J. Sugrue.

a. Dr. Jonathan Cervas

86. The NYCC Plaintiffs called Dr. Jonathan Cervas to testify as to whether the Enacted Map complies with the redistricting criteria for county legislatures set forth in Section 34 of the MHRL (PX 2, Cervas Opening Report at ¶ 1).

87. Dr. Jonathan Cervas is an Assistant Teaching Professor at Carnegie Mellon University, where he teaches both undergraduate and graduate level courses in political science (PX 2, Cervas Opening Report at ¶ 4). He is also a Research Associate of the Electoral Innovation Lab at Princeton University and a contributor to the non-partisan Princeton Gerrymandering Project (*id.*).

88. Dr. Cervas has an M.A. and Ph.D. in Political Science from the University of California, Irvine (PX 2, Cervas Opening Report at ¶ 5). He has published eleven peer-reviewed scholarly articles on topics related to redistricting, political institutions, elections, and voting rules (*id.*).

89. Dr. Cervas served as special master for Supreme Court for the State of New York in the case of *Harkenrider v Hochul* (38 NY3d 494 [2022]), where he was tasked by the court with drawing the remedial redistricting plans for the New York State Congressional delegation and the New York State Senate (PX 2, Cervas Opening Report at ¶ 6(b)). The plans Dr. Cervas drew were adopted by the court and implemented in the 2022 election cycle (*id.*). He has also assisted three federal courts and the Wisconsin Supreme Court in cases concerning redistricting and voting rights (*id.* at ¶ 6).

90. Dr. Cervas submitted an opening report and a reply report in this case.

b. Dr. Kassra Oskooii

91. The NYCC Plaintiffs called Dr. Kassra A.R. Oskooii to testifying concerning his analyses whether Black, Latino, and Asian voters in Nassau County are politically cohesive;

whether voting in Nassau County is racially polarized; and whether the preferred candidates of Black, Latino, and Asian voters are usually defeated by the preferred candidates of a cohesive white voting bloc.

92. Plaintiffs also called Dr. Oskooii to testify concerning his analyses of voter turnout rates by racial group in Nassau County and of campaign contribution rates by racial group in Nassau County.

93. Dr. Oskooii is an Associate Professor, with tenure, and Provost Teaching Fellow in the department of Political Science and International Relations at the University of Delaware (PX 1, Oskooii Opening Report at ¶ 1). He is also an affiliated faculty member at the University of Delaware's Data Science Institute, Master of Science in Data Science, Center for Political Communication, and Center for the Study of Diversity (*id.*).

94. Dr. Oskooii's academic specializations include racial and ethnic politics, political behavior, political psychology, political methodology, political representation, voting rights, and redistricting, and his research—including on the use of ecological inference methods in analysis of racially polarized voting—has been published in leading, peer-reviewed journals (*id.* at ¶¶ 1-2, 7). Dr. Oskooii has taught on the evaluation of electoral maps for compliance with the VRA and traditional redistricting principles (*id.* at ¶ 4).

95. Dr. Oskooii received his Ph.D. in political science, specializing in American politics, racial and ethnic politics, and political methodology in 2016; his master's degree in political science with a political methodology field certificate in 2013; and his Bachelor of Arts in political science in 2008, all from the University of Washington (*id.* at ¶ 3). His qualifications and a list of his publications over the past ten years are fully set forth in his Curriculum Vitae (*id.*, Ex. A).

96. Dr. Oskooii has served as an expert witness in numerous redistricting and voting rights cases (PX 1, Oskooii Opening Report at ¶ 5). As an expert consultant, he has also advised the State of Maryland on its redistricting plans and drew a redistricting plan for the Roswell Independent School District in New Mexico (*id.* at ¶ 6). In a recent redistricting case, the court recognized Dr. Oskooii as an expert on racially polarized voting analysis and credited his analyses, opinions, and testimony, granting them “substantial weight” (*Petteway v Galveston County*, 698 F Supp 3d 952 [SD Tex 2023]).

97. Defendants’ expert, Dr. Sean Trende, recognizes Dr. Oskooii as “a good political scientist” (DX 180, Trende deposition tr at 187:4-16).

98. Dr. Oskooii submitted an opening report, a rebuttal report, and a reply report.

c. Dr. Ari Stern

99. The NYCC Plaintiffs called Dr. Ari Stern as an expert in applied mathematics in the analysis of redistricting, statistics, and probability.

100. Dr. Stern is Professor of Mathematics at Washington University in St. Louis (PX 4, Stern Opening Report at ¶ 1). He holds a Ph.D. in Applied and Computational Mathematics from the California Institute of Technology, as well as an M.A. in Mathematics of Finance and a B.A. in Mathematics from Columbia University (PX 4, Stern Opening Report at ¶ 2). Dr. Stern’s academic research focuses on computational mathematics and geometry, specifically using geometry to develop and analyze algorithms for scientific computing and other applications (PX 4, Stern Opening Report at ¶ 3).

101. Since 2017, Dr. Stern has been involved in applications of computational mathematics to electoral redistricting analysis, including as an author of a peer-reviewed article on the use of computational algorithms to detect communities of interest and as a key collaborator in

the MGGG Redistricting Lab, a research group that develops and maintains redistricting-analysis software (PX 4, Stern Opening Report at ¶¶ 4–5).

102. Dr. Stern submitted an opening report, a rebuttal report, and a reply report.

d. Dr. Thomas Sugrue

103. The NYCC Plaintiffs called Dr. Thomas J. Sugrue as an expert in the analysis of socioeconomic, historical, and political conditions with the respect to the VRA’s Senate Factors and/or NYVRA’s “totality of the circumstances” factors.

104. Dr. Sugrue is Silver Professor of History and Social and Cultural Analysis at New York University (“NYU”), where he has been a member of the faculty since 2015 (PX 3, Sugrue Opening Report at ¶ 1). He is the director of NYU’s Urban Studies Program and the NYU Cities Collaborative and an affiliated faculty member in NYU’s Wagner School of Public Service and in NYU’s Department of Sociology (*id.*). Prior to teaching at NYU, Dr. Sugrue was a member of the faculty at the University of Pennsylvania from 1991-2015, where he was David Boies Professor of History and Sociology and the founding director of the Penn Social Science and Policy Forum (*id.*).

105. Dr. Sugrue has B.A. in history, Summa Cum Laude, from Columbia University in 1984, and a second B.A., Honours, in 1986 from Cambridge University. (*id.* at ¶ 2.) He was awarded an M.A. degree from Cambridge University in 1990. He earned an A.M. and a Ph.D. degree in history from Harvard University in 1987 and 1992, respectively (*id.* at ¶ 2).

106. Dr. Sugrue’s scholarship is interdisciplinary, informed by research in history, sociology, and political science (*id.* at ¶¶ 3-4.). He has written extensively on the topic of race relations, with special attention to the status, perception, and treatment of minorities over the last century (*id.*). Dr. Sugrue has also written about the economic, political, and social roots of racial inequality and poverty in the United States, including the history of racial discrimination;

segregation; inequality in housing, education, employment, policing, and politics, as well as race relations and the impact of immigration in suburbia, including on Long Island and in Nassau County (*id.*).

107. Dr. Sugrue has served and been qualified as an expert witness in several prior cases, including as an expert on social and historical conditions relevant to racial vote dilution cases (*id.* at ¶ 3; *see e.g.* citing *US v City of Eastpointe*, 378 F Supp 3d 589, 593-594 (ED Mich 2019) [“The report, authored by Thomas J. Sugrue, a noted 20th Century American historian, details how racial segregation and discrimination have been intertwined with Eastpointe's residential patterns, schools, and civic life since at least the early 20th Century”]).

108. Dr. Sugrue submitted an opening report, a rebuttal report, and a reply report.

2. The Coads Plaintiffs' Expert Witness

a. Dr. Daniel Magleby

109. The *Coads* Plaintiffs called Dr. Daniel Magleby as an expert in analyzing political geography, elections, and redistricting using computer simulations and other techniques.

110. Dr. Magleby is an Associate Professor in the Department of Political Science at Binghamton University, SUNY (PX 5, Magleby Opening Report at 3). He is the director of Binghamton's Center for the Analysis of Voting and Elections (PX 5, Magleby Opening Report at 3). Dr. Magleby holds a Ph.D. and an M.A. in Political Science from the University of Michigan at Ann Arbor (PX 5, Magleby Opening Report at 4). He also holds an M.S. in Mathematical Methods in the Social Sciences from Northwestern University and a B.A. in Political Science from Brigham Young University (PX 5, Magleby Opening Report at 4).

111. During the 2022–23 redistricting process, Dr. Magleby served as an expert retained by the Democratic Commissioners on the TDAC and published several reports in that capacity (*see* PX 63, Feb. 16, 2023 Hearing tr at 149:2–14, 190:13–191:17). Dr. Magleby also testified

before the Nassau County Legislature at the February 16, 2023, hearing on redistricting and answered numerous questions from both Republican and Democratic lawmakers about his analyses (*see generally id.* at 160:11–252:3).

112. Dr. Magleby teaches courses on political institutions, quantitative methodology, and research design (PX 5, Magleby Opening Report at 3). He also conducts research on legislative elections, geographic information systems (GIS) data, redistricting, voting rights, legislatures, and political geography (PX 5, Magleby Opening Report at 4). He has published academic papers on legislative politics, redistricting, and political geography in peer-reviewed political science and economics journals (PX 5, Magleby Opening Report at 4).

113. Dr. Magleby has testified in one prior case as an expert witness where he “was qualified and accepted as an expert at trial in the fields of political geography and legislative and congressional elections, mathematical modeling and political phenomena and measurements of gerrymandering” in *Harper v Hall* (380 NC 317, 341 [2022], *cert granted sub nom. Moore v Harper*, 142 S Ct 2901 [2022], *overruled in later appeal, Harper v Hall*, 384 NC 292 [2023], *affd sub nom. Moore v Harper*, 600 US 1 [2023]).

114. Dr. Magleby submitted an opening report, a rebuttal report, and a reply report.

3. Defendants’ Expert Witnesses.

115. Defendants called four expert witnesses to testify: Dr. Sean Trende, Mr. Thomas Alfano, Dr. Brad Lockerbie, and Dr. Donald Critchlow.

a. Dr. Sean Trende

116. Defendants called Dr. Sean Trende to testify as an expert witness on several topics, including his analysis of the Enacted Map’s partisanship.

117. Dr. Trende consulted for the Presiding Officer on the development of the Enacted Map. During the redistricting process, Dr. Trende referred to the Enacted Map as “our plan” (PX

24, February 22, 2023 Email, NASSAU_00000013 at NASSAU_00000013). Throughout the mapmaking process, Dr. Trende provided Defendants’ mapmakers with evaluations on the racial and partisan “scoring” on each iteration of the Enacted Map as it was developed (*see e.g.* PX 27, February 17, 2023 Email and Attachments, NASSAU_00000029 at NASSAU_00000029–00000036). Troutman and the Presiding Officer then used Dr. Trende’s name to publicly tout the Enacted Map as fair from a racial and partisan perspective during the redistricting process (*see e.g.* PX 81, Feb. 27, 2023 Memo at 1, 9–10, 13–18). However, save for some “bottom line conclusions” and a selective few charts, Dr. Trende’s analyses were entirely withheld from Democratic lawmakers and the public during the redistricting process (*see* PX 63, Feb. 16, 2023 Hearing tr at 120:22–123:7; PX 80, Feb. 16, 2023 Troutman Memo; PX 81, Feb. 27, 2023 Troutman Memo).

118. Dr. Trende did not appear before the Legislature to testify at any point during the redistricting process (*see generally* PX 63, Feb. 16, 2023 Hearing tr; PX 64, Feb. 27, 2023 Evening Hearing tr; PX 65, Feb. 27, 2023 Afternoon Hearing tr).

119. Dr. Trende is a Senior Elections Analyst for Real Clear Politics, a Visiting Scholar at the American Enterprise Institute, and a Lecturer at The Ohio State University (DX 110, Trende Opening Report at 1). He received his Ph.D. in Political Science from The Ohio State University in 2023 and a Master of Applied Statistics through his Ph.D. course of study (DX 110, Trende Opening Report at 29). Dr. Trende also holds an M.A. in Political Science and a J.D. from Duke University, as well as a B.A. from Yale University (*id.*).

120. In 2021, Dr. Trende was nominated by Republican legislative leaders in Virginia to serve as one of two special masters appointed by the Supreme Court of Virginia to draw proposed maps for the Virginia congressional delegation, State Senate, and House of Delegates (DX 110, Trende Opening Report at 3; DX 180, Trende deposition tr at 249:11–16). The other

special master was Dr. Bernard Grofman. Dr. Trende and Dr. Grofman co-authored memoranda presenting their proposed redistricting plans for the Virginia Supreme Court’s consideration (PX 130, Dec. 27, 2021 Memorandum). Notably, elections for Virginia state offices, like Nassau County offices, are conducted in odd-numbered years (*id.* at 33; Va Code Ann § 24.2-214; Va Code Ann § 24.2-215).

121. Dr. Trende has testified as an expert witness over twenty times (DX 110, Trende Opening Report at 30–32). He served as the petitioners’ expert in challenging the New York State congressional and state senate maps in *Harkenrider v Hochul* (38 NY3d 494, 507 [2022]). He has been excluded as an expert at least once (*Fair Fight Action, Inc. v Raffensperger*, 2020 WL 13561757, at *8 [ND Ga, Nov 16, 2020, 18 Civ 5391] “[T]he Court has determined that Mr. Trende is not qualified to testify as a rebuttal expert to Dr. Graves”). And courts have frequently given Dr. Trende’s opinions little or no weight (*see e.g. Nairne v Ardoin*, 715 F Supp 3d 808, 850 [MD La 2024] [finding Trende analysis “unhelpful and unpersuasive”; finding his methodology “fundamentally flawed and completely useless”]; *S.C. State Conf of N.A.A.C.P. v Alexander*, 649 F Supp 3d 177, 193 [DSC 2023] [finding Trende’s “testimony and reports regarding [challenged district] unpersuasive”], *vacated and remanded on other grounds*, 602 US 1 [2024]; *Ohio Org. Collaborative v Husted*, 2016 WL 8201848, at *8, *10 [SD Ohio, May 24, 2016, 15 Civ 1802] [according maps created by Dr. Trende “as well as Trende’s opinion of what they visually demonstrate, little weight”; excluding a table from Trende report where Trende failed to “identify the source of the data, let alone establish how he collected it”]; *Whitford v Gill*, 218 F Supp 3d 837, 913 [WD Wis 2016], *vacated and remanded*, 138 S Ct 1916 [2018] [giving Trende opinion “little, if any, weight”]; *Democratic Natl. Comm. v Reagan*, 329 F Supp 3d 824, 837 [D Ariz 2018]

[rejecting Trende attempts to opine on relevant law because they were “not helpful and invade the province of the Court”]).

122. Dr. Trende submitted an opening report, a rebuttal report, and a reply report.

b. Mr. Thomas Alfano

123. In response to Dr. Cervas, Defendants presented the testimony of Mr. Thomas Alfano, whom they offered as an expert on communities of interest in Nassau County.

124. Mr. Alfano has no education, research, or training that qualifies him as expert in the communities of interest as they pertain to redistricting Nassau County or anywhere else (DX 177, Alfano deposition tr at 16:21-18:20). Mr. Alfano does not have a degree in demography, sociology, or geography, nor did he conduct any research on communities of interest as an undergraduate or a law student (*id.* at 14:10-15:16). He has never published any articles or taught any classes on redistricting, defining communities of interest or demography (*id.* at 19:4-10).

125. The sole basis of Mr. Alfano’s purported expertise is that he is a longtime resident of Nassau County and a former member of the New York State Assembly (*see id.* at 18:5-10; DX 102, Alfano Rebuttal Report at ¶¶ 4, 15-16). During his tenure in the Assembly, he was not involved in drawing redistricting plans (DX 177, Alfano deposition tr at 26:5-7).

126. Mr. Alfano has never served as an expert witness in a redistricting case before or been qualified as an expert witness in any case (DX 177, Alfano deposition tr at 26:8-13). He has never served as a consultant to a legislature in drawing a redistricting case or served as counsel in any voting cases (*id.* at 26:20-27:9).

127. There are serious concerns about Mr. Alfano’s bias as an expert witness. He testified that he is a friend of Defendant Bruce Blakeman and Republican members of the Legislature (DX 177, Alfano deposition tr at 50:14-51:3). Mr. Alfano has repeatedly contributed to Mr. Blakeman’s campaigns for office, including a \$1,000 contribution during the pendency of

this case (*id.* at 51:16-53:19). Mr. Alfano's daughter was an employee of the Defendant Nassau County Legislature during the redistricting process (*id.* at 61:4-64:22). Mr. Alfano is a former Republican elected official and currently counsel to the Republican members of the Town Board of Hempstead (*id.* at 21:13-22:3).

128. During Mr. Alfano's deposition, he was asked whether he spoke to any legislators about this case prior to and in preparation for his deposition, and counsel for the Defendants instructed Mr. Alfano not to answer the question based on legislative privilege (DX 177, Alfano deposition tr at 12:15-13:9, 65:7-66:2, 66:16-67:17). Mr. Alfano was also instructed by counsel not to answer questions about the source of funds used to pay him (*id.* at 68:9-18).

129. Mr. Alfano submitted only a rebuttal report.

c. Dr. Brad Lockerbie

130. Defendants called Dr. Brad Lockerbie to opine on the issue of whether voting in Nassau County is racially polarized and whether minority-preferred candidates are usually defeated by cohesive White bloc voting.

131. Dr. Lockerbie is a professor of political science at East Carolina University in Greenville, North Carolina (DX 106, Lockerbie Opening Report at ¶ 3). Dr. Lockerbie has taught at East Carolina since 2007 and before then, he was assistant and associate professor of political science at the University of Georgia dating back to 1988 (DX 106, Lockerbie Opening Report at ¶ 3).

132. Dr. Lockerbie has published over 30 peer-reviewed articles on elections and public opinion in political science and interdisciplinary journals (*id.* ¶ 6); however, Dr. Lockerbie has never published any peer-reviewed articles on the analysis of racially polarized voting (DX 179, Lockerbie deposition tr at 31:6-23; 32:5-7) or on the voting rights of racial or ethnic minorities (DX 179, Lockerbie deposition tr at 34:8-11). Dr. Lockerbie also has not used precinct-level voting

data in his analysis in any of his peer-reviewed articles. (DX 179, Lockerbie deposition tr at 31:6-9).

133. Dr. Lockerbie has served as expert witness in several cases involving voting and elections (DX 106, Lockerbie Opening Report at ¶ 7).

134. Dr. Lockerbie prepared an opening report, a rebuttal report, and a reply report.

135. Dr. Lockerbie testified that prior to his deposition, he worked a total of “[a]pproximately 10 to 20” hours on this case (DX 179, Lockerbie deposition tr at 35:16-18).

d. Dr. Donald Critchlow

136. Defendants called Dr. Donald Critchlow to opine on social and historical conditions in Nassau County.

137. Dr. Critchlow is as a history professor at Arizona State University and serves as the Director of the Center for American Institutions at Arizona State University (DX 178, Critchlow deposition tr at 32:11-14).

138. Dr. Critchlow also serves as “the Director of the Center for Political Thought and Leadership, an organization funded by a grant from the Charles Koch Foundation” (*Democratic Natl. Comm.*, 329 F Supp 3d at 836; DX 178, Critchlow deposition tr at 38:5–39:19).

139. Dr. Critchlow has not published any works on Nassau County or Long Island (DX 178, Critchlow deposition tr at 48:14-16). When asked if he had ever written on race relations or discrimination in New York, Dr. Critchlow identified a book on family planning and abortion that discussed “New York politics” and a chapter of a book on Nelson Rockefeller (DX 178, Critchlow deposition tr at 64:14-16; 73:23-74:3).

140. Dr. Critchlow has served as expert witness in several prior cases (DX 103, Critchlow Opening Report at ¶ 6), including a case where a federal district court “afforded little weight to Dr. Critchlow’s opinions” because, among other things, “in many respects he offered

one-sided opinions of Arizona's history, ignored incidents of discrimination, and failed to address the key political shift between the Democratic and Republican parties during the Civil Rights Movement” (*Reagan*, 329 F Supp 3d at 836). Furthermore, the court in *Regan* found that Dr. Critchlow was either unfamiliar with or completely disregarded a Republican strategy of confrontation of minority voters at the polls during the 1960s (*id.*). When Dr. Critchlow did recognize a history of racial discrimination in Arizona, he attributed racial discrimination completely to the Democratic Party and claimed that “discrimination has not existed since the 1960s (in the Republican era)” in Arizona (*id.*).

141. Dr. Critchlow prepared an opening report, a rebuttal report, and a reply report.

V. THE ENACTED MAP WAS DRAWN TO FAVOR REPUBLICANS.

A. The Enacted Map Was Developed and Passed Through a Process that Excluded the Minority Party.

142. During the winter of 2022-2023, two redistricting processes ran on parallel tracks—one public and one private. Privately, beginning no later than December 2022, the mapmaking consultants for Presiding Officer Nicoletto—including Misha Tseytlin, an attorney for the law firm Troutman Pepper Hamilton Sanders LLP (“Troutman”); Sean Trende, a redistricting consultant (and expert witness offered by Defendants in this case); and Aaron Richmond, a contractor whose day job is working for Fair Lines America, an organization led by the head of the National Republican Redistricting Trust—were engaged in an iterative process to develop a map that would advantage Republicans while disregarding the rights of voters of color. Publicly, Democratic legislators and the public were given only a few self-serving disclosures from this process and otherwise denied any meaningful insight into the Enacted Map or its justifications.

1. The Enacted Map was passed on a party-line vote after a truncated public process that denied Democratic lawmakers basic information about the map and its justifications.

143. In November 2022, the Democratic and Republican commissioners on the TDAC each proposed draft redistricting plans to recommend to the Legislature’s Rules Committee.

144. Like all prior redistricting plans for the Legislature since its creation in 1994, proposed maps from both the Republican and Democratic TDAC acknowledged the need to include majority-minority districts for the purpose of complying with legal protections against racial vote dilution (*see* PX 3, Sugrue Opening Report at ¶¶ 134-136; PX 61, Jan. 17, 2023 Rules Committee tr at 19:10-15 [witness for Democratic TDAC commissioners testifying that the Democratic TDAC map “avoids any racial vote dilution and creates five performing majority/minority districts”]; *id.* at 47:22–48:14 [counsel for the Republican TDAC commissioners testifying that the Republican plan “advances . . . the goal of Voting Rights Act Section 2” by creating non-Hispanic Black majority district and “three black Hispanic coalition districts”]).

145. Both the proposed Republican and Democratic TDAC maps submitted to the Legislature included “coalition districts”, that is, districts where multiple minority groups were combined to form a majority of the citizen voting age population in a district drawn to protect those voters from racial vote dilution (PX 61, Jan. 17, 2023 Rules Committee tr at 19:10-15, 47:22–48:14).

146. That both TDAC maps included coalition districts is consistent with the Legislature’s past practice of VRA compliance. In the immediately prior redistricting cycle in 2012-2013, the Republican-controlled Legislature drew three majority-minority districts for the purpose of protecting Black and Hispanic voters in Nassau County from racial vote dilution, one

of which was expressly drawn as a Black-Hispanic coalition district (PX 3, Sugrue Opening Report at ¶ 136; PX 242, Kopel deposition tr at 105:5-17, 108:5–110:6, 111:10-24).

147. On January 17, 2023, the Rules Committee of the Legislature met to discuss the two maps proposed by the TDAC’s Democratic and Republican Commissioners (PX 61, Jan. 17, 2023 Rules Committee tr at 6:17–7:11; *id.* at 11:6-11). At the conclusion of the meeting, the Rules Committee voted to advance both the Republican Commissioners’ map and the Democratic Commissioners’ map to the full Legislature for its consideration (*id.* at 175:18–176:25).

148. As in prior years, the identities of those who drew the TDAC maps were publicly known (*see e.g.* PX 61, Jan. 17, 2023 Rules Committee tr at 49:10-16 [identifying Mr. Schaefer as the person who drew the Republican TDAC map]; PX 68, Feb. 25, 2013 Hearing tr at 125:14-18 [identifying Mr. “Kiernan and consultants who worked with majority council [sic] to make adjustments [to the proposed map] based upon public testimony”]; *id.* at 521:2-3 [describing giving standards to Mr. Schaefer’s firm, Skyline, “when we asked them to draw the map”]). Commissioners from both parties retained experts who provided reports or testified about the merits of different maps and disclosed reports and analysis concerning their conclusions (*see e.g.* PX 61, Jan. 17, 2023 Rules Committee tr at 53:4–79:21; *id.* at 21:25–22:9).

149. Presiding Officer Nicoletto, Chair of the Rules Committee (*id.* at 1:4, 1:8-9), personally voted to advance both maps (*id.* at 175:18–176:3). He gave no indication that he understood either TDAC-proposed map to be illegal (*see generally id.*). And, although there was an extended discussion of compliance with the federal VRA and the NYVRA at the meeting (*see e.g. id.* at 17:18–22:21, 28:21–30:7, 36:12–39:18, 44:19–48:23, 68:11–74:24, 88:3–97:22), Mr. Nicoletto made no mention of his or his mapmaking team’s understanding that it was illegal to draw majority-minority districts in Nassau County to comply with the VRA or the NYVRA (*see*

generally id.). Nor did Mr. Nicoletto mention having retained his own private mapmaking team to conduct analyses relating to mapmaking (*see generally id.*). Neither map advanced by the Rules Committee ever actually made it to the floor of the full Legislature (PX 63, Feb. 16, 2023 Hearing tr at 11:2-17). Instead, on February 9, 2023, Presiding Officer Nicoletto published a new proposed map (NYSCEF Doc No. 98, answer at ¶ 127, in Action II).

150. The February 9 Map—and all subsequent iterations of it—were drawn by the Presiding Officer’s mapmaking team, consisting of Troutman attorney Misha Tseytlin, Dr. Sean Trende, and at least one other consultant, Aaron Richmond, whose identity Defendants withheld until ordered by the Court in this litigation to disclose it (*see e.g.* PX 18, Requests for Admission at 115-118).

151. The Presiding Officer did not submit the retainer agreement for Troutman’s services to the Legislature’s Rules Committee for approval (PX 19, Requests for Admission at 215).

152. No one affiliated with the Democratic caucus of the Legislature participated in the drawing of any iteration of the Presiding Officer’s maps (PX 18, Requests for Admission at 119-121).

153. The February 9 Map diverged significantly from both TDAC-proposed maps. It included only four districts in which Black, Latino, and Asian voters constituted a majority of eligible voters and split the large, compact Asian community in the western part of Nassau County across three legislative districts (PX 240, Demographic Data from February 9, 2023 Proposed Plan).

154. Mr. Nicoletto waited until a meeting of the Legislature on February 16, 2023—only 12 days before the start of the candidate petitioning period for the 2023 elections—to justify his

decision to discard the two TDAC maps that he voted to advance one month before, and to explain why his proposed map deliberately failed to contain any districts drawn to protect voters of color against racial vote dilution (PX 242, Kopel deposition tr at 215:15–216:4; 231:4-12).

155. Democratic legislators were not given any explanation for Mr. Nicoletto's abrupt shift to the new February 9 Map until five minutes before the start of the February 16, 2023 hearing of the Nassau County Legislature to discuss the Map. There, Democratic legislators received for the first time a memorandum authored by the Presiding Officer's mapmaking consultants at Troutman (PX 63, Feb. 16, 2023 Hearing tr at 42:12–19; PX 18, Requests for Admission at 125–128). The February 16 Troutman Memo was made available only in paper copies to those present in the chamber for the hearing (PX 18, Requests for Admission at 125, 127).

156. At the February 16 legislative hearing, Mr. Tseytlin testified at Mr. Nicoletto's invitation to defend the newly proposed map (PX 63, Feb. 16, 2023 Hearing tr at 17:18–18:18).

157. Mr. Tseytlin was the sole witness who testified to justify for the new map (*see generally id.*).

158. Mr. Tseytlin touted the purported fairness and lawfulness of the Presiding Officer's map, but was not forthcoming when questioned about specific aspects of the map and its design.

159. Mr. Tseytlin was evasive when asked who drew the map. Mr. Tseytlin repeatedly testified that he and his law firm drew the map in consultation with Presiding Officer Nicoletto but would not provide more detail (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr at 45:10-12 ["My law firm drew the map with consultation of the Presiding Officer."]; 53:9-12 ["LEGISLATOR ABRAHAMMS: Mr. Tseytlin, let's back up. You drew this map with the with the Presiding Officer, correct? MR. TSEYTLIN: Yes."]). But when Legislator Abrahams asked repeatedly, "Who

actually sat at a computer and drew the map?”, Mr. Tseytlin never gave a direct answer (*id.* at 44:18–46:12).

160. During his February 16 testimony, Mr. Tseytlin did not mention Aaron Richmond, a consultant employed by an organization run by the Executive Director of the National Republican Redistricting Trust (PX 239, Aug. 23, 2024 Email; PX 126, Kincaid declaration). Defendants withheld Mr. Richmond’s identity until this Court ordered its disclosure (NYSCEF Doc No. 210, order at 3, in Action II). Throughout this litigation, Defendants have attempted to walk back Mr. Tseytlin’s testimony that he and Troutman participated in creating the map (*see e.g.* NYSCEF Doc No. 156, memorandum of law at 18, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

161. Mr. Tseytlin also refused to disclose critical details about Dr. Trende’s analyses while simultaneously making representations about Dr. Trende’s purportedly favorable conclusions for the Enacted Map. Mr. Tseytlin justified the mapmakers’ decision to draw *no* majority-minority districts based solely on Dr. Trende’s analysis: “Mr. Trende did a Section 2 analysis” and concluded that “there were no districts that needed to be drawn to comply with Section 2 of the VRA” (PX 63, Feb. 16, 2023 Hearing tr at 101:25–102:5; *see also* PX 80, Feb. 16, 2023 Troutman Memo; PX 81, Feb. 27, 2023 Troutman Memo).

162. When Democratic legislators and members of the public asked to see Dr. Trende’s analyses, the Presiding Officer and Mr. Tseytlin denied those requests (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr at 120:22–123:7; 126:3–127:11). Similarly, although Mr. Tseytlin admitted that the mapmakers had found “racially polarized voting in some parts of Nassau” (*id.* at 116:20–117:17)—a fact that would support a finding of racial vote dilution and require race-consciousness

redistricting—when pressed for details, he stated, “I do not have those numbers in front of me” (PX 63, Feb. 16, 2023 Hearing tr at 116:20–117:17).

163. A colloquy between Democratic Legislator Carrié Solages, Presiding Officer Nicoletto, and Mr. Tseytlin reflects Defendants’ treatment of the Democratic legislators’ attempts to understand the map:

LEGISLATOR SOLAGES: You made reference to Mr. Trende’s analysis. Did Mr. Trende provide a racially polarized voting analysis?

MR. TSEYTLIN: He conducted one, yes.

LEGISLATOR SOLAGES: Can you provide—is that part of your memo?

MR. TSEYTLIN: No, he conducted one.

LEGISLATOR SOLAGES: But are you relying upon that analysis?

MR. TSEYTLIN: We are relying upon his conclusion that we did not have to draw any other districts to comply with Section 2 of the VRA, yes.

LEGISLATOR SOLAGES: Can you please provide his analysis?

MR. TSEYTLIN: That was the bottom line.

LEGISLATOR SOLAGES: You still considered his analysis, nevertheless. So, therefore, for your conclusion, can you please provide that to this Body?

MR. TSEYTLIN: I provided to this Body the bottom line conclusion that he analyzed it.

LEGISLATOR SOLAGES: So you’re not providing the analysis from Mr. Trende?

MR. TSEYTLIN: I am providing his bottom-line conclusion. That is what I’m providing.

LEGISLATOR SOLAGES: Can you please provide his analysis?

PRESIDING OFFICER NICOLELLO: I think he's answered the question. He's providing the bottom line analysis, and that's –

LEGISLATOR SOLAGES: He's relying upon the conclusion, but not upon the analysis. But the analysis determines the conclusion; therefore, we are entitled to the analysis.

PRESIDING OFFICER NICOLELLO: Therefore, no, you're not. He's given you an answer, and that's the answer that you have.

LEGISLATOR SOLAGES: There was no answer, just to be clear.

PRESIDING OFFICER NICOLELLO: He was. He basically said that he's providing a bottom line analysis and that's all that he is providing.

LEGISLATOR SOLAGES: He's refusing to provide an analysis that he [is] relying on the conclusion that came from that analysis.

PRESIDING OFFICER NICOLELLO: It is what it is.

(PX 63, Feb. 16, 2023 Hearing tr at 120:22–123:7).

164. The Presiding Officer did not make Dr. Trende available to testify at the February 16 hearing (*see* PX 63, Feb. 16, 2023 Hearing tr at 50:4–51:11; 124:25–127:11).

165. Mr. Tseytlin also rejected Democratic legislators' inquiries about mapmakers' justifications for keeping certain communities of interest together in the Presiding Officer's map while splitting other communities of interest—especially communities of color. Although he testified that he drew the map, Mr. Tseytlin declined to answer questions about why particular communities were kept together or separated (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr at 53:24–55:17; 58:3–59:9; 61:6–64:16).

166. While Democratic legislators were denied information that would have let them meaningfully assess the map, Republican legislators accepted the Presiding Officer's narrative justifying his own map. At the February 16 hearing, only one Republican legislator, John Ferretti, engaged with Mr. Tseytlin—and then only to tell him that Ferretti was “blown away by” Mr.

Tseytlin’s testimony and to encourage him to finish responding to a question from earlier that Mr. Tseytlin was “kind of cut off from answering” (PX 63, Feb. 16, 2023 Hearing tr at 146:3–148:25).

167. Defendants admit that: “with the exception of the Troutman Memos and the information provided to the Legislature by Misha Tseytlin during [the] February 16, 2023 hearing, no member of the Legislature’s Democratic caucus received access to the analyses conducted by Sean Trende relating to the Redistricting Process or Redistricting Plan at any point in time prior to the Legislature voting to adopt the Redistricting Plan on February 27, 2023” (PX 17, Requests for Admission at 92-93, 95; *see also* PX 17, Requests for Admission at 96 [Defendants admit that, with the exception of the Troutman Memos and Mr. Tseytlin’s February 16 testimony, “the Legislature did not make the analyses conducted by Sean Trende relating to the Redistricting Process or Redistricting Plan available to the public at any point in time prior to voting to adopt the Redistricting Plan on February 27, 2023”]).

168. Defendants also admit that Republican legislators relied solely on the information that Mr. Nicolello and Mr. Tseytlin conveyed through Mr. Tseytlin’s testimony and the Troutman Memos (*see* PX 17, Requests for Admission at 94 [admitting that “that prior to the legislative vote to adopt the Redistricting Plan on February 27, 2023, no member of the Legislature’s Republican caucus requested access to the analyses conducted by Sean Trende relating to the Redistricting Process and Redistricting Plan.”]).

169. On February 17, 2023, the Presiding Officer published a revised version of the February 9 Map (*see* PX 242, Kopel deposition tr at 270:14-18). No memorandum or other official explanation accompanied the February 17 Map.

170. On February 21, 2023, the Presiding Officer published a further revised version of the February 9 Map that was eventually adopted as the Enacted Map (NYSCEF Doc No. 98, answer at ¶ 142, in Action II).

171. No other hearing was held on the Enacted Map until February 27, 2023—the last day before the candidate petitioning period for the 2023 elections (*see* PX 65, Feb. 27 Hearing tr at 8:23–9:13; NYSCEF Doc No. 98, answer at ¶¶ 152–53, in Action II).

172. Also on February 27—the same day the Legislature voted on the map—the Presiding Officer released a second memorandum, authored by Troutman, to further defend the February 21 Map (PX 81, Feb. 27, 2023 Troutman Memo at 1). As with the February 16 Troutman Memo, the Presiding Officer didn’t circulate the February 27 Troutman Memo until the start of the hearing, and only in hard copy to those in physical attendance at the meeting (PX 18, Requests for Admission at 127-128).

173. The February 27 Troutman Memo was a revised version of the February 16 Troutman Memo (*compare* PX 81, Feb. 27, 2023 Troutman Memo *with* PX 80, Feb. 16, 2023 Troutman Memo). Notably, the February 27 Troutman Memo repeated verbatim the mapmakers’ justification for not drawing any majority-minority districts to protect against racial vote dilution based on Dr. Trende’s purported finding that the *Gingles* preconditions had not been satisfied (PX 81, Feb. 27, 2023 Troutman Memo at 9 [“Sean Trende . . . conducted a *Gingles* precondition analysis of the County and the Proposed Revised Map, and concluded that Nassau County contains no districts meeting the *Gingles* preconditions that would require or permit the creation of any race-focused districts, for purposes of compliance with § 2 of the VRA.”]; *id.* at 10 [stating same justification with respect to the NYVRA]).

174. The February 27 Troutman Memo claimed: “Legislators and the public advanced several considerations that they wished to see reflected in any map eventually adopted by the Nassau County Legislature. Of the proposals discussed at the Full Legislature Meeting, there were three significant suggestions that the Proposed Revised Map was able to incorporate.” (PX 81, Feb. 27, 2023 Troutman Memo at 2).

175. As an initial matter, Democratic legislators were not given enough information or time to fully provide input on the maps, let alone formulate all possible significant suggestions (*see e.g.* PX 62, Feb. 16, 2023 Hearing tr at 42:12-16 [“LEGISLATOR ABRAHAMS: And we just received your [Mr. Tseytlin’s] memo. We appreciate your memo, but we just received your memo probably five minutes before the meeting started.”]; *id.* at 123:2-7 [“LEGISLATOR SOLAGES: He’s [Mr. Tseytlin] refusing to provide an analysis [by Dr. Trende] that he[’s] relying on the conclusion that came from that analysis. PRESIDING OFFICER NICOLELLO: It is what it is.”]). Moreover, the February 27 Troutman Memo misrepresented the significance of these revisions and the extent to which they addressed the concerns raised by Democratic Legislators.

176. The February 27 Troutman Memo cites three suggestions made at the February 16 hearing that the mapmakers purportedly addressed: (1) “that Plainview and Old Bethpage form a single, strong community of interest”; (2) that “Elmont [should be placed] into a single district” and “that the Mill Brook community should be returned to District 3 with Valley Stream, as these communities have significant connections”; and (3) that “both Legislators and members of the public decried the split of the Village of Hempstead into three districts” (PX 81, Feb. 27, 2023 Troutman Memo at 2). The February 27 Memo also cites the request “to move Lakeview from District 14 to District 1 . . . which the Proposed Revised Map was unable to accommodate” (*id.* at 2-3, n 3).

177. But two of the three “suggestions” the Troutman Memo says mapmakers addressed were not actually followed. Neither Elmont nor Mill Brook were kept whole, even though it was unnecessary to divide either (*see* PX 242, Kopel deposition tr at 313:21–317:5 [admitting the Enacted Map splits both Elmont and Mill Brook and that neither is so large that it cannot be contained in a single district]). During the February 27, 2023 hearing, Legislator Solages specifically refuted the February 27 Troutman Memo’s contention that “[t]he Proposed Revised Map also accommodates this request as much as possible, restoring a significant portion of Mill Brook to proposed District 3.” (PX 81, Feb. 27, 2023 Troutman Memo at 2; PX 65, Feb. 27, 2023 Hearing tr at 74:15–75:9 [Legislator Solages stated, “I refer to the map and it is not a significant portion of Mill Brook. . . . And so I asked respectfully that the map include the entirety of Mill Brook and not just a small sliver of Mill Brook.”]). The Village of Hempstead remained divided (PX 2, Cervas Opening Report at ¶ 50).

178. The revised map kept Lakeview in a district with neighboring communities that numerous Black Lakeview residents repeatedly testified they felt unwelcome in because of their race (PX 63, Feb. 16, 2023 Hearing tr at 259:7–264:17, 264:20–268:18, 268:22–271:17, 271:21–274:6, 279:25–283:4), even though it was possible to include all of Lakeview in Legislative District 1 (*see* PX 242, Kopel deposition tr at 319:8-23). The February 27 Troutman Memo recognized they did not address the request to move Lakeview from District 14 to District 1 (PX 81, Feb. 27, 2023 Troutman Memo at 2-3, n 3). The one suggestion that the mapmakers did address—combining Plainview and Old Bethpage—occurred after it was made public that Troutman drew district lines on the “front walk” of an incumbent Democratic legislator’s house, putting him into the same district as a Republican incumbent (PX 63, Feb. 16, 2023 Hearing tr at 132:21-25).

179. Citing the criticism from Minority Leader Abrahams during the February 16 Meeting about the failure of the proposed map to contain at least five majority-minority districts, the February 27 Troutman Memo asserted that “the Proposed Revised Map now contains five districts where racial minorities make up the majority of the district, as measured by Voting Age Population (“VAP”), just as Minority Leader Kevan Abrahams had hoped for.” (PX 81, Feb. 27, 2023 Troutman Memo at 3).

180. The February 27 Troutman Memo offered a convoluted and contrived rationale for claiming that Minority Leader Abrahams requested a VAP-majority district—asserting in a footnote “Minority Leader Abraham’s criticisms regarding the number of majority-minority districts in the Original Proposed Map were based upon VAP data, not Citizen Voting Age Population, or “CVAP,” data, given that he expressed concern that the Original Proposed Map had only four majority-minority districts and that was true only when using VAP data, not CVAP” (PX 81, Feb. 27, 2023 Memo at 3 n 4). This assertion is contradicted by the demographic data published with the February 21 map, which shows that the Enacted Map included four majority-minority districts by citizen voting age population (PX 73, Enacted Map demographic data).

181. Further, the February 16 Hearing transcript does not show that Minority Leader Abrahams sought an additional district where people of color constituted merely a majority of the *adult population* (VAP)—as opposed to a district where people of color constituted a majority of *eligible voters*, that is, citizen voting age population (CVAP) (*see* PX 62, Feb. 16, 2023 Hearing tr at 14:6-13).

182. The February 27 Troutman Memo’s attempt to dress up a majority-minority district by VAP as satisfying the Minority Leader’s request for an additional majority-minority district has strong echoes in the case of *League of United Latin Am. Citizens v Perry*. In that case, the United

States Supreme Court found that a very similar effort—“to have a nominal Latino voting-age majority (without a citizen voting-age majority) for political reasons”—amounted to the “use of race to create the facade of a Latino district,” which supported a finding of discrimination (548 US 399, 441 [2006]).

183. The Presiding Officer made neither Mr. Tseytlin nor Dr. Trende available to testify at the February 27 hearing (*see generally* PX 64-65, Feb. 27, 2023 Hearing trs).

184. During the February 27, 2023 hearing, Minority Leader Abrahams made clear that members of the minority party “were never made aware that Troutman Pepper was being hired,” nor were they given access to Dr. Trende’s work. (PX 64, Feb. 27, 2023 Hearing tr at 155:24–161:5; 162:13–21).

185. During that same hearing, Presiding Officer Nicoletto said that Republicans “have only been provided what you have been provided, which is the conclusions of Mr. Trende.” But Nicoletto immediately thereafter noted: “Other than that [the Troutman Memos], I’ve had conversations with my counsel, which I’m not going to disclose. But other than that, we’ve been provided with the conclusions Mr. Trende provided, it’s in the memos, you have what we have.” (PX 64, Feb. 27, 2023 Hearing tr at 164:13–21).

186. On February 27, 2023, the Enacted Map was adopted by the Legislature without a single minority-party member voting in favor of it (PX 64, Feb. 27, 2023 Hearing tr at 181:9–14 [“Presiding Officer . . . I want the record [to] reflect that it is passed with 11 votes of the Republican Majority with seven votes against from the Democrat minority”]).

187. The petitioning period for candidates for Nassau County Legislature began on February 28, 2023 (NYSCEF Doc No. 98, answer at ¶ 152, in Action II). On the same day, County Executive Blakeman signed the Enacted Map into law (*see* Local Law 1-2023).

2. The Enacted Map was developed behind closed doors by partisan consultants who used partisan and racial data to draw the map, even as they publicly disclaimed doing so.

188. On December 26, 2022—nearly two months before Mr. Nicoletto revealed that he commissioned Troutman to draft new proposed legislative maps—Dr. Trende sent an email to Mr. Tseytlin providing his analysis of the TDAC-proposed maps and indicating Mr. Nicoletto and Troutman’s intention to draw and introduce a new proposed map (PX 34, Dec. 26, 2022 Email, NASSAU_00000084).

189. First, Dr. Trende noted that “On the sims: REDACTED FOR PRIVILEGE That said, five minority majority districts is not ***out*** of line with the sims. These are not broken down by individual racial categories.” (*id.*). “[S]ims” refers to a set (or “ensemble”) of simulated maps generated by a computer algorithm programmed to comply with the applicable redistricting requirements and parameters. Comparing a map of interest with the ensemble of simulated maps can reveal whether the map of interest is an outlier in terms of, for example, partisanship or the number of majority-minority districts.

190. This email indicates that Dr. Trende’s analysis showed that the map proposed by the Democratic TDAC commissioners was not racially gerrymandered, contradicting Mr. Tseytlin’s public contention in his February 16, 2023 testimony that “As a result, unfortunately, both of the maps proposed by the Democrats and the Commission and the Republicans Commission violate the Equal Protection Clause.” (PX 63, Feb. 16, 2023 Hearing tr at 26:7–11).

191. Dr. Trende’s email makes clear that Mr. Nicoletto intended to introduce a new map that would give Republicans a strong electoral advantage while hitting a targeted score on the “gerrymandering index” to create deniability against claims of partisan gerrymandering. Dr. Trende wrote to Mr. Tseytlin that: “Their gerrymandering index: REDACTED FOR PRIVILEGE. Still beyond the range of the sims, however. But it gives an idea what we are likely going to have

to tell the legislature they are aiming for, like it or not. On the dotplots, their maps actually look pretty good.” (PX 34, Dec. 26, 2022 Email, NASSAU_00000084). This was an early step in a process in which Mr. Nicoletto’s mapmaking team reverse-engineered a map that maximized Republican control of the Legislature while cosmetically scoring better than the TDAC-proposed maps on Dr. Trende’s Gerrymandering Index metric.

192. A chart comparing all three maps—the Enacted Map, the Democratic-proposed Map, and the Republican-proposed Map—to the same ensemble and highlighting the Enacted Map’s performance compared to the TDAC maps was featured in the February 27 Troutman Memo touting the Enacted Map as fair from a partisan perspective (PX 81, Feb. 27, 2023 Troutman Memo at 14, “Chart 1. Gerrymandering Index Scores”). That ensemble was drawn “race-blind”, that is, without any constraint on the minimum number of majority-minority districts that the computer-generated simulated maps were required to have to comply with the VRA.

193. This comparison of the TDAC maps (which each included majority-minority districts drawn to comply with VRA) to the race-blind maps Troutman planned to draw for Mr. Nicoletto using Dr. Trende’s race-blind ensemble as the benchmark was an exercise designed to make the Troutman-Nicoletto map look better than the TDAC maps by comparison (*see e.g.* PX 22, Feb. 22, 2023 Email, NASSAU_00000003 at NASSAU_00000006 [“Haven’t had a chance to open the draft memo, but from what you describe, that is correct. I think the massive swing to the center from the original R draft is useful as well.”]).

194. In his expert report in this case, Dr. Trende opines that precisely this kind of comparison is inappropriate (DX 111, Trende Rebuttal Report at 35 [“In short, one cannot compare Dr. Magleby’s racially targeted simulations to the legislature’s race-free maps in determining partisan intent using a simulation analysis. It is an apples-to-oranges comparison that will not

produce a valid inference about legislative intent.”]). In this context, the TDAC maps are the “oranges” that are made to look like outliers by Trende’s ensembles of “apples”.

195. As the Troutman Memos indicated and as Mr. Tseytlin testified on February 16, 2023, Dr. Trende conducted a “*Gingles* precondition analysis”—that is, he analyzed whether and to what extent it was possible to draw majority-minority districts in Nassau County and whether voting was racially polarized in Nassau County (*see e.g.*, PX 80, Feb. 16, 2023 Troutman Memo at 5; PX 81, Feb. 27, 2023 Troutman Memo at 9; PX 63, Feb. 16, 2023 Hearing tr at 101:25–102:5).

196. Charts that Dr. Trende generated during the redistricting process show that it is possible to draw more majority-minority districts than the Enacted Map provides (*see e.g.* PX 32, February 3, 2023 Email and Attachments, NASSAU_00000070 at NASSAU_00000076).

197. In one of his expert reports submitted in this case, Dr. Trende also stated he used computer code that “reported, but did not save, the number of majority minority districts in a map” and that code file “was last saved on January 9, 2023.” (DX 111, Trende Rebuttal Report at 37).

198. Dr. Trende also conducted an analysis of racial voting patterns in Nassau County, which Mr. Tseytlin said showed “[t]here is some racially polarized voting in some parts of Nassau.” (PX 63, Feb. 16, 2023 Hearing tr at 117:4–6).

199. Dr. Trende’s contemporaneous records show that during the redistricting process, he analyzed racial voting patterns in only three races over two election cycles—the 2018 races for Governor and Attorney General and the 2020 Presidential election (PX 10, Oskooii Reply Report at ¶ 34, n 3–4; PX 86, League of Women Voters Settlement Agreement; PX 87–91, Trende RPV Results; PX 121, Trende RPV Results). The metadata on those contemporaneously generated files show Dr. Trende generated the results of his analysis of racial voting patterns on or before January

4, 2023 (PX 20, Fourth Set of Requests for Admission ¶¶ 222–28). Dr. Trende’s results show that in each of the three races analyzed, he found that a majority of non-Hispanic White voters voted for the Republican candidate and a majority of Black, Hispanic, and “Other” voters voted for the Democratic candidate (PX 87–91, Trende RPV Results; PX 121, Trende RPV Results).

200. Collectively, Dr. Trende’s conclusions that at least five majority-minority districts could be drawn in Nassau County and that racially polarized voting existed in Nassau County indicate that Dr. Trende completed his *Gingles* analysis on or around January 4, 2023 (*see* PX 63, Feb. 16, 2023 Hearing tr at 118:3–6).

201. The Presiding Officer’s mapmaking consultants knew well before the January 17, 2023 Rules Committee hearing that they were planning to reject the two TDAC maps as purportedly unconstitutional and to propose their own race-blind map (PX 34, Dec. 26, 2022 Email, NASSAU_00000084).

202. However, at the January 17, 2023 Rules Committee hearing, the Presiding Officer made no mention of his consultants’ analysis or their plans to draft a race-blind map (*see generally* PX 61, January 17, 2023 Rules Committee tr). Instead, he voted to advance the two purportedly unconstitutional maps anyway (*id.* at 175:18–176:25).

203. To assist Mr. Nicoletto’s map drawing team in drafting a new proposed map, Troutman retained Aaron Richmond (PX 239, Aug. 23, 2024 Email). Mr. Richmond is a Project Manager for Fair Lines America, where he has worked since March 2021 when he was hired as a GIS Analyst (PX 126, Kincaid declaration). The Executive Director of Fair Lines America is also the Executive Director of the National Republican Redistricting Trust (*id.*).

204. Mr. Nicoletto and Mr. Tseytlin concealed Mr. Richmond’s identity from the public and the Legislature. Mr. Tseytlin testified at the February 16, 2023 hearing, at which Dr. Trende’s

name was invoked dozens of times (*see generally* PX 63, Feb. 16, 2023 Hearing tr). The February 16 and 27 Troutman memos were released on Troutman letterhead and Dr. Trende’s name was invoked over a dozen times in each memo (*see generally* PX 80, Feb. 16, 2023 Troutman Memo; PX 81, Feb. 27, 2023 Troutman Memo). Mr. Richmond’s name, however, does not appear once in the entirety of the February 16 transcript or in either of the Troutman Memos (*see generally* PX 63, Feb. 16, 2023 Hearing tr; PX 80, Feb. 16, 2023 Troutman Memo; PX 81, Feb. 27, 2023 Troutman Memo). When asked directly to identify who drew the map, Mr. Tseytlin repeatedly stonewalled Democratic legislators (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr at 44:13–22 [“LEGISLATOR ABRAHAMS: So yourself and Mr. Trende put together the map? MR. TSEYTLIN: Counsel worked together with the Presiding Officer to put together the map. LEGISLATOR ABRAHAMS: I'm sorry. Who actually sat at a computer and drew the map? MR. TSEYTLIN: I answered your question.”]; *id.* at 45:3–12 [“LEGISLATOR ABRAHAMS: Someone has to sit at a computer and actually draw the map. Was it Mr. Trende? MR. TSEYTLIN: No. LEGISLATOR ABRAHAMS: It was yourself? MR. TSEYTLIN: My law firm drew the map with consultation of the Presiding Officer.”]).

205. Mr. Richmond was intimately involved in the mapmaking process well before Mr. Tseytlin’s testimony on February 16. On January 19, 2023, Mr. Richmond sent Dr. Trende an email with the subject line “Nassau Mapping Questions” (PX 21, January 19, 2023 Email and Attachments, NASSAU_00000001).

206. Mr. Richmond sent drafts of the Enacted Map to Mr. Tseytlin and Dr. Trende for “Scoring,” and received charts of statistical analyses of the partisanship and racial demographics for each draft map. On February 3 and 17, 2023, Mr. Richmond sent draft maps for “Scoring” and received in return from Dr. Trende charts comparing partisan performance and racial

demographics of the proposed map to Dr. Trende’s simulated maps, including charts comparing the Black and overall non-white population share of each district (*see* PX 32, February 3, 2023 Email and Attachments at NASSAU_00000072–76); PX 27, February 17, 2023 Email and Attachments at NASSAU_00000029–00000036).

207. These emails, their attachments, and Dr. Trende’s analysis of racially polarized voting show that Mr. Nicoletto’s map-drawing team continued to consider and analyze the racial composition of proposed legislative districts after Dr. Trende completed his *Gingles* analysis—both prior to and after Mr. Tseytlin’s February 16, 2023 testimony—despite Mr. Tseytlin testifying that he and his mapmaking team “did not analyze race of the map after Mr. Trende concluded that there was no VRA Section 2 district.” (PX 63, Feb. 16, 2023 Hearing tr at 57:18–21).

208. Dr. Trende’s emails also show how the mapmaking team was aware of the Enacted Map’s strong pro-Republican bias and were wary of how it could be exposed.

209. Prior to the start of Mr. Tseytlin’s testimony on February 16, 2023, Dr. Trende identified that the proposed map scored poorly on the mean-median metric, writing that “Using his [Dr. Magleby’s] metric and our approach, we are (just barely) within bounds. 5.2% of plans have larger absolute mean-median scores.” (PX 26, February 16, 2023 Email, NASSAU_00000028).

210. Dr. Trende’s subsequent emails regarding this analysis show how the mapmaking team was concerned that the Enacted Map’s partisanship could be exposed through the analysis of odd-year elections.

211. On February 21, 2023, the day the final map was published (NYSCEF Doc No. 98, answer at ¶ 142, in Action II), Mr. Richmond sent an email to Dr. Trende and Mr. Tseytlin with the subject line “Nassau Election Results” at 12:56 PM (PX 42, February 21, 2023 Email,

NASSAU_00000110 at NASSAU_00000110). Dr. Trende replied “For now I can give [sic] a quick-and-dirty response on this, but it would probably behoove us to have a call at some point to figure out how big of a deal this is.” (*id.* at NASSAU_00000111). This email from Dr. Trende was the first in a series of emails sent on February 21 and 22, 2023, which analyzed and discussed the Enacted Map after its final draft had been released (*see e.g.* PX 45, February 21, 2023 Email, NASSAU_00000120, at NASSAU_00000120–124; PX 22, February 22, 2023 Email at NASSAU_00000003–07; PX 33, February 22, 2023 Email, NASSAU_00000077 at NASSAU_00000077–83).

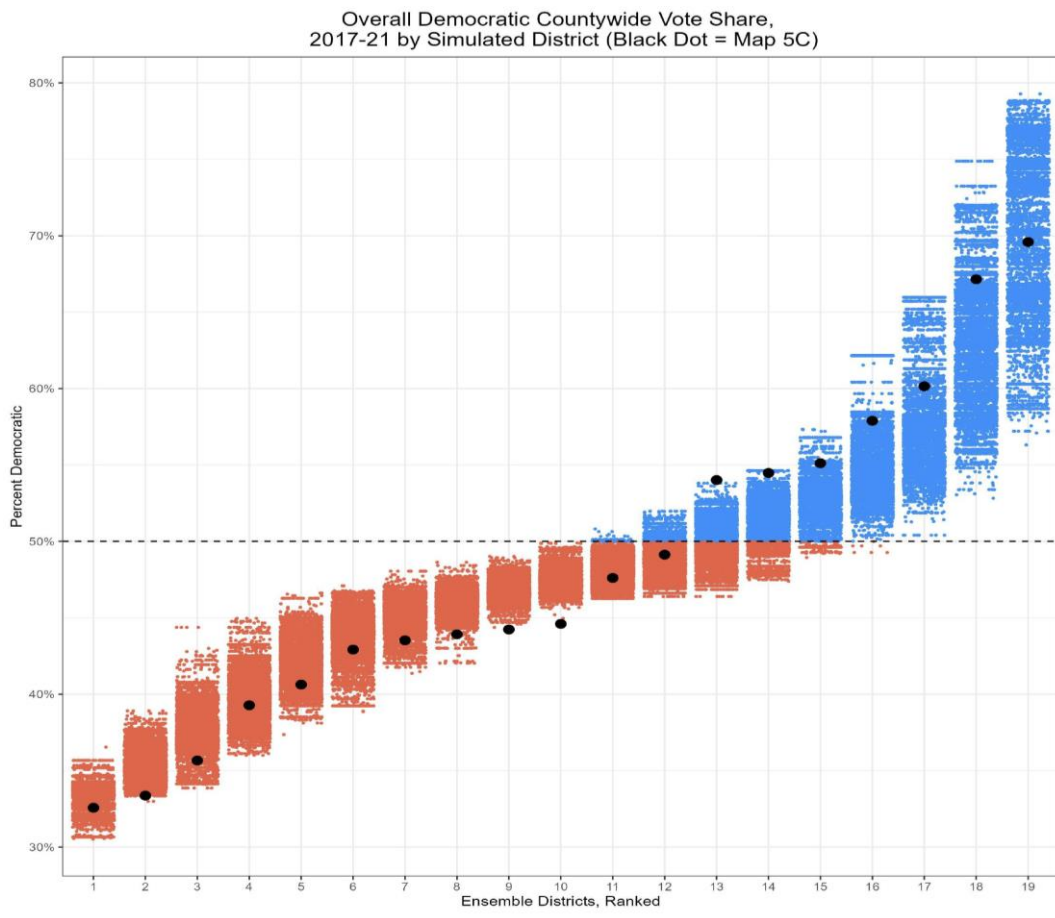
212. In one email, Dr. Trende wrote “So I just did a quick run of 5000 sims using a composite of the 2017 elections. We're in bounds, although not comfortably so.” (PX 42, February 21, 2023 Email at NASSAU_00000110).

213. Two minutes later, Dr. Trende sent another email to Mr. Nicoletto's mapmaking team where he wrote “On the dotplots, they're not great, but not terrible. They also highlight the absurdity of the mean-median metric. *To make the mean-median issue go away*, everything can be left the same, but district #10 (in rank) made a few points more Democratic. Then, problem solved.” (PX 43, February 21, 2023 Email, NASSAU_00000112 at NASSAU_00000112 (emphasis added)).

214. In another February 22, 2023 e-mail, Dr. Trende sent two attachments, including a file titled “Combined_2017-2021.png”, which contained a dotplot with comparing the soon-to-be Enacted Map to his ensemble using election data from odd year elections in Nassau County (PX 33, February 22, 2023 Email and Attachments, at NASSAU_00000077-83).

215. The dotplot sent by Dr. Trende shows how the Enacted Map cracks Democratic voters in the pivotal districts for retaining control of the Legislature and packs Democratic voters

into more safely Democratic districts, advantaging Republicans’ ability to control the Legislature (PX 33, February 22, 2023 Email and Attachments at NASSAU_00000082). In the image below, the black dot representing the Enacted Map falls below the entire column of dots in the 9th and 10th ranked districts, showing that the key districts for maintaining control of the Legislature are more favorable to Republicans than any of Dr. Trende’s thousands of simulated maps. At the same time, the black dot appears at or near the top of the column of dots in the 13th through 16th districts, showing that Democratic voters are more packed into those safe Democratic seats than virtually all of Dr. Trende’s thousands of simulated maps.



216. None of Dr. Trende’s charts analyzing the partisanship of the Enacted Map using odd-year elections appeared in the February 27 Troutman Memo (*see generally* PX 81, Feb. 27, 2023 Memo; PX 64, Feb. 27, 2023 Hearing tr; PX 65, Feb. 27, 2023 Afternoon Hearing tr).

217. Mr. Nicoletto's map drawing team made no edits to the proposed map following Dr. Trende's analyses produced on February 21 and 22, 2023. Notwithstanding having received, reviewed, and discussed the clear evidence of the Enacted Map's strong bias in favor of Republicans that Dr. Trende generated on February 21 and 22, 2023, the mapmakers took no steps to mitigate that bias or even disclose evidence of it to the public, despite numerous opportunities to make those relevant disclosures.

B. Statistical Evidence Shows That The Enacted Map Has A Discriminatory Effect In Favor Of Republicans.

218. Both sets of Plaintiffs and Defendants each called expert witnesses to testify concerning statistical analyses of the partisan effects of the Enacted Map.

219. Each of these experts relied upon a method of applied mathematics known as "ensemble analysis." Ensemble analysis uses an algorithm to generate a set (or "ensemble") of simulated maps against which to measure the Enacted Map (PX 4, Stern Opening Report at ¶ 11; PX 5, Magleby Opening Report at 9–10; DX 110, Trende Opening Report at 5–7).

220. Both of Plaintiffs' partisan gerrymandering experts conducted statistical analyses of the Enacted Map and determined that the Map is an extreme gerrymander that favors Republicans. Dr. Stern conducted ensemble analyses of the Enacted Map—including comparisons of the Enacted Map to the set of simulated maps generated by Dr. Trende—and found that the Enacted Map cracks Democratic votes in strategically important swing districts while packing Democratic votes into districts that are already safely Democratic. Dr. Magleby identified the same pattern of extreme gerrymandering in his analyses.

1. Dr. Stern's Analysis

221. Dr. Stern analyzed the Enacted Map's properties with respect to partisan and minority representation by comparing the Map to ensembles of thousands of algorithmically

generated alternative redistricting plans (PX 4, Stern Opening Report at ¶¶ 6–7). Dr. Stern conducted this analysis to see how the Enacted Map “compares to the other plans that could have been drawn, following the principles the map-drawers claim to have used together with those the law requires” (*id.* at ¶ 11). By measuring the districts of the Enacted Map against the districts in the ensemble of simulated plans, Dr. Stern was able to “determine whether the Adopted Plan resembles a typical ensemble plan, or whether it instead resembles an extreme outlier that would be unlikely to be chosen without ‘cherry-picking’ it for that purpose” (*id.* at ¶ 11).

222. First, Dr. Stern generated an ensemble of 100,000 simulated plans that were partisan-blind and race-blind—that is, the algorithm that generated the maps *only* used data on Nassau County’s total population and its geographic features (*e.g.*, boundaries of cities and villages) (PX 4, Stern Opening Report at ¶¶ 7, 17). To implement and calibrate constraints for the algorithm to reflect the Legislature’s stated intent in redistricting, Dr. Stern reviewed the February 27 Troutman Memo as well as the computer code that Sean Trende used to generate the ensemble of simulated maps undergirding the analyses discussed in that memo (PX 4, Stern Opening Report at ¶ 18).

223. To analyze the Enacted Map’s partisan properties relative to the ensemble plans, Dr. Stern first used Nassau County election data for all 8 countywide elections held between 2017 and 2021 (PX 4, Stern Opening Report at ¶ 26).

224. To measure the partisanship of the districts in the Enacted Map, Dr. Stern tallied the two-party vote share in each Enacted Map’s districts and in each of the ensemble maps. He then numbered the districts in each map in order of Democratic vote share, from lowest to highest, for the election being considered (PX 4, Stern Opening Report at ¶ 27). Dr. Stern referred to these as “ordered district” numbers. Thus, in every 19-district plan for the Nassau County Legislature,

ordered district 1 has the lowest Democratic vote share and ordered district 19 has the highest (PX 4, Stern Opening Report at ¶ 27).

225. Dr. Stern explained: “The ordered districts in the middle of this ranking are strategically important swing districts, since whichever party wins ordered district 10 wins a majority of seats in the Legislature. In a partisan gerrymander favoring Republicans over Democrats, we would expect to see ‘cracking’ of Democratic votes in mid-numbered swing districts and ‘packing’ of Democratic votes in higher-numbered districts. In fact, this is precisely what is observed in the Adopted Plan.” (PX 4, Stern Opening Report at ¶ 28).

226. Dr. Magleby concurred that ordered districts “9, 10, and 11 are strategically important” because control of the Legislature hinges on the median 10th district (*see e.g.* PX 5, Magleby Opening Report at 16).

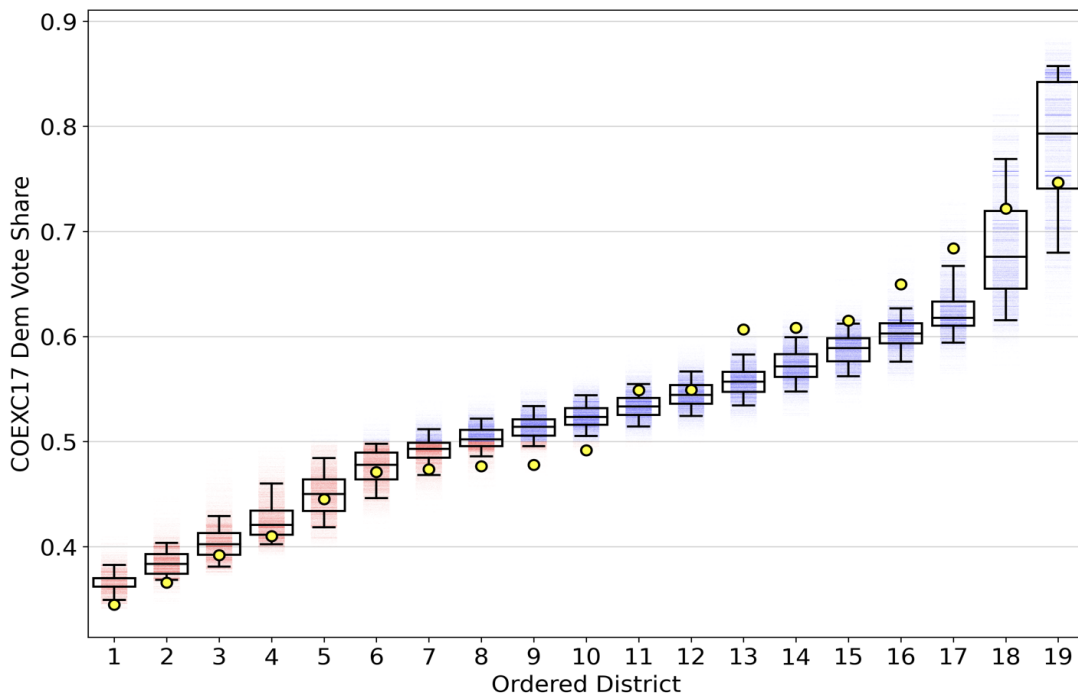
227. Dr. Trende likewise agreed that the median district is “typically” strategically important in a legislative body where the party in the majority has control over the chamber (DX 180, Trende deposition tr at 97:5–13).

228. Dr. Stern generated a series of tables showing the percentile rank of each district in the Enacted Map compared to the corresponding set of ordered districts in the ensemble for every election analyzed (*see e.g.* PX 4, Stern Opening Report, Appendix at 30–37, Tables 2–9).

229. Dr. Stern generated visual representations of his results as boxplots, a graph with reference points that show whether a district in the Enacted Map falls in the box, that is between the 25th% and 75th% percentile of the corresponding ensemble districts, or beyond the whiskers, that is, above the 95th% percentile or below the 5th% percentile of the corresponding ensemble districts (PX 4, Stern Opening Report at ¶ 25; *see e.g. id.* at ¶ 29, Figure 2 at p. 13).

230. Dr. Stern’s analysis showed that “[c]ompared to the partisan-blind, race-blind ensemble plans, the Adopted Plan ‘packs’ Democratic voters into more heavily Democratic-leaning districts and ‘cracks’ them in crucial swing districts. This has the effect of making packed districts less competitive (since they are ‘safe’ for Democrats) and, in close county elections, flipping as many as 3 cracked districts from majority-Democratic in most ensemble plans to majority-Republican in the Adopted Plan.” (PX 4, Stern Opening Report at ¶ 9).

231. To illustrate the pattern of packing and cracking he identified and how it favors Republicans over Democrats in close races, Dr. Stern produced this boxplot of the 2017 County Executive race (PX 4, Stern Opening Report, ¶ 29, Figure 2 at p. 13).



232. As Dr. Stern explained, this boxplot shows how, “[r]elative to the ensemble, the Adopted Plan significantly cracks Democratic votes in ordered districts 8–10 and packs Democratic votes in ordered districts 13–17.” (PX 4, Stern Opening Report at ¶ 29). The result is that “[i]nstead of Democrats winning 12 seats, as in the median ensemble plan, they win only 9 seats in the Adopted Plan.” (*id.*).

233. Dr. Stern provided the percentile ranks for each of these districts in the Enacted Map relative to the ensemble using data from the 2017 County Executive race, which shows a numerical pattern of extreme outliers: “Democratic votes are more cracked in ordered districts 8, 9, and 10 of the Adopted Plan than in 98.4%, 99.9%, and 99.97% of ensemble plans, respectively.” and “Democratic votes are more packed in ordered districts 13, 14, 15, 16, and 17 of the Adopted Plan than in 99.93%, 98.2%, 96.6%, 99.4%, and 97.7% of the ensemble plans, respectively.” (PX 4, Stern Opening Report at ¶ 29).

234. Dr. Stern found a similar pattern for every election he analyzed, concluding that “The targeted cracking in swing districts is such that, in every single one of the 8 countywide elections, at least one of ordered districts 8–11 is more cracked than in over 99% of ensemble plans. In close elections, this is shown to flip as many as three districts from majority-Democratic to majority-Republican. Meanwhile, districts numbered above these are packed, creating safe Democratic districts in which competition is suppressed.” (PX 4, Stern Opening Report at ¶ 33). Dr. Stern provided boxplots and tables for all 8 elections he analyzed using his initial ensemble of 100,000 maps (PX 4, Stern Opening Report at ¶¶ 40–47).

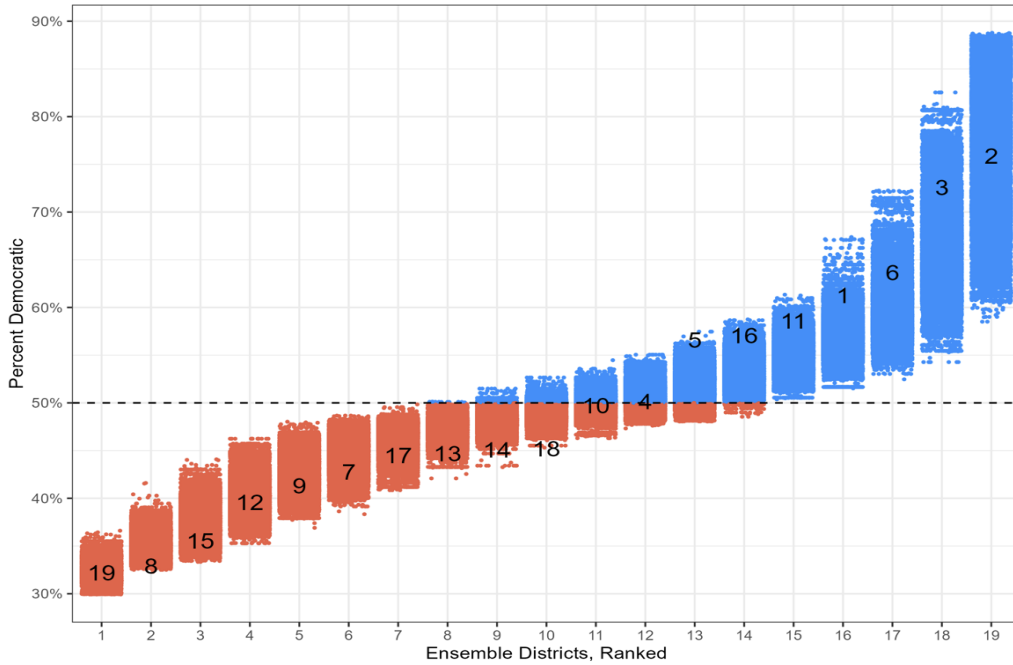
235. Dr. Stern also analyzed the Enacted Map against the ensemble that Dr. Trende generated in his expert reports and found the same hallmarks of a gerrymander.

236. Dr. Stern’s analysis of the Enacted Map using Dr. Trende’s ensemble data and index of odd-year elections shows extreme cracking of Democrats in ordered districts 8-10 and extreme packing in ordered districts 13-16 (PX 8, Stern Rebuttal Report at ¶ 8). In the median district, the Enacted Map is more cracked than *every single one* of the 50,000 maps in Dr. Trende’s base ensemble (*id.*). In fact, the median district in Enacted Map was more extreme than *every single one of the 500,000 maps* in Dr. Trende’s expanded base ensemble (*id.*).

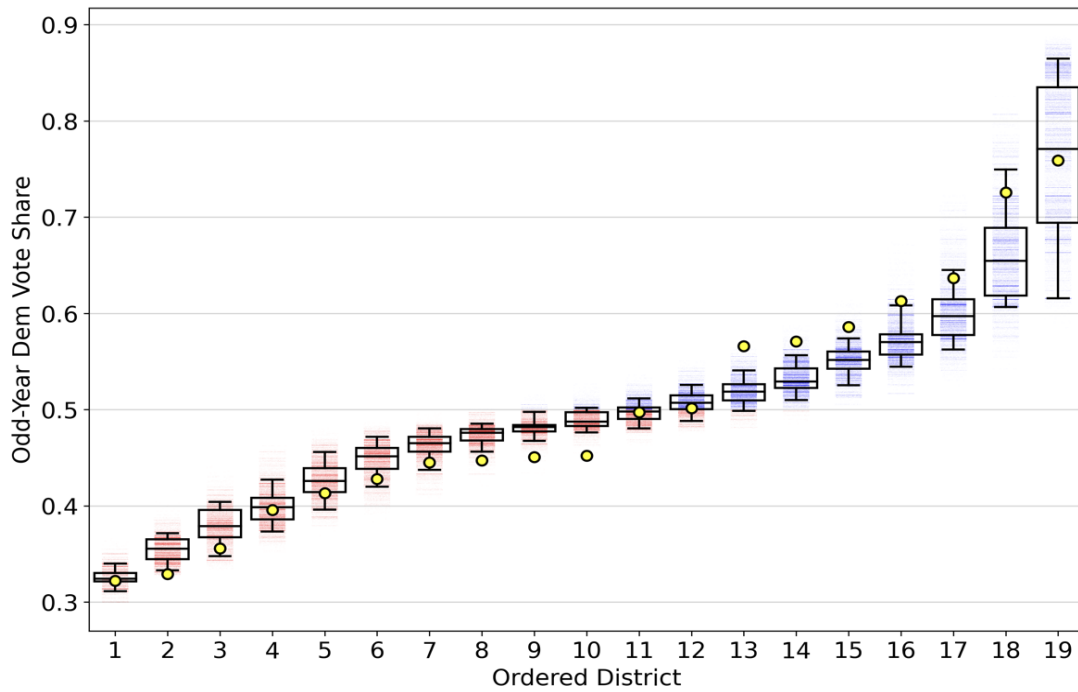
237. Dr. Stern found that the pattern of packing and cracking in key district is consistent throughout every set of elections that Dr. Trende reported analyzing, including his index of even-year elections (PX 8, Stern Rebuttal Report at ¶¶ 12–13). Dr. Stern provided tables and boxplots for each of these elections in the Appendix to his rebuttal report (PX 8, Stern Rebuttal Report, Appendix at pp. 11–14).

238. The following two charts compare the Enacted Map to Dr. Trende’s ensemble using the index of odd-year elections: first, using Dr. Trende’s own dotplot (DX 110, Trende Opening Report, Figure 23 at 42), and then using Dr. Stern’s boxplot (PX 8, Stern Rebuttal Report, Figure 3 at 5). As both Dr. Stern and Dr. Magleby point out, Dr. Trende’s dotplot obscures the numbers of clear outliers in the Enacted Map (PX 8, Stern Rebuttal Report at ¶¶ 6–13; PX 9, Magleby Rebuttal Report at 4–10). In Dr. Trende’s dotplot, each simulated map is represented by a dot, meaning that the below reproduction of Dr. Trende’s Figure 23—a dotplot of Dr. Trende’s base ensemble of 50,000 simulated maps—contains a total of 950,000 dots. The size and volume of dots in Dr. Trende’s dotplot blend in solid blocks of color, making regions with a high density of dots indistinguishable from regions with a low density of dots (PX 8, Stern Rebuttal Report at ¶ 4(a)). Dr. Magleby points out that Dr. Trende’s dotplots here differ in their clarity from the dotplots he used as an expert for parties challenging maps in the *Harkenrider* case (PX 9, Magleby Rebuttal Report at 5–10). By contrast, Dr. Stern charts the same data using smaller dots than Dr. Trende, revealing multiple districts in the Enacted Map to be outliers in a way that Dr. Trende’s dotplot obscures.

Ensemble dotplot from the Trende Opening Report for Nassau County elections between 2017–2021 (DX 110, Trende Opening Report, Figure 23 at 42).



Boxplot of the same data shown in Figure 23 of the Trende Opening Report, using data from Nassau County elections from 2017–2021 (PX 8, Stern Rebuttal Report, Figure 3 at p. 5).



239. Dr. Stern also provided a table with his calculations for the percentile rank of each district in the Enacted Map compared to Dr. Trende’s base ensemble of 50,000 maps using his

index of odd-year elections. Dr. Stern’s table further clarifies the extent to which the Enacted Map cracks Democratic voters in ordered districts 8-10 and packs them in ordered districts 13-16 (PX 8, Stern Rebuttal Report, Table 1 at 7 [reproduced below]).

Table 1: Ensemble analysis summary data for odd-year Nassau County elections 2017–2021, using the “base” ensemble of 50,000 maps from the Trende Report.

	Ensemble Median Dem%	Adopted Plan Dem%	Percentile
1	32.43%	32.22%	28.67%
2	35.53%	32.90%	0.67%
3	37.89%	35.56%	9.54%
4	39.85%	39.58%	45.20%
5	42.59%	41.31%	23.72%
6	45.14%	42.78%	12.24%
7	46.49%	44.50%	8.56%
8	47.58%	44.72%	1.05%
9	48.20%	45.08%	0.06%
10	48.75%	45.21%	0.00%
11	49.80%	49.72%	45.79%
12	50.71%	50.14%	29.32%
13	51.85%	56.59%	99.99%
14	52.90%	57.09%	99.46%
15	55.14%	58.59%	98.98%
16	57.00%	61.30%	97.71%
17	59.72%	63.68%	93.71%
18	65.47%	72.58%	92.70%
19	77.07%	75.88%	45.92%

240. Comparing the Enacted Map to Dr. Trende’s ensemble using his index of *even-year* races reveals a similar pattern of packing and cracking. Dr. Stern found significant cracking of Democratic votes in ordered districts 10 and 12 and significant packing in ordered districts 14 and 16 (PX 8, Stern Rebuttal Report at ¶ 13; *id.*, Figure 7 at p. 14 and Table 6 at p. 14). In addition to those outliers that are more extreme than over 95% of ensemble maps, Dr. Stern’s Table 6 also noted that ordered districts 15 and 18 are more than packed with Democratic voters than 93.56% and 93.85% of ensemble maps, respectively (*id.*, Table 6 at 14).

241. Thus, Dr. Stern’s analysis—including using Dr. Trende’s own ensembles—reveals that the Enacted Map is an extreme outlier compared to partisan-blind maps.

242. Dr. Stern’s analysis further shows that the number of outlier districts in the Enacted Map is so aberrational that they are extremely unlikely to have been the product of a politically neutral mapmaking process (PX 12, Stern Reply Report at ¶ 11 [stating that the Enacted Map “has significantly more partisan outlier districts than we would expect by chance.”]).

243. In his ensemble of 100,000 partisan-blind maps, Dr. Stern tallied the number of partisan outlier districts in each ensemble map, defined as any district in which the Democratic vote share is below the 2.5th percentile or above the 97.5th percentile for that district in the ensemble (*i.e.*, districts in the most extreme 5% in terms of partisanship) (PX 12, Stern Reply Report at ¶ 12).

244. Dr. Stern found that the median number of outlier districts in the ensemble is 1, reflecting the “baseline for how many outlier districts” one would expect to see in a map drawn without consideration of partisanship (PX 12, Stern Reply Report at ¶¶ 12–13).

245. By contrast, whichever countywide election is used, the Enacted Map has between 4 and 8 outlier districts—“significantly more” than the ensemble median (PX 12, Stern Reply Report at ¶ 13). In fact, the Enacted Map has more outlier districts than over 95% of ensemble plans: “it is an outlier in the number of outliers it has” (*id.*; *see also id.* at 5, Table 1). Dr. Stern accordingly concluded that the partisan outlier districts in the Enacted Map cannot be “explained by ‘random chance’” (PX 12, Stern Reply Report at ¶ 13).

2. Dr. Magleby’s Analysis

246. Dr. Magleby’s analyses are consistent with Dr. Stern’s in identifying the Enacted Map as “an extreme partisan gerrymander” that “was clearly drawn to favor the Republican Party” (PX 5, Magleby Opening Report at 3). Specifically, Dr. Magleby also found that the Enacted Map

“entrench[es] a Republican majority” in the Legislature by “‘packing’ Democratic voters into a minority of districts and by ‘cracking’ Democratic voters across a set of strategically impor[t]ant districts in such a manner as to dilute the strength of their votes” in those districts (*id.*).

247. Like Dr. Stern and Dr. Trende, Dr. Magleby evaluated the partisanship of the Enacted Map using ensemble analysis (*see* PX 5, Magleby Opening Report at 9–13). He began by examining the ensemble analysis that Dr. Trende himself performed as part of the mapmaking team during the redistricting process, the details of which were disclosed in discovery (*id.* at 13–14). Even setting aside that Dr. Trende’s ensemble failed to consider the requirement that the legislative map not dilute the voting strength of racial minority voters (*see id.* at 24–25), Dr. Magleby found that Dr. Trende’s own ensemble analysis revealed the exact same pattern of cracking and packing as Dr. Stern found.

248. For example, looking at a composite of all odd-year elections from 2017 to 2021, Dr. Magleby determined from Dr. Trende’s ensemble analysis that in strategically important “districts of rank 8, 9, and 10, the enacted map’s [Democratic] vote share falls below what we observe” in the corresponding districts in the ensemble maps (PX 5, Magleby Opening Report at 23, Figure 7 at p. 22). At the same time, “[d]istricts of rank 13, 15, 16, and 18” are more packed with Democratic votes than most of the corresponding districts in the ensemble maps (*id.*).

249. Dr. Magleby observed that Dr. Trende’s ensemble analysis of individual elections in 2021 shows the same pattern of “pack[ing] Democratic voters into a few districts and crack[ing] Democratic voters across a set of strategically important districts” (PX 5, Magleby Opening Report at 14–21 & Figures 4–6).

250. Dr. Magleby then conducted his own ensemble analyses using 10,000 maps that he generated (*see* PX 5, Magleby Opening Report at 25–27). This ensemble was created using a

computer algorithm that complied with all relevant redistricting and legal requirements, including partisan-blindness (*id.*). Unlike Dr. Trende’s ensemble, Dr. Magleby’s ensemble was “restricted to maps that include four or more majority-minority districts” (*id.* at 27).

251. Dr. Magleby’s analysis of his ensemble confirmed that ordered districts 13 through 16 are “more extreme” in packing Democratic votes than 95% of the corresponding districts in the ensemble (PX 5, Magleby Opening Report at 29–32, Figure 8 at p. 28 and Table 1 at p. 32). And ordered districts 8 through 10 have fewer Democratic votes than at least 95% of the corresponding districts in the ensemble (*id.*). Indeed, every ordered district from 7 through 11 is “less Democratic than we would expect had they been drawn using the neutral criteria incorporated into the ensemble” (*id.* at 30). “The result of this pattern of . . . dilution of Democratic votes” in “strategically important districts” is the “likely . . . entrenchment of a Republican majority even when Democrats secure a majority of the votes” (*id.*).

252. In light of this extreme cracking and packing, Dr. Magleby concluded that “a neutral process is unlikely to have” produced the Enacted Map (PX 5, Magleby Opening Report at 30).

253. Next, like Dr. Stern, Dr. Magleby reproduced the results of Dr. Trende’s own ensemble analysis using his “base ensemble” of 50,000 maps (*see* PX 9, Magleby Rebuttal Report at 13–19). Yet again, this analysis showed that ordered districts 8 through 10 in the Enacted Map are statistical outliers in the degree to which they crack Democratic votes, while ordered districts 13 through 16 are outliers in the degree to which they pack Democratic votes (*id.* at 15–16, Figure 4 at p. 15). And, just like Dr. Stern found, Dr. Magleby identified the strategically paramount ordered district 10 to be more Republican than *every single one of the 50,000 maps* in Dr. Trende’s ensemble (*id.* at 17–18, Table 1 at p. 32).

254. Finally, Dr. Magleby used a different metric of partisan fairness to evaluate the results of his ensemble analysis. This metric, called the “mean-median difference” or “median-mean difference,” is a measure of “partisan symmetry,” which “assesses the degree to which outcomes differ for parties or partisan voters under similar circumstances” (PX 5, Magleby Opening Report at 12, 35). Specifically, the mean-median difference “characterizes bias in a map as a comparison between a party’s overall performance (the mean of the party’s vote share in all districts) and the party’s performance in the strategically important median district” (*id.* at 35). It is a way of discerning “whether a map is likely to violate majority rule” (*id.*). For example, if a party receives a mean vote share of 52% across Nassau County, but only 49% of the vote in the median district, the mean-median difference is -3% ($49\% - 52\% = -3\%$) (*id.*). This reflects that the party received a majority of the overall votes but lost the median district, and therefore does not hold a majority of the seats (*id.*). Put another way, if one party must receive more than half of the votes to carry half of the seats, its opposing party can carry a majority of the seats with less than half of the votes—“one party’s votes carry less weight compared to its counterpart party” (*id.*).

255. Dr. Trende has acknowledged that the mean-median metric “is motivated by the notion that things that happen at the extremes of a map do not matter much, particularly for legislative districts. Instead, . . . what we are most concerned about is ensuring that the middle [*i.e.*, median] district is one that is in line with the state’s underlying partisanship” (DX 180, Trende deposition tr at 221:9–25). That is because in a body like the Nassau County Legislature, the partisanship of the median seat “is far more important than the partisanship of the . . . most [R]epublican” or most Democratic seat, “because [the median seat] determines who controls the chamber” (*id.* at 222:3–22). Thus, the mean-median metric is well-suited to detecting partisan gerrymandering designed to secure majority control of a legislature (*see id.* [“[T]he mean median

score limits a party's ability to gerrymander control of the chamber to its benefit, even if . . . it might gerrymander the size of its majorities.”]).

256. Dr. Trende criticizes Dr. Magleby's use of the mean-median metric in this case by claiming that the mean-median “would validate the map in *Harkenrider*” (DX 111, Trende Rebuttal Report at 61–62). Addressing that criticism, Dr. Magleby responded that “[t]he median-mean metric would not have been appropriate in *Harkenrider* because majority control of the state's congressional delegation was not up for grabs. But given the competitiveness of Nassau County's elections, the median-mean difference is an appropriate way to measure partisan bias in the enacted map's strategically important districts” (PX 13, Magleby Reply Report at 6). In a February 19, 2023 e-mail to Misha Tseytlin, Dr. Trende wrote, potentially referring to Dr. Magleby, who testified on this topic before the Nassau County Legislature three days prior: “What he will probably say—which is true—is that the eg [efficiency gap] and mean-median don't work as well when you get out to the extremes (heavily Republican or heavily Democratic states).” (PX 28, Feb. 19, 2023 Email, NASSAU_00000043 at NASSAU_00000043).

257. Dr. Magleby compared the mean-median difference in the Enacted Map to the mean-median differences of the 10,000 maps in his neutral ensemble (PX 5, Magleby Opening Report at 36). The results show that the mean-median difference in the Enacted Map is both lower than the “mean-median difference in the vast majority of” ensemble districts and “persistently negative,” reflecting an anti-Democrat bias “that exceeds what we would expect” from a map drawn without partisan intent (*id.* at 37–38, Figure 10 at p. 37). This bias is striking: “Depending on the election used to gauge partisan support, the enacted map is more extreme than all [10,000] maps in the neutral ensemble” or, at the very least, more extreme than all but 590 of the 10,000 ensemble maps (5.9%) (*id.* at 38-39, Table 2).

3. Dr. Trende's Analysis

258. Dr. Trende's own statistical analyses consistently indicate that the Enacted Map favors Republicans.

259. As noted above, Dr. Stern and Dr. Magleby each replicated Dr. Trende's analysis using his base ensemble of maps and found that the Enacted Map cracks Democratic votes to an extreme degree in strategically important swing districts while packing Democratic votes in already-Democratic districts (*see supra* Section V.B.1-2).

260. In his analysis, Dr. Trende primarily relies upon data from the same set of elections that he used to measure partisanship in the *Harkenrider* case: an index of even-year elections between 2016 and 2020 (DX 111, Trende Rebuttal Report at 28; DX 180, Trende deposition tr at 104:20-105:1). In *Harkenrider*, Dr. Trende was evaluating the partisanship of maps for Congressional and state senate seats—offices for which elections are held only in even-numbered years (DX 180, Trende deposition tr at 106:5-14).

261. As special master in Virginia, however, where elections for state offices are conducted in odd-numbered years, Dr. Trende specifically rejected the use of even-year elections to test the partisanship of the maps they drew for odd-year state legislative elections: “Because state races occur in the off-years, which can have very different turnout patterns from presidential and midterm election years, we determined that it was important not to use elections from presidential or midterm elections to evaluate partisanship.” (PX 130, Dec. 27, 2021 Memorandum at 33).

262. As noted above, Plaintiffs' experts' analyses of Dr. Trende's dotplots comparing the Enacted Map to his ensembles using odd-year election data reveal a pattern of extreme packing and cracking (*see supra* Section V.B.1-2).

263. Defendants and Dr. Trende have generally downplayed the significance of the dotplots and instead promote the “gerrymandering index” as the “core test the Court of Appeals of accepted for partisan gerrymandering in *Harkenrider*” (NYSCEF Doc No. 189, Reply Memorandum of Law in Support of Non-Party Sean Trende’s Motion to Quash at 5, in Action II, Sup Ct, Nassau County index No. 602316/2024, citing *Harkenrider v Hochul*, 38 NY3d 494, 506, 519-20 [2022]; *see also* DX 111, Trende Rebuttal Report at 18-19 [“The key finding in *Harkenrider* was that the gerrymandering index for the Enacted Map fell entirely outside the range of the gerrymandering indices for the ensembles.”]).

264. But the term “gerrymandering index” does not appear anywhere in the Court of Appeals’ opinion in *Harkenrider*. Instead, both the Court of Appeals and the Fourth Department expressly refer to the patterns of cracking and packing in “discrete districts” that is only discernible in Dr. Trende’s dotplots (*Harkenrider*, 38 NY3d at 506) or “scatterplots,” as the Fourth Department referred to them (*Harkenrider v Hochul*, 204 AD3d 1366, 1372 [4th Dept 2022]). Indeed, the Fourth Department’s analysis focuses on the finding that “the enacted congressional map was such an outlier in Trende’s simulation *only in the districts* where the legislative majority party had the *most strategic value to gain through gerrymandering*.” (*Id.* (emphasis added)).

265. Consistent with the Court of Appeals’ and the Fourth Department’s analyses, this Court should consider evidence from the experts’ dotplots, and especially expert evidence analyzing data from odd-year elections, which are highly probative of whether the Enacted Map in this case contains districts drawn to discourage competition or for the purpose of favoring a political party.

a. The gerrymandering index

266. Dr. Trende primarily relies on a metric called the “gerrymandering index” to assert that the Enacted Map is not a partisan outlier (*see* DX 110, Trende Opening Report at 10-13).

267. Dr. Trende admits that the gerrymandering index may not be able to detect the kind of partisan gerrymandering here: the focused cracking and packing of votes in individual, strategically important districts (DX 180, Trende deposition tr at 259:15-260:21; *see also id.* at 98:15-99:13, 118:2-15).

268. As Dr. Trende explains, the gerrymandering index is an aggregate metric: It measures partisanship by summing up the difference between the partisan vote share across all districts in the challenged map and the ensemble maps (DX 110, Trende Opening Report at 10-12).

269. Dr. Trende recognizes that “[w]hat a partisan gerrymander looks like” on measures of partisanship “will vary from jurisdiction to jurisdiction” (DX 180, Trende deposition tr at 137:8-12). For example, the form that gerrymandering takes in a “politically competitive” jurisdiction like Nassau County could be different from its form in a less competitive jurisdiction like New York State as a whole (*id.* at 137:13-138:6 [Trende testifying that New York is “a solidly Democratic state” and that “Republicans are certainly better able to capture countywide offices [in Nassau] than statewide offices [across New York]”]).

270. Because the gerrymandering index is an aggregate metric, it is not well-suited to detecting the kind of partisan gerrymandering in the Enacted Map in several ways.

271. First, as Dr. Trende admits, “the gerrymandering index weights all deviations equally, regardless of the strategic importan[ce] of a ranked district” (DX 180, Trende deposition tr at 98:15-17). Thus, “a deviation [from the ensemble mean] in the median district,” such as the strategically paramount ordered district 10 in the Enacted Map, “is weighed the same as in the most democratic or the most republican district” (*id.* at 99:3-13; *see* PX 8, Stern Rebuttal Report at ¶ 15 [“The Gerrymandering Index is an aggregate measurement of how much a plan deviates

from the ensemble average across all 19 districts, regardless of which districts the deviations occur in and what the political consequences are.”]).

272. Second, the gerrymandering index may not be able to identify gerrymandering in specific districts within a map (DX 180, Trende deposition tr at 259:15-260:21).

273. Third, a “map could be drawn to moderately favor a political party” and produce a gerrymandering index score that is not an extreme outlier (DX 180, Trende deposition tr at 118:2-15).

274. Because of these deficiencies, “the Gerrymandering Index is vulnerable to manipulation” (PX 8, Stern Rebuttal Report at ¶ 19). For example, a mapmaker familiar with the metric can “draw[] one or more strategically-unimportant-but-high-variance districts to be very close to the ensemble average,” while drawing a small number of strategically important districts to advantage one party and “engineer an extreme partisan gerrymander that, nevertheless, has only a moderately high Gerrymandering Index” (*id.*).

275. Dr. Stern observed that “[t]his is precisely the case for the [Enacted Map]” (PX 8, Stern Rebuttal Report at ¶ 19). In the ensemble maps, the most Democratic district has the “largest partisan variance” (*id.* at ¶ 16; *see* DX 110, Trende Opening Report at 14). By contrast, “the strategically important swing districts ‘have a much tighter range’” in their partisan variance (PX 8, Stern Rebuttal Report at ¶ 16; DX 110, Trende Opening Report at 14). As a result, there are many maps in the ensemble with high gerrymandering index scores—higher than the Enacted Map—even though those high scores are “due to large-but-strategically-irrelevant deviations in the most Democratic district” (PX 8, Stern Rebuttal Report at ¶ 16). Meanwhile, “the packing-and-cracking deviations” in the Enacted Map’s strategically districts—a pattern that is “rare in the

ensemble”—do not generate as extreme a score on the gerrymandering index, even though those deviations “have much more profound political consequences” (*id.*).

276. Dr. Stern’s analysis using Dr. Trende’s gerrymandering index shows the partisan bias in the Enacted Map clearly. To determine how Dr. Trende’s analysis is affected by the most Democratic district, which is both strategically unimportant and high variance, Dr. Stern used Dr. Trende’s method to calculate the gerrymandering index for the Enacted Map excluding the most Democratic district (PX 8, Stern Rebuttal Report at ¶ 17). This analysis shows that the remaining 18 districts in the Enacted Map have a gerrymandering index that is higher than 95% of ensemble maps (*id.*, Table 2). For example, with respect to the composite of even-year elections, the gerrymandering index of the Enacted Map’s 18 districts is higher than 96.93% of ensemble maps (*id.*). And with respect to the composite of odd-year elections, the gerrymandering index of the Enacted Map’s 18 districts is *higher than 98.39% of ensemble maps* (*id.*). Thus, Dr. Stern observes, the Enacted Map “is revealed to be partisan outlier with respect to the Gerrymandering Index in the remaining 18 districts” (*id.* at ¶ 17).

b. Other measures of partisan fairness

277. Dr. Trende also analyzed the Enacted Map under four other “partisan fairness metrics” (DX 111, Trende Rebuttal Report at 7-9, 39-47). He did so relative to map ensembles consisting of maps generated using combined even-year elections, individual odd-year election cycles, and combined odd-year elections (*id.* at 43-44, Figure 19 at 44).

278. On his tables of partisan fairness measures, when Dr. Trende refers to a measurement as being “within bounds,” that indicates only his finding that the Enacted Map’s pro-Republican bias is not more extreme than 97.5% of simulated maps in the Ensemble (DX 180, Trende deposition tr at 159:9-13). On those tables, a map in the lowest 2.5% quantile would be an

extreme pro-Democratic gerrymander—an unlikely prospect for an Enacted Map that received the vote of every Republican legislator and opposed by every Democratic legislator.

279. On Dr. Trende’s tables, scores below the mean indicate that a map is “more favorable to Republicans on this particular measure than the average politics blind map” and a negative score indicates that a map favors Republicans (DX 180, Trende deposition tr at 162:17-163:21).

280. Dr. Trende’s partisan fairness analyses reveal the Enacted Map to have a strong pro-Republican bias on two measures—Mean-Median and Partisan Bias.

281. For every set of elections and compared to every ensemble that Dr. Trende reports, the mean-median score for the Enacted Map is substantially more pro-Republican than the average ensemble plan (*see* DX 111, Trende Rebuttal Report at 40, 42, 44, 46).

282. In this case, Dr. Trende generated an ensemble of 500,000 simulated maps “in the interest of putting . . . to rest” criticism from the *Harkenrider* litigation that his ensemble approach did not include enough simulations (DX 110, Trende Opening Report at 23-24).

283. Looking at the partisan fairness scores that he generated by comparing the Enacted Map to his ensemble of 500,000 maps, Dr. Trende found that the Enacted Map’s mean-median score has a more extreme pro-Republican bias than at least 97.5% of all 500,000 ensemble maps when compared to 2017 elections, 2021 elections, and the index of odd-year elections from 2017 through 2021 (DX 111, Trende Rebuttal Report, Figure 20 at 46).

284. The “Partisan Bias 50%” scores that Dr. Trende calculates for the Enacted Map also show a strong pro-Republican effect. The Partisan Bias 50% metric examines “whether [a] map affects the ability of a party to translate votes into seats” (DX 180, Trende deposition tr at 160:9-161:1). Thus, the Partisan Bias 50% metric “looks at whether a map yields more seats to one party

or another in a hypothetical 50/50 election” (*id.*). If the Partisan Bias score for the Enacted Map is below the mean score for a map ensemble, that indicates “the [Enacted] map is more favorable to republicans . . . than the average politics blind map” (*id.* at 163:1-21).

285. For every set of elections and compared to every ensemble that Dr. Trende reports, the Partisan Bias 50% score for the Enacted Map is substantially more pro-Republican than the average plan (*see* DX 111, Trende Rebuttal Report at 40, 42, 44, 46).

286. Looking again at Dr. Trende’s ensemble of 500,000 simulated maps, the Partisan Bias 50% score of the Enacted Map is comparable to or more extreme than the score of simulations that exhibit more pro-Republican bias than 97.5% of all 500,000 ensemble maps when using data from 2017 elections, 2019 elections, 2021 elections, or Dr. Trende’s index of even-year elections (DX 111, Trende Rebuttal Report at 46).

287. Dr. Trende recognizes that even extreme partisan gerrymanders may look good some measures of partisan fairness, for example, applying the mean-median metric to the *Harkenrider* maps (DX 111, Trende Rebuttal Report at 61-62).

288. That the Enacted Map consistently exhibits extreme pro-Republican bias on two partisan fairness measures that Dr. Trende calculated supports a finding that the Enacted Map has partisan effects.

289. Overall, the Court should find that the weight of evidence shows the Enacted Map has discriminatory effects that favor Republicans. The evidence establishes a consistent and extreme pattern of cracking Democratic voters in the strategically important median district and adjacent ordered districts while packing Democratic voters into safely Democratic seats and reducing competition in those areas.

290. This pattern of packing and cracking is so significant and consistent across all elections analyzed that the Court should find that the Enacted Map was drawn with the intent to favor Republicans and disfavor Democrats and discourage competition.

C. The Enacted Map Achieves Impermissible Partisan Ends and Dilutes Minority Voting Strength by Violating Traditional and Statutory Redistricting Criteria.

291. Plaintiffs called Dr. Jonathan Cervas to testify as to whether the Enacted Map complies with the redistricting criteria for county legislatures set forth in Section 34 of the MHRL (PX 2, Cervas Opening Report at ¶ 1). Dr. Cervas also testified to whether the Enacted Map impairs the electoral opportunities of minority-preferred candidates compared to the non-dilutive Cervas Illustrative Plan (*id.* at ¶¶ 1-2). Dr. Cervas further testified that the Cervas Illustrative Plan can provide a viable remedy for both the racial vote dilution in violation of the NYVRA and the MHRL violation that Plaintiffs allege (*id.*).

292. Section 34 [4] of the MHRL sets forth redistricting criteria for county legislatures. It provides that redistricting plans for county legislatures “shall be subject to federal and state constitutional requirements and shall comply with the following standards, which shall have priority in the order herein set forth, to the extent applicable.” (MHRL § 34 [4]). Those standards in the statutory order of priority are:

- Compliance with “one person, one vote” standard. “[D]istricts shall be as nearly equal in population as is practicable; the difference in population between the most and least populous district shall not exceed five percent of the mean population of all districts.” (*Id.* § 34 [4] [a]).
- Compliance with protections against abridgment or retrogression of racial minority voting strength. “Districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or to diminish their ability to elect representatives of their choice.” (*Id.* at § 34 [4] [b]). This provision incorporates the protections of the federal VRA and the NYVRA, as well as state and federal constitutional protections for minority voting rights and against racial discrimination. (PX 2, Cervas Opening Report at ¶¶ 40-41)
- Contiguity. “Districts shall consist of contiguous territory.” (MHRL § 34 [4] [c]).

- Compactness. “Districts shall be as compact in form as practicable.” (*Id.* § 34 [4] [d]).
- Prohibition on discouraging competition or intentional favoring of parties, candidates or incumbents. “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.” (*Id.* § 34 [4] [e]).
- Requirement to consider maintenance of existing district cores, preexisting political subdivisions, and communities of interest. “The maintenance of cores of existing districts, of pre-existing political subdivisions including cities, villages, and towns, and of communities of interest shall also be considered.” (*Id.*).
- Prohibition on unnecessarily dividing incorporated municipalities with populations under 40 percent of an ideal district. “To the extent practicable, no villages, cities or towns except those having more than forty percent of a full ratio for each district shall be divided.” (*Id.*).
- Promoting orderly election administration. “Districts shall be formed so as to promote the orderly and efficient administration of elections.” (*Id.* § 34 [4] [f]).

293. Dr. Cervas explained that these statutory criteria largely reflect a set of what are commonly known as “traditional redistricting principles.” (PX 2, Cervas Opening Report at ¶ 12).

294. Because the concept of vote dilution implies the existence of undiluted practice against which the fact of dilution may be measured, plaintiffs in vote dilution cases challenging redistricting plans will often provide an illustrative map to serve as a benchmark, undiluted practice against which the challenged plan can be measured (*see e.g. Pico Neighborhood Assn. v City of Santa Monica*, 15 Cal 5th 292, 315 [2023], *as mod* [Sept. 20, 2023], citing *Reno v Bossier Parish Sch. Bd.*, 520 US 471, 480 [1997]).

295. As part of his inquiry into the Enacted Map’s adherence to the MHRL criteria, Dr. Cervas drew an alternative legislative district map, the Cervas Illustrative Plan (PX 2, Cervas Opening Report at ¶ 7). Dr. Cervas reported that he approached the task of drawing the Cervas Illustrative Plan “as if [he] were aiding a court in the development of a remedial map, ensuring compliance with both state and federal laws relevant to local redistricting in New York.” (*Id.*).

296. Dr. Cervas formed his opinions and constructed the Cervas Illustrative Plan using publicly available data including the 2023 Enacted Map; the 2013 redistricting plan for the Legislature; redistricting population data from the United States Census Bureau and prison-adjusted data from the New York State Legislative Task Force on Demographic Research and Reapportionment (LATFOR); and data on the citizen voting age population of Nassau County from the Census Bureau’s American Community Survey (PX 2, Cervas Opening Report at ¶¶ 9, 13). Dr. Cervas also compared the performance of districts in the Cervas Illustrative Plan to districts in the Enacted Map by using data on the eight electoral contests for Nassau County Executive, Clerk, Comptroller, and District Attorney held between 2017 and 2021 (*see id.* at ¶¶ 9, 13, 63-66).

297. To draw the Cervas Illustrative Plan, Dr. Cervas used an application called “Dave’s Redistricting,” a free, publicly available resource for analyzing and creating redistricting plans (PX 2, Cervas Opening Report at ¶ 14). As special master in *Harkenrider v Hochul*, Dr. Cervas used Dave’s Redistricting to create the remedial maps for the New York State Congressional delegation and the State Senate (*id.*).

298. Dr. Cervas used traditional redistricting criteria and standard good-government criteria in constructing the Cervas Illustrative Plan (PX 2, Cervas Opening Report at ¶¶ 2(c), 34). Dr. Cervas reported that he employed the same approach in drawing the districts in the Cervas Illustrative Plan that Dr. Trende and Dr. Bernard Grofman employed when they drew redistricting plans for the Virginia congressional delegation and state legislature in 2021 (PX 72, Cervas Reply Report at ¶ 40, citing PX 130, Dec. 27, 2021 Memorandum).

299. In a December 27, 2021 Memorandum to the Supreme Court of Virginia describing the proposed maps they drew, Dr. Trende and Dr. Grofman wrote that they “began by drawing

districts that comply with traditional good government districting criteria (contiguity, minimizing splits in counties and cities, and where feasible in census designated places, compactness, etc.) and considered race only after we had drawn a map fully subject to the constraints of those traditional factors” (PX 72, Cervas Reply Report at ¶ 40, citing PX 130, Dec. 27, 2021 Memorandum at 5). Dr. Trende and Dr. Grofman further noted that “this strategy of placing good government criteria as first priority was accepted by the federal courts in *Personhuballah* and *Golden Bethune-Hill* as an appropriate way to avoid *Shaw v Reno* issues,” that is, racial gerrymandering issues (PX 130, Dec. 27, 2021 Memorandum at 9 n 1).

300. The Cervas Illustrative Plan reflects this approach, in contrast to the Enacted Map. As Dr. Cervas’s reports show, the Cervas Illustrative Plan meets or exceeds the performance of the Enacted Map on every redistricting criterion the MHRL sets forth (PX 2, Cervas Opening Report at ¶¶ 2(c), 31-128, 134; PX 72, Cervas Reply Report at ¶ 9). Dr. Cervas also demonstrated that the Cervas Illustrative Plan’s adherence to the good-government criteria set forth in the MHRL is evident by comparing the Cervas Illustrative Plan to the ensemble of 500,000 race-blind, partisan-blind maps that Dr. Trende generated in this case (PX 72, Cervas Reply Report at ¶ 7).

1. Equipopulation

301. Although both the Enacted Map and Cervas Illustrative Plan are within a five percent population deviation from the mean district, the overall deviation for the Cervas Illustrative Plan is 2.48%, compared to 2.99% for the Enacted Map (PX 2, Cervas Opening Report at ¶¶ 38-39). Measured against Dr. Trende’s ensemble of 500,000 simulated maps, the Cervas Illustrative Plan has a smaller population deviation than 97.9% (over 489,000) of the simulated plans (PX 72, Cervas Reply Report at ¶ 45).

2. Non-dilution of minority voting strength

302. The Enacted Map has four majority-minority districts by CVAP: Enacted Districts 1, 2, 3, and 6 (PX 2, Cervas Opening Report at ¶ 49).

a. The Enacted Map fails to account for population growth in Nassau County's communities of color.

303. The four majority-minority districts in the Enacted Map is the same number of majority-minority districts as in the 2013 Redistricting Plan, even though the minority population and minority share of the population in the County has increased substantially in the intervening decade, and even though minority voters are over-concentrated in the existing majority-minority districts (PX 6, Oskooii Rebuttal Report at ¶ 124; PX 2, Cervas Opening Report at ¶ 129).

304. Dr. Cervas observed that the number of districts in the Enacted Map in which minority voters have the opportunity to elect their candidates of choice is inconsistent with the significant population and demographic shifts that occurred between the 2010 and 2020 redistricting cycles (PX 2, Cervas Opening Report at ¶¶ 2(a)-(b), 17-24).

305. Nassau County's population growth between the 2010 and 2020 Census is entirely attributable to population increases among racial minority groups, including Hispanic, Asian, and Black residents (PX 2, Cervas Opening Report at ¶¶ 2(a), 21, Table 1). Over that decade, the minority population increased by 153,936 persons (*id.* at ¶ 2(a)). Conversely, the white population decreased by 97,893 persons (*id.* at Table 1).

306. As of 2020, the non-Hispanic white population constitutes 64.1% of the Nassau County CVAP (PX 2, Cervas Opening Report at ¶ 24, Table 2). The total minority population constitutes 35.9%—more than one-third—of the Nassau County CVAP and over 40% of the County's total VAP (*id.*). The Hispanic population constitutes 13.0% of the County CVAP (*id.*).

The Black population constitutes 12.4% of the County CVAP (*id.*). The Asian population constitutes 10.0% of the County CVAP (*id.*).

307. Dr. Cervas reported that the stagnation in the number of majority-minority districts in the Enacted Map “is not due to poor political geography or insufficient legal protections but rather stems directly from the choices made by the governing body when drawing district lines” (PX 2, Cervas Opening Report at ¶ 2(b)).

- b. The Enacted Map unnecessarily divides villages with large populations of color to create oddly shaped districts.

308. New York law and traditional districting principles disfavor splitting political subdivisions, and Dr. Cervas observed that no villages in Nassau County are so large that they must be divided between multiple legislative districts (PX 2, Cervas Opening Report at ¶¶ 28, 114-115). However, the Enacted Map divides three incorporated villages in Nassau County—Hempstead, Freeport, Valley Stream—each of which “ha[s] a greater percentage of minority residents than every other village in Nassau County” except the small village of South Floral Park, which has fewer than 2,000 residents (*id.* at ¶ 115).

309. The gratuitous splitting of these predominantly minority villages is among the characteristics that Dr. Cervas pointed to in finding that the Enacted Map deviates from traditional districting principles and impairs the electoral opportunities of voters of color in Nassau County by “cracking” and “packing” them (PX 2, Cervas Opening Report at ¶ 48).

310. Dr. Cervas reported that the Village of Hempstead was unnecessarily divided between Enacted Districts 1 and 2 (PX 2, Cervas Opening Report at ¶¶ 50-51). The result is that Enacted District 1 has an oddly configured dumbbell shape that gratuitously divides the Census Designated Place (“CDP”) of South Hempstead (*id.*). The shape of Enacted District 1 has the effect of cutting off the Lakeview CDP from being included in a majority-minority district (*id.* at ¶ 50).

At the same time, the other portion of the Village of Hempstead, which contains several precincts with populations that are over 90% Black and Latino, is added to the heavily packed Enacted District 2, which has a minority CVAP of over 75 percent (*id.* at ¶ 51).

311. Dr. Cervas reported that the Enacted Map also divides the Village of Valley Stream into three legislative districts, putting much of the village’s heavily minority population into the already-packed Enacted District 3, while cracking other parts of the village into majority-white Enacted Districts 7 and 14 (PX 2, Cervas Opening Report at ¶ 74). Enacted District 3 unnecessarily divides not only the Village of Valley Stream, but also the Elmont CDP, North Valley Stream CDP, and South Valley Stream CDP (*id.* at ¶ 52). These unnecessary divisions are all the more conspicuous because of how heavily packed Enacted District 3 is: Black, Latino, and Asian voters make up 81.7% of the district’s CVAP (*id.*).

312. Dr. Cervas reported that the Enacted Map further divides the Village of Freeport between Enacted Districts 5 and 6 (PX 2, Cervas Opening Report at ¶ 53). Enacted District 5 cracks communities of color by dividing the Village of Freeport and pairing much of that village’s Black and Latino population with a heavily white community across an obvious line of residential segregation—the Meadowbrook Parkway (*id.* at ¶ 78; PX 3, Sugrue Report at ¶ 107). At the same time, Enacted District 6 is an oddly shaped district that unnecessarily divides not only Freeport, but also several CDPs (PX 2, Cervas Opening Report at ¶ 53).

313. The Enacted Map also divides the Greater New Hyde Park area, with its large and growing Asian population, into three separate legislative districts—Enacted Districts 9, 10, and 18 (PX 2, Cervas Opening Report at ¶ 84). The Enacted Map places the Village of New Hyde Park in Enacted District 9, separating it from the North New Hyde Park CDP and other neighboring villages and CDPs with substantial Asian populations in the Town of North Hempstead (*id.* at ¶

87). The Enacted Map places the Village of New Hyde Park in Enacted Districts 9 and 18, which score poorly on measures of compactness (*id.* at ¶ 100, Table 11). Enacted District 18 is particularly oddly shaped—primarily anchored in Nassau County’s northeast corner but with a long, skinny tail zig-zagging across nearly the entire width of the County (*id.* at ¶ 89). The effect of these oddly configured districts is that Asian residents do not exceed 23% of the CVAP in any of Enacted Districts 9, 10, or 18 (*id.* at ¶ 84, Table 9).

314. The *NYCC* Plaintiffs’ expert Dr. Stern interrogated the question of whether the Enacted Map cracked and packed communities of color in Nassau County from a different angle. Dr. Stern analyzed the racial demographics of the districts in the Enacted Map compared to his race-blind, partisan-blind ensemble (PX 4, Stern Opening Report at ¶ 7).

315. As he did in his partisanship analysis, Dr. Stern numbered each of the 19 districts in each ensemble plan in the order of its minority CVAP proportion from lowest to highest. Dr. Stern’s analysis shows that “[m]inority CVAP is more cracked in ordered districts 14 and 15 of the Adopted Plan than in 92.4% and 96.9% of ensemble plans, respectively” and that “[m]inority CVAP is more packed in ordered district 16 of the Adopted Plan than in 94.9% of ensemble plans.” (PX 4, Stern Opening Report at ¶ 35).

316. Looking at CVAP to measure the racial and ethnic compositions of districts in the adopted plans and ensemble plans makes sense because the effectiveness of districts in terms of minority electoral opportunities is typically measured in CVAP, and especially so in areas with significant non-citizen populations (*see e.g.* PX 1, Oskooii Opening Report at ¶ 34). In fact, Nassau County’s official summary of the Enacted Map’s demographics reports only adjusted population and CVAP (PX 73, Compactness and Demographics of Enacted Map).

317. In any event, using CVAP or VAP as a measurement both show that the mapmakers cracked and packed minority residents of Nassau County into legislative districts. As shown by Dr. Stern, “[m]inority VAP is more cracked in ordered districts 13, 14, and 15 of the Adopted Plan than in 90.0%, 89.3%, and 87.3% of ensemble plans, respectively” and “[m]inority VAP is more packed in ordered district 16 than in 95.7% of ensemble plans.” (PX 12, Stern Reply Report at ¶ 37).

318. This sharp jump from cracking to packing makes the Enacted Map an outlier with respect to the ensemble. Dr. Stern’s “plot shows that, in the ensemble plans, average minority CVAP proportion increases gradually from around 40% in ordered district 13 to around 60% in ordered district 17, with substantial minority opportunity in the districts in between. By contrast, the Adopted Plan has a huge gap in minority CVAP proportion, which jumps abruptly from just above 40% in the cracked ordered district 15, all the way up to 60% in the packed ordered district 16.” (PX 4, Stern Opening Report at ¶ 35, Figure 5 at p. 18 [displayed below]).

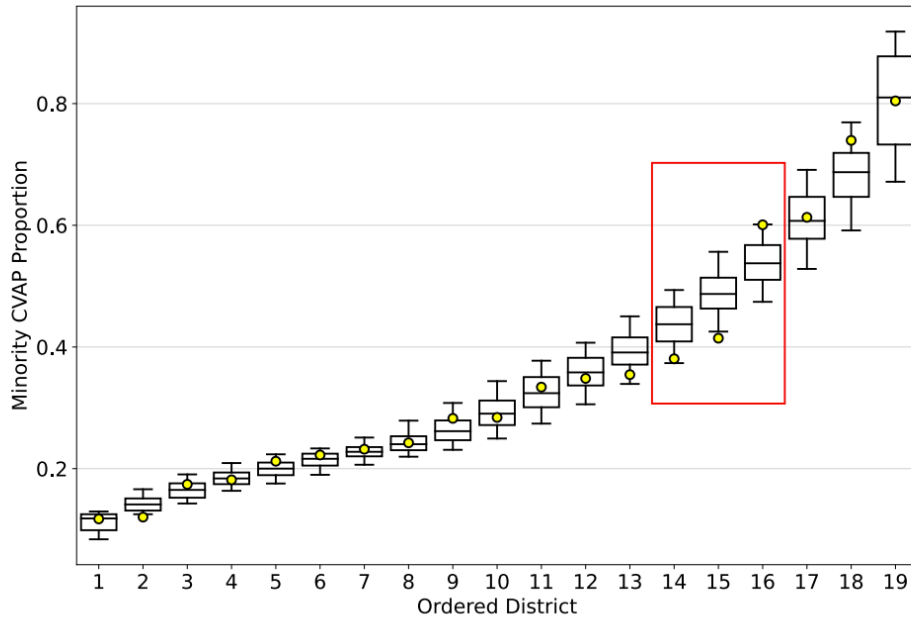


Figure 5: Minority CVAP proportion by ordered district. As in the previous boxplots, the boxes show the distribution of ensemble plan values in each ordered district, and the yellow dots show the Adopted Plan values.

319. The enacted map is also an outlier in terms of the gap in minority CVAP proportion between ordered districts 15 and 16. As calculated by Dr. Stern, “[t]his gap, created by the combination of cracking in ordered district 15 and packing in ordered district 16, is larger in the Adopted Plan than 99.23% of ensemble plans.” (PX 12, Stern Reply Report, Figure 7 at p. 24). The same is true when measuring this gap using VAP. Dr. Stern found that “[w]hereas the median ensemble plan has a gap [in minority VAP proportion between ordered districts 15 and 16] of only 3.32%, the Adopted Plan has a gap of 14.88% due to the combined effects of cracking and packing in these two districts. This gap is larger in the Adopted Plan than it is in 98.25% of ensemble plans, making it a significant outlier.” (*Id.* at ¶ 41).

320. As Dr. Stern summarized: “For both VAP and CVAP, the abrupt shift from cracking to packing occurs at the exact same point: between ordered districts 15 and 16. This suppresses minority opportunity outside the 4 highest-minority-proportion districts by creating a

much larger gap in minority proportion than seen in the typical ensemble plan.” (PX 12, Stern Reply Report at ¶ 37).

- c. The Cervas Illustrative Plan provides six reasonably configured majority-minority districts by adhering to traditional districting principles.

321. As discussed above, Dr. Cervas drew the Cervas Illustrative Plan by prioritizing good-government criteria, such as maintaining political subdivisions to the greatest extent feasible.

322. The Cervas Illustrative Plan draws six majority-minority districts by CVAP: Illustrative Districts 1, 2, 3, 5, 6, and 7 (PX 2, Cervas Opening Report at ¶ 55).

323. All the six majority-minority districts in the Cervas Illustrative Plan are reasonably configured and score higher on compactness measures than the least compact districts in the Enacted Map (PX 2, Cervas Opening Report at ¶ 48, Table 5; ¶ 100, Table 11; ¶ 101, Table 12).

324. Illustrative Districts 1, 3, and 5, which are each majority-minority districts, are among the most compact in the Cervas Illustrative Plan (PX 2, Cervas Opening Report at ¶ 100, Table 11).

325. The Greater New Hyde Park District (Illustrative District 10), which prevents the gratuitous cracking of the Asian community in the New Hyde Park area, has compactness scores higher than most districts in the Cervas Illustrative Plan and higher than nearly every district in the Enacted Map (PX 2, Cervas Opening Report at ¶ 100, Table 11; ¶ 101, Table 12).

326. The Cervas Illustrative Plan’s six majority-minority districts also better comply with traditional redistricting principles than those in the Enacted Map (PX 2, Cervas Opening Report at ¶ 48).

327. Illustrative District 1 includes the entire Village of Hempstead and part of West Hempstead CDP (PX 2, Cervas Opening Report at ¶ 56). District 1 has a 79.8% minority CVAP, which can be attributed to keeping whole the Village of Hempstead, which has a total population

that is approximately 95% people of color (*id.*). Keeping the Village of Hempstead whole within District 1 is consistent with traditional districting principles and Section 34's consideration of political subdivisions and communities of interest (*id.*).

328. Illustrative District 2 includes the Village of Westbury, New Cassell CDP, part of Uniondale CDP, and part of Hicksville CDP (PX 232, Cervas Illustrative Plan; PX 2, Cervas Opening Report at ¶ 57). This district has a 65.2% minority CVAP (PX 2, Cervas Opening Report at ¶ 57). Unlike Enacted District 2, which splits the Village of Hempstead, Illustrative District 2 avoids splitting any incorporated villages, only splitting CDPs as necessary for population equality (PX 232, Cervas Illustrative Plan; PX 2, Cervas Opening Report at ¶¶ 51, 57). Moreover, Illustrative District 2 is less racially packed than the geographically corresponding district in the 2023 Redistricting Plan, which has 75.2% minority CVAP (*id.*).

329. Illustrative District 3 includes the villages of Floral Park, South Floral Park, and Bellerose, Elmont CDP, and parts of Franklin Square and North Valley Stream CDP. This district has a minority CVAP of 69.3% and is highly compact (PX 2, Cervas Opening Report at ¶ 58). Unlike Enacted District 3, Illustrative District 3 avoids splitting either the incorporated Village of Valley Stream or the Elmont or South Valley Stream CDPs (*id.* at ¶¶ 52, 58). And unlike Enacted District 3, which has a minority CVAP of 81.7%, Illustrative District 3 avoids gratuitously packing voters of color (*id.* at ¶¶ 52, 58).

330. Illustrative District 5 includes the entire village of Freeport and parts of the Baldwin and Oceanside CDPs (PX 2, Cervas Opening Report at ¶ 59). District 5 has a minority CVAP of 64.1%. This District is highly compact and avoids the Enacted Map's unnecessary division of the incorporated Village of Freeport (*id.* at ¶¶ 53, 59).

331. Illustrative District 6 includes the village of Rockville Centre, Roosevelt and Lakeview CDPs, and parts of Baldwin and Uniondale CDPs (PX 2, Cervas Opening Report at ¶ 60). District 6 is 61.1% minority CVAP, compact, and splits no villages (*id.*).

332. Illustrative District 7 includes the entire village of Valley Stream, the South Valley Stream and Inwood CDPs, and part of Woodmere CDP (PX 2, Cervas Opening Report at ¶ 61). Illustrative District 7 has a minority CVAP of 61.8% (*id.*). The shape of Illustrative District 7 is reasonably configured and is largely based on the southern portions of District 3 in the 2013 Redistricting Plan (*id.*). Illustrative District 7’s compactness scores are higher than the least compact districts in the Enacted Map, even though the district’s western boundary follows Nassau County’s border with Queens (*id.* at ¶ 100, Table 11; ¶ 101, Table 12). Unlike the Enacted Map, which divides the Village of Valley Stream into three separate legislative districts, Illustrative District 7 avoids splitting the Village of Valley Stream at all (*id.* at ¶ 61).

d. Performance testing shows that the Enacted Map impairs minority political opportunity compared to the Cervas Illustrative Plan.

333. After drawing the Cervas Illustrative Plan, Dr. Cervas conducted an electoral performance analysis to assess whether and to what extent the Enacted Map impairs Black, Latino, and Asian voters’ ability to elect their candidates of choice or influence the outcome of elections (PX 2, Cervas Opening Report at ¶ 63).

334. Courts in racial vote dilution cases involving redistricting plans use performance analysis—sometimes called “reconstituted” or “recompiled” elections analysis—to determine whether an enacted plan reduces minority electoral opportunities compared to a plaintiff’s illustrative plan (*see Nairne v Ardoin*, 715 F Supp 3d 808, 862-865 [MD La 2024]; *Alpha Phi Alpha Fraternity Inc. v Raffensperger*, 587 F Supp 3d 1222, 1314 [ND Ga 2022]; *see also Rodriguez v Bexar County, Texas*, 385 F3d 853, 861 [5th Cir 2004]).

335. A performance analysis reconstructs previous election results to evaluate the success of different candidates under an adopted map compared to an illustrative map. This analysis does not rely on estimation methods. Instead, it identifies the voting precincts within the adopted and/or illustrative districts of interest and aggregates the votes cast for each candidate in each district. The total votes for each candidate are then divided by the total votes cast in the election for that district to calculate vote percentages (PX 2, Cervas Opening Report at ¶ 64; PX 6, Oskooii Rebuttal Report at ¶ 123).

336. Performance analyses often focus on the districts in a specific area of a redistricting plan—typically where plaintiffs allege additional ability-to-elect districts should have been drawn but were not (*see Nairne*, 715 F Supp 3d at 862-865; *Alpha Phi Alpha Fraternity Inc.*, 587 F Supp 3d at 1314; *see also Rodriguez*, 385 F3d at 861).

337. Dr. Cervas conducted an analysis comparing the performance of the Cervas Illustrative Plan to the Enacted Map in those districts where the Cervas Illustrative Plan shows that the Legislature could have drawn additional ability-to-elect districts but did not (PX 2, Cervas Opening Report at ¶¶ 68-81). These are districts in which minority-preferred candidates would have been elected in most or all of the elections in the sample (*id.*).

338. Dr. Cervas's electoral performance analysis focuses on whether and to what extent the preferred candidates of minority voters in recent county-wide elections would have prevailed over the preferred candidates of white voters in contests where voting is racially polarized (PX 2, Cervas Opening Report at ¶ 65).

339. Dr. Cervas focused his performance testing on electoral contests where voting was racially polarized because those elections are more informative of whether that district will enable

voters of color to elect their candidates of choice when voting is racially polarized (PX 2, Cervas Opening Report at ¶ 66; PX 72, Cervas Reply Report at ¶ 35).

340. By looking at the difference in how the preferred candidates of minority voters would have performed in the areas of interest under the Enacted Map compared to under the Cervas Illustrative Map, the net change in success rates can provide information about the extent to which the Enacted Map impairs the ability of minority voters to elect their candidates of choice or influence the outcome of elections (PX 2, Cervas Opening Report at ¶ 65).

341. To conduct a comparative performance analysis of the Cervas Illustrative Plan and the Enacted Plan, Dr. Cervas used election results from all seven contests for Nassau County office in the 2017 and 2021 elections (PX 2, Cervas Opening Report at ¶¶ 66-67, Table 6). Dr. Cervas also used information about which candidates were preferred by White, Black, Latino, and Asian voters based on an analysis of racial voting patterns conducted by another of Plaintiffs' experts, Dr. Kassra Oskooii (*see infra* Section VI.B.-C.).

342. Dr. Cervas used data from elections for Nassau County office conducted in odd-numbered years because they are held in the same years and on the same ballot as elections for the Nassau County Legislature (PX 72, Cervas Reply Report at ¶ 66).

343. Although Dr. Oskooii did not conclude that voting in the 2019 District Attorney contest was racially polarized, Dr. Cervas also considered the results of the 2019 District Attorney contest in his performance analysis because one of Defendants' experts, Dr. Brad Lockerbie, reported that voting was racially polarized in the 2019 District Attorney contest (PX 72, Cervas Reply Report at ¶¶ 35-38). Dr. Cervas concluded that even this election also supported the conclusion that the Enacted Plan impairs minority voting strength (*id.* at ¶ 38).

344. Dr. Cervas first found that the Cervas Illustrative Plan and the Enacted Plan each provide four majority-minority districts that perform 100% of the time (7 out of 7 contests) for the preferred candidates of minority voters—that is, the minority-preferred candidates prevail in every contest. These districts are numbered 1, 2, 3, and 6 in both the 2023 Redistricting Plan and the Cervas Illustrative Map (PX 2, Cervas Opening Report at ¶ 68; PX 72, Cervas Reply Report at ¶¶ 37-38).

345. Dr. Cervas compared the electoral performance of the areas with additional majority-minority districts in the Cervas Illustrative Plan to their geographic counterparts in the Enacted Map—Illustrative District 7 in the greater Valley Stream area and Illustrative District 5 in the greater Freeport area (PX 2, Cervas Opening Report at ¶¶ 69-81; PX 72, Cervas Reply Report at ¶¶ 37-38).

i. Greater Valley Stream area

346. Dr. Cervas’s analysis demonstrates that the Enacted Map reduces the ability of minority voters to elect their candidate of choice by failing to create a new majority-minority district in the Valley Stream area.

347. In the Enacted Map, the Village of Valley Stream is split between Enacted Districts 3, 7, and 14 (PX 2, Cervas Opening Report at ¶ 71). Enacted District 3 is a heavily packed majority-minority district (75.2% minority CVAP); however, Enacted Districts 7 and 14 are majority-white districts (65.2% and 61.5% NH-White CVAP, respectively) (PX 2, Cervas Opening Report at ¶ 71).

348. In the Cervas Illustrative Plan, both Illustrative Districts 3 and 7 are majority-minority districts (69.3% and 61.8% minority CVAP, respectively) and District 14 is a majority-white district (77.9% NH-White CVAP) (PX 2, Cervas Opening Report at ¶ 71).

349. In the Enacted Map, the heavily packed Enacted District 3 performs 100% of the time for minority-preferred candidates; however, Dr. Cervas found that no minority-preferred candidate has won Enacted District 7 since 2017 and the only minority-preferred candidate to win Enacted District 14 was the incumbent District Attorney in 2019 (PX 2, Cervas Opening Report at ¶¶ 73, 79, Table 7; PX 72, Cervas Reply Report at ¶ 38).

350. By comparison, the Cervas Illustrative Plan creates a new majority-minority district in Illustrative District 7 that performs 75% percent of the time (6 out of 8) for minority-preferred candidates without any loss in performance in the adjacent majority-minority district in Illustrative District 3, which continues to perform 100% of the time (8 out of 8), and the minority preferred candidate never prevails in Illustrative District 14 (0 out of 8) (PX 2, Cervas Opening Report at ¶¶ 73, 79, Table 7; PX 72, Cervas Reply Report at ¶ 38).

ii. Greater Freeport area

351. Dr. Cervas's performance testing shows that the Enacted Map substantially reduces electoral opportunities for Black, Latino, Asian voters living in the areas where the Cervas Illustrative Plan draws additional majority-minority districts, including the Freeport area (PX 2, Cervas Opening Report at ¶¶ 69-81; PX 72, Cervas Reply Report at ¶¶ 37-38).

352. In the Enacted Map, the Village of Freeport is divided into Enacted Districts 5 and 6. Enacted District 5 is not a majority-minority district, while Enacted District 6 is a majority-minority district (PX 2, Cervas Opening Report at ¶ 75).

353. Illustrative District 5 includes the entire undivided Village of Freeport at its core. In the Cervas Illustrative Plan, Districts 5 and 6 are adjacent majority-minority districts and serve as geographic counterparts to Enacted Districts 5 and 6 (PX 2, Cervas Opening Report at ¶ 75).

354. In the Enacted Map, performance testing over all eight contests between 2017 and 2021 shows that in Enacted District 6, the minority-preferred candidates win 100% of the time;

however, in Enacted District 5, the minority preferred candidates win only 71% of the time (PX 2, Cervas Opening Report at ¶ 77; PX 72, Cervas Reply Report at ¶ 38). And looking at the most recent county-wide contests in 2021, Dr. Cervas found that minority-preferred candidates win only 33% of the time (PX 2, Cervas Opening Report at ¶ 77).

355. By comparison, the Cervas Illustrative Plan creates a second majority-minority district with no loss in performance to the first majority-minority district (PX 2, Cervas Opening Report at ¶ 77). Both Illustrative District 5 and Illustrative District 6 perform 100% of the time (*id.*; PX 72, Cervas Reply Report at ¶ 38).

356. The 38% reduction in performance over all contests and the 67% reduction in performance in the most recent contests in 2021 show that the Enacted Map impairs the electoral opportunities and political influence of communities of color in the greater Freeport area (PX 2, Cervas Opening Report at ¶ 77).

iii. Greater New Hyde Park area

357. Dr. Cervas reported that he was asked by Plaintiffs' counsel to evaluate whether it is possible to draw a district based on traditional redistricting criteria in the Greater New Hyde Park area that does not divide the large and growing Asian community there and keeps together communities of interest in a single district (PX 2, Cervas Opening Report at ¶ 82).

358. The Enacted Map splits precincts with large Asian voter populations between three districts—Enacted Districts 9, 10, and 18—two of which are oddly configured (PX 2, Cervas Opening Report at ¶ 84).

359. In contrast, Illustrative District 10 is a highly compact district built on traditional redistricting principles (PX 2, Cervas Opening Report at ¶¶ 85, 90-91). The compactness of Illustrative District 10 does not come at the expense of other districts in the area; in fact, Illustrative

Districts 9 and 18 are substantially more compact than their counterparts in the Enacted Map (PX 2, Cervas Opening Report at ¶¶ 90-91, Table 10; *see also id.* at ¶ 100, Table 11; ¶ 101, Table 12).

360. Illustrative District 10 has an Asian CVAP of 34.1% and a minority CVAP of 47.0% (PX 2, Cervas Opening Report at ¶ 84, Table 9). In comparison, none of its geographic counterparts in the Enacted Map has an Asian CVAP that exceeds 22.6% or an overall minority CVAP that exceeds 36.6% (*id.*).

361. Dr. Cervas also conducted performance testing on the districts in the Greater New Hyde Park area to evaluate whether the Enacted Map impairs the ability of Asian voters to influence the outcome of elections (PX 2, Cervas Opening Report at ¶¶ 92-97).

362. In conducting his performance testing in the New Hyde Park area, Dr. Cervas reported that the “2021 county elections in Nassau County are the most recent county-wide elections and therefore the most informative to test electoral performance for minority voters” (PX 2, Cervas Opening Report at ¶ 92).

363. Dr. Cervas also reported that he found the 2017 elections less informative because they are more remote in time and because “demographic shifts have taken place during that time in the area,” that is, substantial increases in the area’s Asian citizen voting age population (PX 2, Cervas Opening Report at ¶ 92).

364. Dr. Cervas found that in the four contests during the most recent elections for county office in 2021, the candidate preferred by Asian voters in Enacted Districts 9, 10, and 18 was defeated in every contest in each of the three districts—a performance rate of 0% (PX 2, Cervas Opening Report at ¶ 94).

365. By contrast, under the Cervas Illustrative Plan, the Asian-preferred candidate would have won in District 10 in the County Executive race—a performance rate of 25% (1 out of 4). (PX 2, Cervas Opening Report at ¶ 94).

366. Dr. Cervas observed that Asian-preferred candidates were more successful in Enacted District 10 during the 2017 elections (PX 2, Cervas Opening Report at ¶ 95); however, the sharp reduction in the success of minority-preferred candidates from 2017 to 2021 occurred alongside increased racially polarized voting in the area, including a substantial increase in White bloc voting against minority-preferred candidates (PX 72, Cervas Reply Report at ¶ 57, citing PX 6, Oskooii Rebuttal Report at ¶ 11, 113; *see also* PX 6, Oskooii Rebuttal Report at ¶ 134).

367. Dr. Cervas’s electoral performance testing demonstrates the Enacted Map’s cracking of the Asian community in the Greater New Hyde Park area into three districts dilutes the influence of Asian voters (PX 2, Cervas Opening Report at ¶¶ 82-97).

368. The Cervas Illustrative Plan demonstrates that it is possible to create a district based on traditional redistricting criteria in Greater New Hyde Park that does not deny Asian voters the opportunity to influence electoral outcomes (PX 2, Cervas Opening Report at ¶¶ 84-93).

3. Contiguity

369. Both the Cervas Illustrative Plan and the Enacted Map are contiguous (PX 2, Cervas Opening Report at ¶ 98; PX 72, Cervas Reply Report at ¶ 9[b]).

4. Compactness

370. The Cervas Plan is more compact than the Enacted Map and more compact than nearly every one of Dr. Trende’s 500,000 simulated maps (PX 2, Cervas Opening Report at ¶¶ 100-103; PX 72, Cervas Reply Report at ¶¶ 9[c], 48).

371. Social scientists and mathematicians have introduced various metrics to assess the compactness of electoral districts, essentially evaluating how closely a district’s shape aligns with that of a simple geometric figure, typically a circle (PX 2, Cervas Opening Report at ¶ 99).

372. Two prominent compactness measures are the Reock and Polsby-Popper indices (PX 2, Cervas Opening Report at ¶ 99). The Reock index focuses on the proximity of district boundaries to the geographic center, while the Polsby-Popper index assesses the irregularity of the district’s perimeter (*id.* at ¶ 100). Both indices yield scores ranging from 0 to 1, with scores close to 1 indicating high compactness (*id.* at ¶ 99). Polsby-Popper and Reock scores can be measures for individual districts as well as averaged across an entire plan (*id.* at ¶ 100).

373. Courts routinely use the Reock and Polsby-Popper indices to measure the compactness of redistricting plans (*see e.g. Alpha Phi Alpha Fraternity Inc.*, 587 F Supp 3d at 1258 [referring to the “Reock and Polsby-Popper analyses” as “two commonly used measures of a district’s compactness”]; *Comm. for a Fair and Balanced Map v Illinois State Bd. of Elections*, 835 F Supp 2d 563, 570 [ND Ill 2011] [referring to Reock and Polsby-Popper measures as “two widely acceptable tests to determine compactness scores”]). As special masters in Virginia, Dr. Trende and Dr. Grofman reported to the Virginia Supreme Court only the Polsby-Popper and Reock compactness scores for their proposed redistricting plans, citing them as “two commonly used measures of spatial compactness.” (PX 130, Dec. 27, 2021 Memorandum at 30).

374. The Cervas Illustrative Plan is more compact than the Enacted Map both at the individual district level and averaged across the entire plan (PX 2, Cervas Opening Report at ¶¶ 100-102). Every district in the Cervas Illustrative Plan is more compact than the least compact district in the Enacted Map (*id.* at ¶ 102). 15 of the 19 districts in the Cervas Illustrative Plan have a higher Polsby-Popper score than the average Polsby-Popper score for the Enacted Map (*id.*).

375. The Cervas Illustrative Plan is also more compact than virtually every one of the 500,000 simulated maps in Dr. Trende’s ensemble—only 0.00242% of simulated maps in Dr. Trende’s ensemble have a higher average Polsby-Popper compactness score than the Cervas Illustrative Plan (PX 2, Cervas Opening Report at ¶¶ 100-103; PX 72, Cervas Reply Report at ¶¶ 9 [c], 48).

376. Compared to the subset of 58,888 plans in Dr. Trende’s ensemble that, like the Cervas Illustrative Plan, have at least 6 majority-minority districts by citizen voting age population, none have a higher average Polsby-Popper score than the Cervas Illustrative Plan (PX 72, Cervas Reply Report at ¶ 48).

5. Prohibition on favoring parties or incumbents or discouraging competition

377. Dr. Cervas drew the Cervas Illustrative Plan without reference to partisan data or information on incumbents’ residential addresses (PX 2, Cervas Opening Report at ¶ 104) and Defendants’ experts, Dr. Lockerbie, Dr. Trende, and Mr. Alfano, do not dispute that the Cervas Illustrative Plan neither favors nor disfavors any political party or incumbent and does not discourage competition (PX 72, Cervas Reply Report at ¶ 9[d]-[e]). By contrast, as discussed above, the Enacted Map is an outlier in favoring Republican control of the Legislature when compared to each of several sets of simulated maps (*see supra* Section V.A.2-B). When compared to Dr. Trende’s dotplots showing the partisan vote share for each district, the Cervas Illustrative Plan yields results that are generally consistent with the mean of the set of partisan-blind, race-blind maps (PX 72, Cervas Reply Report at ¶ 52).

378. For example, using the results of the 2017 County Executive contests, the Cervas Illustrative Plan yields 10 districts in which the Democratic candidate won (out of 19 total districts) (PX 72, Cervas Reply Report at ¶ 63). This result is consistent with Dr. Trende’s party-blind ensemble, in which most maps yield at least 10 Democratic districts (*id.* at ¶ 63; DX 111, Trende

Rebuttal Report at 91, Figure 57 at 91). In contrast, the Enacted Plan yielded only 9 Democratic districts (PX 72, Cervas Reply Report at ¶ 63).

379. For another example, in the 2021 County Executive race, the Cervas Illustrative Plan produced 11 Democratic districts (PX 72, Cervas Reply Report at ¶ 64). This result is not an outlier, as 30.5% of ensemble maps also produced 11 Democratic districts, and a majority of simulated plans yielded at least 10 Democratic districts (*id.*). In contrast, the Enacted Plan yielded only 8 seats for Democrats, lower than 91.3% of the simulated maps in Dr. Trende’s ensemble (*id.*; DX 111, Trende Rebuttal Report, Figure 61 at 96).

6. Maintaining existing district cores, pre-existing political subdivisions, and communities of interest

380. The MHRL provides that County Legislatures shall consider in redistricting “cores of existing districts, of pre-existing political subdivisions including cities, villages, and towns, and of communities of interest.” (MHRL § 34 [4] [e]).

a. Core Maintenance

381. With respect to core maintenance, Dr. Cervas assessed the average percentage of individuals remaining in the same district from the 2013 Redistricting Plan to either the Enacted Map or the Cervas Illustrative Plan (PX 2, Cervas Opening Report at ¶ 105).

382. Dr. Cervas reported that the Enacted Map averages 58.7% similarity with the 2013 Redistricting Plan, compared to the Cervas Illustrative Plan, which averages 61.3% similarity with the 2013 Redistricting Plan (PX 2, Cervas Opening Report at ¶¶ 106-107).

b. Pre-Existing Political Subdivisions

383. Minimizing the fragmentation of counties, towns, cities, and other recognizable political units is a long-standing principle of good governance in redistricting (PX 2, Cervas

Opening Report at ¶ 109; *see* PX 130, Dec. 27, 2021 Memorandum at 9 [“We began with the good government criterion of preserving whole counties and cities to the greatest extent feasible”]).

384. Within Nassau County, there are three types of incorporated political subdivisions: towns, cities, and villages (PX 2, Cervas Opening Report, Table 3 at ¶ 29).

385. There are three towns, Hempstead, North Hempstead, and Oyster Bay, which are so large that they must be divided to ensure districts of equal population (PX 2, Cervas Opening Report at ¶ 110). However, the number of times each town is divided can be minimized to uphold good-government principles by preserving the integrity of political subdivisions to the greatest extent feasible.

386. The Enacted Map splits Nassau County’s three towns a total of 25 times (PX 2, Cervas Opening Report at ¶ 112).

387. By comparison, the Cervas Illustrative Plan splits those three towns only 23 times (PX 2, Cervas Opening Report at ¶ 113).

388. There are two cities in Nassau County: Glen Cove and Long Beach. Neither is so large that it must be divided and neither the Enacted Map nor the Cervas Illustrative Plan divides either city (PX 2, Cervas Opening Report at ¶¶ 26-27; *see also id.* at ¶¶ 111; 121, Tables 12-13).

389. In Nassau County, there are no villages with a population so large that they must be divided into multiple legislative districts (PX 2, Cervas Opening Report at ¶ 114).

390. The Enacted Map keeps all villages with populations less than 40% of an ideal district in a single district (PX 2, Cervas Opening Report at ¶ 125); however, the Enacted Map splits three incorporated villages: Valley Stream, Hempstead, and Freeport (PX 2, Cervas Opening Report, Figure 9 at ¶ 115). Hempstead and Freeport are each split once into two legislative districts, and the Village of Valley Stream is split twice into three legislative districts (*id.*).

391. The number of village splits in the Enacted Map is an outlier compared to Dr. Trende’s ensemble of 500,000 race-blind, party-blind simulated maps (PX 72, Cervas Reply Report, Figure 4 at ¶ 50). Dr. Cervas found that only 3.2% of the simulated maps had four or more village splits (*id.*). The Enacted Map’s splitting of Valley Stream into three legislative districts was even more unusual—reflected in only 2.7% of simulated maps in Dr. Trende’s ensemble (PX 72, Cervas Reply Report, Figure 5 at ¶ 51).

392. By comparison, the Cervas Illustrative Plan splits zero villages (PX 2, Cervas Opening Report at ¶ 116).

393. Although CDPs are not incorporated political subdivisions, they are “essentially neighborhoods as identified by the Federal Census Bureau that are easily recognizable.” (PX 242, Kopel deposition tr at 125:6-14; *see* PX 2, Cervas Opening Report at ¶ 117). Both Dr. Cervas and Defendants recognized that CDPs should be kept whole to the extent practicable and splits minimized (PX 242, Kopel deposition tr at 125:23-126:14; *see* PX 2, Cervas Opening Report at ¶ 117). The Legislature’s Presiding Officer, testifying as the Legislature’s designee, called keeping CDPs whole “an important consideration.” (PX 242, Kopel deposition tr at 125:23-126:14).

394. There are 67 CDPs in Nassau County (PX 2, Cervas Opening Report at ¶ 118).

395. The Enacted Map splits 22 CDPs with a total of 24 splits, as some CDPs are split more than once (PX 2, Cervas Opening Report at ¶ 118).

396. By contrast, the Cervas Illustrative Plans splits only 19 CDPs a total of 20 times (PX 2, Cervas Opening Report at ¶ 119).

397. Overall, the Cervas Illustrative Plan splits fewer political subdivisions fewer times than the Enacted Map (*see* PX 2, Cervas Opening Report at ¶¶ 109-121, Tables 12-13).

398. The Cervas Illustrative Plan contradicts the mapmakers' claim in the February 27 Troutman Memo that "the districts in the [Enacted Map] all minimize town and village splits as much as possible." (PX 81, Feb. 27, 2023 Troutman Memo at 18-19).

c. Communities of Interest

399. The MHRL provides that the maintenance of "communities of interest" shall be considered but does not provide a definition of the term "communities of interest." (MHRL § 34 [4] [e]).

400. Dr. Cervas reported that "[a] well-established approach to preserving and respecting communities of interest" that "has the benefit of relative objectivity and transparency in redistricting" is "through maintaining the integrity of political subdivisions, including villages and CDPs." (PX 2, Cervas Opening Report at ¶ 122). In his 2022 article titled, "Turning Communities Of Interest Into A Rigorous Standard For Fair Districting," Dr. Cervas and his co-authors wrote that political subdivisions are "cognizable communities and can readily be viewed as themselves communities of interest in that residents of such units have interests in common." (PX 2, Cervas Opening Report at ¶ 122).

401. Presiding Officer Kopel, testifying as the Legislature's designee, testified that villages and CDPs represent communities of interest (PX 242, Kopel deposition tr at 125:16-21; *see e.g. id.* at 328:10-13 [recognizing the Village of Freeport as a community of interest]; 329:17-20 [recognizing the Village of Valley Stream as a community of interest]).

402. Dr. Cervas recognized that "[a]nother approach to assessing communities of interest involves looking at a range of social, cultural, economic, or other connections that bind communities." (PX 2, Cervas Opening Report at ¶ 123). However, Dr. Cervas acknowledged that "[t]his approach to evaluating communities of interest has its own merits but can also sometimes

serve to obscure motives aimed at preserving partisan advantage or incumbent protection within redistricting plans.” (*Id.*).

403. Dr. Trende has expressed similar concerns about the potential for using this approach to communities of interest as a pretext for gerrymandering (DX 180, Trende deposition tr at 228:11-25). Dr. Trende wrote in his March 1, 2022 expert report in the *Harkenrider* redistricting case, “Communities of interest are a notoriously difficult concept to nail down, as they typically have a vague definition such as ‘[s]ocial, cultural, racial, ethnic, and economic interests common to the population of the area, which are probable subjects of legislation.’” (DX 111, Trende Rebuttal Report, Ex. C at 19, citing Kan. Office of Revisor of Statutes, Proposed Guidelines and Criteria for 2022 Kansas Congressional and State Legislative Redistricting May 20, 2021]).

404. According to Dr. Trende, the vague definition of this approach makes communities of interest “vulnerable to ad hoc reasoning (*‘this is the district we want, find a community of interest to justify it’*).” (DX 111, Trende Rebuttal Report, Ex. C at 19 (emphasis added)).

405. The mapmakers of the Enacted Map took such a broad and vaguely defined approach to communities of interest. The Troutman Memoranda and Mr. Tseytlin’s evasive February 16, 2023 testimony show that the mapmakers first identified the districts they wanted to draw and then found communities of interest to justify those districts (*see* PX 80, Feb. 16, 2023 Troutman Memo at A1-A4; PX 81, Feb. 27, 2023 Troutman Memo at A1-A5; PX 63, Feb. 16, 2023 Hearing tr at 58:3-21).

406. During his February 16, 2023 testimony, when asked “how would you define communities of interest,” Mr. Tseytlin testified: “Communities of interest are people who share political, economic, social or religious ties.” (PX 63, Feb. 16, 2023 Hearing tr at 58:3-9). The

February 27 Troutman Memo refers to Mr. Tseytlin’s February 16 testimony and further notes: “communities of interest have been broadly outlined as groups of persons ‘defined by actual shared interests,’... including such factors as the ‘major transportation lines’ that serve a region.” (PX 81, Feb. 27, 2023 Troutman Memo at 19).

407. Mr. Tseytlin repeatedly referred to the February 16, 2023 Troutman Memo Appendix as a statement of the mapmakers’ communities of interest (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr 54:20-23 [“The memorandum in Appendix A, it talks about all the communities of interest. I’m going to let the memorandum speak for itself.”]). Mr. Tseytlin refused requests to elaborate upon the content of Appendix A in response to questions about the communities of interest in the iteration of the Enacted Map under review during that legislative meeting (*see e.g.* PX 63, Feb. 16, 2023 Hearing tr at 58:16-21 [“MR. TSEYTLIN: As I’ve said five times now, Minority leader, we worked with the Presiding Officer to put together the map. Appendix A speaks for itself with regard to the communities of interests that are considered.”]).

408. The February 16, 2023 Troutman Memo cobbles together a scattershot set of communities of interest to justify the mapmakers’ proposed districts while ignoring basic good-government principles, such as keeping villages and CDPs whole (PX 80, Feb. 16, 2023 Troutman Memo at A1-A4). Appendix A describes the communities of interest considerations in the Enacted Map that vary from district to district with no clear organizing principle (*see id.*). This hodgepodge of obscure and inconsistent factors for defining communities of interest include the presence of “mutual aid fire services,” school districts, county police precincts, shared evacuation routes, shared rail lines, common federal applications for aid, shared chambers of commerce, park revitalization, civic associations, synagogues, “transit-oriented shopping and housing,” economic

development corridors, the “coalition to preserve Hempstead Harbor,” shared “recreational and sports leagues,” and a “robust arts community.” (*Id.*).

409. Appendix A demonstrates the same kind of “ad hoc reasoning” on communities of interest that Dr. Trende criticized in his *Harkenrider* report (DX 111, Trende Rebuttal Report, Ex. C at 19).

410. The Cervas Illustrative Plan provides an objective, transparent, and established approach to preserving communities of interest. The Enacted Map does not, exposing its authors’ impermissible intent.

7. Promoting the orderly administration of elections

411. The lowest-ranked redistricting criteria in the MHRL is “promot[ing] the orderly and efficient administration of elections,” which the law does not define (MHRL § 34 [4] [f]). The February 27 Troutman Memo lists compactness and contiguity as factors relevant to satisfying this criterion (PX 81, Feb. 27, 2023 Troutman Memo at 20). Dr. Cervas also reports that preservation of political subdivisions “minimizes the risk of voter confusion arising from having village residents voting in multiple different legislative races.” (PX 2, Cervas Opening Report at ¶ 128).

412. Based on these factors, the Cervas Illustrative Plan outperforms the Enacted Map on this criterion by providing for more compact districts and splitting fewer political subdivisions.

8. Defendants’ expert evidence concerning the Cervas Illustrative Plan.

a. Mr. Thomas Alfano

413. In response to Dr. Cervas, Defendants presented the testimony of Mr. Thomas Alfano, whom they offered as an expert on communities of interest in Nassau County.

414. Mr. Alfano opined in his report that the Cervas Illustrative Plan does not adequately consider communities of interest in Nassau County (DX 102, Alfano Rebuttal Report at ¶ 25). But, Mr. Alfano also affirmed that preserving the integrity of political subdivisions is one way of

honoring communities of interest (*id.* at ¶ 22; DX 177, Alfano deposition tr at 73:24-74:23, 108:8-25). Mr. Alfano admitted that he did not believe Dr. Cervas altogether failed to consider communities of interest, but only that it was his opinion that the Enacted Map better reflected *his* understanding of the communities of interest in Nassau County than the Cervas Illustrative Plan (DX 177, Alfano deposition tr at 86:16-87:11, 107:6-108:14).

415. Although Mr. Alfano stated in his rebuttal report that he believed Dr. Cervas had subordinated the MHRL’s community-of-interest criteria for racial targets, he testified that this opinion was based solely on Dr. Cervas’s citation to demographic statistics in his report (*e.g.* DX 177, Alfano deposition tr at 120:5-19, 145:3-14, 162:7-19).

b. Dr. Sean Trende

416. Dr. Trende offered essentially two critiques of the Cervas Illustrative Plan: first, that the Illustrative Plan relies too heavily on race (DX 111, Trende Rebuttal Report at 83-87), and, second, that it fails to improve electoral opportunities for voters of color (*id.* at 87-96).

417. Dr. Trende’s critiques are both contradicted by his own data.

418. First, the six majority-minority districts in the Cervas Illustrative Plan are consistent with Dr. Trende’s ensemble of partisan-blind, race-blind maps—58,888 maps out of Dr. Trende’s ensemble of 500,000 also contained at least six majority-minority districts, including some that contained seven majority-minority districts (PX 72, Cervas Reply Report at ¶ 42; DX 180, Trende deposition tr at 191:4-23).

419. Dr. Cervas also showed that compared to Dr. Trende’s ensemble, the Cervas Illustrative Plan more closely adhered to traditional and statutory redistricting criteria, including equipopulation, compactness, and minimizing political subdivision splits (PX 72, Cervas Reply Report at ¶¶ 44-54).

420. Dr. Trende reported in creating an ensemble of simulated maps that “it is important to direct the simulations to hew as closely as possible to the actual non-partisan constraints under which the mapmaker operated.” (DX 111, Trende Rebuttal Report at 35). But Dr. Trende’s ensemble was calibrated to the Enacted Map (DX 110, Trende Opening Report at 9), *not* to the Cervas Illustrative Plan, which adhered to good-government principles to a greater extent than the Enacted Map (*see* PX 72, Cervas Reply Report at ¶¶ 41, 43-53).

421. With respect to Dr. Trende’s second critique, Dr. Trende’s electoral performance analysis of the Cervas Illustrative Plan compared to the Enacted Map actually shows that Dr. Cervas’s plan *does* improve minority electoral opportunities while also achieving partisan fairness (PX 72, Cervas Reply Report at ¶¶ 55-67).

422. In conducting his performance analysis, Dr. Trende used only seven of the eight Nassau County contests conducted in 2017, 2019, and 2021—omitting the 2021 District Attorney contest (DX 111, Trende Rebuttal Report, Figure 60 at 94; Figure 61 at 96). Dr. Trende testified that he omitted the 2021 District Attorney contest because it was not in the data that was provided to him by counsel and that he did not take any steps to check whether any other elections should be included in his analysis (DX 180, Trende deposition tr at 111:20-112:7).

423. Nonetheless, even omitting the 2021 District Attorney contest, Dr. Trende’s Figures 60 and 61 confirm that Cervas Illustrative District 7 more often elects minority-preferred candidates than either Enacted District 7 or 14 without any reduction in the performance of the adjacent majority-minority district (labeled as LD3 in both the Cervas Illustrative Plan and the Enacted Plan) (PX 72, Cervas Reply Report at ¶ 55; DX 111, Trende Rebuttal Report, Figure 60 at 94; Figure 61 at 96).

424. Similarly, Dr. Trende’s Figures 60 and 61 confirm that Cervas Illustrative District 7 more often elects minority candidates of choice than Enacted District 5 without any reduction in the performance of the adjacent majority-minority district (labeled as LD6 in both the Cervas Illustrative Plan and the Enacted Plan) (PX 72, Cervas Reply Report at ¶ 55; DX 111, Trende Rebuttal Report, Figure 60 at 94; Figure 61 at 96).

425. Dr. Trende’s data are also consistent with Dr. Cervas’s analysis that Illustrative District 10 improves minority electoral opportunities in the most recent elections analyzed—the 2021 elections (PX 72, Cervas Reply Report at ¶ 57). Dr. Trende does not contradict Dr. Cervas’s observation that there have been substantial demographic shifts in this area or Dr. Oskooii’s observation that racially polarized voting—and in particular, white bloc voting—also substantially increased in this area between 2017 and 2021 (PX 72, Cervas Reply Report at ¶ 57; PX 2, Cervas Opening Report at ¶ 92; PX 6, Oskooii Rebuttal Report at ¶¶ 11, 113, 134), making the 2017 election results less probative of minority political opportunity here.

426. Dr. Trende’s assertion that the Cervas Illustrative Plan enhances minority electoral opportunities at the expense of Democrats generally—“robbing Peter to pay Paul,” in Dr. Trende’s words (DX 111, Trende Rebuttal Report at 94)—is also contradicted by his own data. Dr. Trende observes that “Dr. Cervas’ maps don’t present as strong political outliers” (DX 111, Trende Rebuttal Report at 87). Further, Dr. Cervas also shows that the Cervas Illustrative Plan’s partisan outcomes are more with the mean of Dr. Trende’s partisan-blind ensemble line than those of the Enacted Map (PX 72, Cervas Reply Report at ¶¶ 60-64).

427. But Dr. Trende’s results highlight that the Enacted Map performs particularly poorly for minority-preferred candidates of color outside of the four majority-minority districts on the map (DX 111, Trende Rebuttal Report, Figure 61 at 96). In the 2021 contest for Nassau County

clerk, in which a Black candidate (Brown), who was preferred by voters of color, ran against a White candidate (O’Connell) preferred by White voters, the Black candidate won only 4 out of 19 districts on the Enacted Map—the four majority-minority districts (*id.*). By contrast, Dr. Trende found that Brown was able to win a fifth district under the Cervas Illustrative Plan (*id.*).

428. Dr. Trende also used an index of even-year elections—that is, state and federal elections—to test the performance of the Enacted Map compared to the Cervas Illustrative Map (DX 111, Trende Rebuttal Report, Figure 60 at 94). The index of even-year elections is a simple, unweighted average of several state and federal elections occurring between 2016 and 2020, including presidential, senatorial, gubernatorial, and attorney general contests (DX 180, Trende deposition tr at 104:15-105:17, 108:2-109:6).

429. This analysis is entitled to little weight due to the significant differences between even- and odd-year elections in Nassau County, where elections for the Legislature are conducted in odd-numbered years, as Defendants have acknowledged (PX 242, Kopel deposition tr at 62:12-14, 63:7-16, 66:24-67:21). Indeed, Defendants have sued to maintain county elections in odd-numbered years, specifically identifying numerous differences between elections in even-numbered years and those in odd-numbered years (NYSCEF Doc No. 1, complaint at ¶ 68, in *County of Nassau v State of New York*, Sup Ct, Nassau County, index No. 605931/2024).

430. As Special Masters in Virginia, where elections for state offices are conducted in odd-numbered years, Dr. Trende and Dr. Grofman specifically rejected the use of even-year elections to test the performance of the state legislative maps they drew: “Because state races occur in the off-years, which can have very different turnout patterns from presidential and midterm election years, we determined that it was important not to use elections from presidential or midterm elections to evaluate partisanship.” (PX 130, Dec. 27, 2021 Memorandum at 33).

431. Instead, Dr. Trende and Dr. Grofman used odd-year contests to test the performance of their maps for the Virginia state legislature. (PX 130, Dec. 27, 2021 Memorandum at 33).

432. In addition, as discussed in greater detail below, evidence from other expert witnesses shows that there are significant differences in voter turnout by race between even- and odd-year elections, as well as substantially increased white bloc voting in odd-year contests compared to even-year contests (*see infra* VI.B.1; VII.D.).

VI. THE ENACTED MAP DILUTES THE VOTING STRENGTH OF BLACK, LATINO, AND ASIAN COMMUNITIES IN NASSAU COUNTY.

433. In its February 27, 2023 Memorandum to the Legislature, Troutman correctly represented that *Thornburg v Gingles* established the framework for racial vote dilution claims under the federal Voting Rights Act (478 US 30 [1986]; PX 81, Feb. 27, 2023 Troutman Memo at 8). The Supreme Court recently reaffirmed this framework in *Allen v Milligan* (599 US 1 [2023]).

434. In an expert report he submitted in the *Harkenrider* case, Defendants' expert, Dr. Trende, explained the *Gingles* framework:

The VRA requires the creation of districts that can elect the candidates of choice of a minority group when such a group is: (a) is 'sufficiently large and geographically compact to form a majority in a single-member district;' (b) is 'politically cohesive' (that is, its members tend to vote the same way); and (c) the majority votes as a bloc to defeat the group's candidate of choice.

(DX 111, Trende Rebuttal Report, Ex. C at 15, quoting *Gingles*, 478 US 30).

435. In the February 27 Memorandum to the Legislature, Troutman explained that Dr. Trende studied whether Nassau County met these preconditions such that the creation of majority-minority districts was necessary. (*see e.g.* PX 80, Feb. 16, 2023 Troutman Memo at 5).

A. Black, Latino, and Asian Voters are Sufficiently Numerous and Compact to Form a Majority of Eligible Voters in at Least Six Single-Member Districts

436. Plaintiffs' expert, Dr. Cervas, drew an illustrative plan that adheres to the traditional and statutory redistricting criteria reflected in the Municipal Home Rule Law (*see* PX 2, Cervas Opening Report at ¶ 129).

437. In drawing the Cervas Illustrative Plan, Dr. Cervas prioritized good government criteria, including minimizing population deviations, compactness, and preserving the integrity of political subdivisions (*see* PX 2, Cervas Opening Report at ¶¶ 2[c], 34).

438. The Cervas Illustrative Plan demonstrates that Black, Latino, and Asian citizens of voting age in Nassau County are sufficiently numerous and compact to form a majority in at least six reasonably configured districts (*see supra* Section II.E.4; PX 2, Cervas Opening Report at ¶¶ 2[d], 131).

439. Defendants' expert, Dr. Trende, created a set of 500,000 simulated redistricting plans for the Nassau County Legislature, which Dr. Trende represents were generated without racial or political data and were otherwise drawn under the constraints under which the Legislature operated (PX 72, Cervas Reply Report at ¶ 7; DX 180, Trende deposition tr at 191:4-23).

440. According to Dr. Trende, that set of maps contained 58,888 maps (or 11.7% of the entire set of 500,000), which included at least 6 majority-minority districts by citizen voting age population (*see* DX 111, Trende Rebuttal Report at 87; PX 72, Cervas Reply Report at ¶ 42).

441. Among Dr. Trende's set of simulated redistricting plans for the Nassau County Legislature, over 2,000 contained 7 majority-minority districts by citizen voting age population (*see* PX 72, Cervas Reply Report at ¶ 42; DX 180, Trende deposition tr at 191:4-23).

442. Dr. Trende’s set of simulated maps demonstrates that it is possible to draw at least six majority-minority districts by citizen voting age population without any consideration of race or politics.

B. Black, Latino, And Asian Voters Are Politically Cohesive in Nassau County.

443. Plaintiffs called Dr. Kassra A.R. Oskooii, as an expert. He examined whether Black, Latino, and Asian voters in Nassau County are politically cohesive, whether voting in Nassau County is racially polarized, and whether the preferred candidates of Black, Latino, and Asian voters are usually defeated by the preferred candidates of a cohesive white voting bloc.

444. To determine whether Black, Latino, and Asian voters in Nassau County are politically cohesive and whether voting is racially polarized in Nassau County, Dr. Oskooii used a statistical method for estimating racial voting patterns called “ecological inference” (PX 1, Oskooii Opening Report at ¶¶ 27, 39).

445. The voting patterns of different racial groups typically must be inferred using statistical methods because elections are conducted by secret ballot, so no public records show which candidate each individual voter voted for (PX 1, Oskooii Opening Report at ¶ 26). Using precinct-level election results and demographic data, statistical techniques can estimate the candidate preferences of different racial or ethnic groups (*id.* at ¶ 27).

446. One widely accepted statistical method for estimating racial voting patterns is ecological inference or “EI” (PX 1, Oskooii Opening Report at ¶ 27). Ecological inference takes ecological (*i.e.*, group-level) data, such as precinct-level vote totals and demographic data, to predict vote choice by racial or ethnic groups (*id.* at ¶ 40).

447. Ecological inference “has been the benchmark method courts use in evaluating racial polarization in voting rights lawsuits and has been used widely in comparative political research on group and ethnic voting patterns.” (PX 1, Oskooii Opening Report at ¶ 27).

448. Dr. Oskooii used two variations of ecological inference to generate his estimates of racial voting patterns: King’s Iterative EI and Rows by Columns (RxC) (PX 1, Oskooii Opening Report at ¶¶ 39-40). Both methods use the following precinct-level data to estimate vote choice by racial or ethnic group: (1) the percentage of each racial and ethnic group under consideration; (2) the share of votes received by each candidate; and (3) the total votes cast between the candidates (*id.* at ¶ 40).

449. King’s EI produces estimates using the method of maximum likelihood; it is referred to as an iterative method because it runs a 2-by-2 analysis of each candidate and each racial group of voters in iterations (PX 1, Oskooii Opening Report at ¶ 40).

450. RxC uses a hierarchical Bayesian model and estimates multiple row and multiple columns simultaneously (*id.*).

451. King’s EI and RxC are closely related methods and a comprehensive assessment indicates that they produce substantively similar findings regarding racial voting patterns (*id.*).

452. To estimate racial vote choice with each of these two ecological inference methods, Dr. Oskooii used a peer-reviewed software package titled “eiCompare,” of which he is a co-author (PX 1, Oskooii Opening Report at ¶ 42). The eiCompare package is publicly available (*id.*).

453. For precinct-level election results, Dr. Oskooii’s source of data was the reported vote totals from the Official Canvass and Statement of Votes Cast published by the Nassau County Board of Elections (PX 1, Oskooii Opening Report at ¶ 45).

454. To use voter files as an input in ecological inference analysis, it is necessary to estimate the racial composition of voters in precincts. This is because voter registration records in New York do not include data on voters’ self-identified race (PX 1, Oskooii Opening Report at ¶ 35).

455. To estimate the racial composition of each voting precinct in Nassau County, Dr. Oskooii applied a well-established methodology that has been accepted by federal courts in the analysis of racial voting patterns called Bayesian Improved Surname Geocoding (“BISG”) to voter files obtained from the New York State Board of Elections (PX 1, Oskooii Opening Report at ¶¶ 28, 35-37). BISG uses individual-level data—including a voter’s name, geographic location, and the racial composition of the voter’s census block—to generate probabilistic predictions about voters’ racial and ethnic backgrounds (*id.* at ¶ 35).

456. The BISG methodology has been accepted for use in assessing racial voting patterns in voting rights cases by federal courts (*see e.g. Natl. Assn. for Advancement of Colored People, Spring Val. Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 368, 392 [SD NY 2020], *affd sub nom. Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213 [2d Cir 2021]; *Petteway v Galveston County*, 698 F Supp 3d 952, 975-76 [SD Tex 2023] [“Dr. Oskooii testified that BISG is a reliable method and is widely employed across various industries and applications. . . . The court finds that BISG is a reliable methodology for assessing racially polarized voting patterns.”], *affd sub nom. Petteway v Galveston County, Texas*, 86 F4th 214 [5th Cir 2023], *reh en banc granted, opinion vacated*, 86 F4th 1146 [5th Cir 2023], and *on reh en banc sub nom. Petteway v Galveston County*, 111 F4th 596 [5th Cir 2024], and *revd and remanded on other grounds*, 111 F4th 596 [5th Cir 2024]).

457. Because BISG uses data from actual voters, it is more precise than other methods for estimating the racial composition of voters in a precinct that do not use data from actual voters. For example, data from the United States Census Bureau on Voting Age Population (“VAP”) and Citizen Voting Age Population (“CVAP”) can be used to generate such estimates (PX 1, Oskooii Opening Report at ¶ 34). But CVAP includes all eligible voters, rather than all eligible voters who

actually voted, and there are often significant racial gaps in voter turnout rates—as is the case in Nassau County (*see id.* at ¶¶ 65-72). VAP data creates another level of imprecision on top of the imprecisions in CVAP because VAP includes adults who are not eligible to vote at all (*id.* at ¶ 34). That imprecision can be significant in areas that include a large number of adult non-citizens (*id.*). BISG does not suffer from these imprecisions (*id.*).

458. The application and validation of BISG to voter files and the use of those voter files as an input in ecological inference analysis is the subject of a peer-reviewed article in a leading journal on political science methodology (PX 1, Oskooii Opening Report at ¶ 36). fBISG—the latest peer-reviewed methodology for implementing BISG—is the method Dr. Oskooii used to estimate the racial composition of voters in each precinct in Nassau County (*id.* at ¶ 37). He applied fBISG using a peer-reviewed software package developed by the fBISG method’s authors (*id.*).

459. Dr. Oskooii applied fBISG to New York State voter files that provided voter history information—*i.e.*, whether a voter cast a ballot in a particular election—for Nassau County general elections that occurred in each odd and even year from 2013 to 2022. (PX 1, Oskooii Opening Report at ¶ 38). The results yielded the probability that each voter belongs to each of several racial or ethnic groups (*id.* at ¶ 38). These probabilities were then aggregated to the precinct level to estimate the racial and ethnic composition of each precinct within Nassau County (*id.*).

460. Dr. Oskooii did not classify individual voters as belonging to a particular racial group based on the racial group for which their individual probability was the greatest (PX 10, Oskooii Reply Report at ¶ 16). Instead, Dr. Oskooii took all the probabilities assigned to each voter for each of several racial or ethnic groups and aggregated all those probabilities to the precinct level to estimate the racial composition of each precinct within Nassau County (PX 1, Oskooii Opening Report at ¶ 38; PX 10, Oskooii Reply Report at ¶ 16).

461. Dr. Oskooii's use of BISG in the analysis of racial voting patterns and the method he used of aggregating probabilities at the precinct level, rather than assigning racial classifications to individuals, was validated by the U.S. District Court for the Southern District of New York and the U.S. Court of Appeals for the Second Circuit in a recent racial vote dilution case, *Natl. Assn. for Advancement of Colored People, Spring Val. Branch v East Ramapo Central School District* (462 F Supp 3d at 384) ["Dr. Barreto applied BISG in the manner proposed in the academic literature—not by attempting to assign individuals to racial categories, but by aggregating individual race estimates to create precinct-level demographic estimates."], *affd sub nom. Clerveaux*, 984 F3d at 234–35).

462. The Court should find that fBISG methodology is a reliable method for estimating the racial composition of voting precincts as an input for the analysis of racial voting patterns.

463. Dr. Oskooii also applied the fBISG methodology to determine the rates at which different racial groups turn out to vote in county elections (PX 1, Oskooii Opening Report at ¶ 64; *see generally id.* at ¶¶ 63–77) and contribute financially to campaigns for county office (PX 1, Oskooii Opening Report at ¶ 80; *see generally id.* at ¶¶ 78–95). Here, Dr. Oskooii applied the fBISG methodology to estimate the racial composition of a single large county-wide population as opposed to the populations of smaller voting precincts (*see generally* PX 1, Oskooii Opening Report at ¶¶ 63–95). Because BISG is reliable for estimating the racial composition of voting precincts, it follows that the methodology is also reliable for estimating the racial composition of much larger populations.

1. The selection and weighting of elections in racially polarized voting analysis.

464. Dr. Oskooii reported that when conducting an analysis of racially polarized voting and whether and to what extent minority voters can elect their candidates of choice, analysts

generally consider several factors in determining which elections to analyze and how to give weight to the results.

465. Dr. Oskooii stated that “[w]hen conducting an analysis of racially polarized voting and whether and to what extent minority voters can elect their candidates of choice, the most probative elections are those that are most similar to elections of the office of interest” (PX 6, Oskooii Rebuttal Report at ¶ 22).

466. Dr. Oskooii analyzed recent contested elections for the offices of Nassau County Executive, Comptroller, Clerk, and District Attorney (PX 1, Oskooii Opening Report at ¶¶ 29–31; PX 6, Oskooii Rebuttal Report at ¶¶ 23–24). Each of these offices is geographically co-extensive with the Nassau County Legislature and these contests take place on the same dates and in the same odd-numbered years as elections for the Nassau County Legislature (PX 1, Oskooii Opening Report at ¶ 31.). These contests appeared on ballots across the entire county, and only in Nassau County (*id.*).

467. Dr. Oskooii conducted ecological inference analyses of racial voting patterns for all 13 elections between 2013 and 2021 for the four county-wide offices listed on this page (PX 1, Oskooii Opening Report at ¶ 29; PX 10, Oskooii Reply Report at ¶ 32).

468. Dr. Oskooii did not analyze state and federal elections because those elections occurred in even-numbered years and do not appear on the same ballot as contests for the Nassau County Legislature (PX 6, Oskooii Rebuttal Report at ¶¶ 29–32; PX 10, Oskooii Reply Report at ¶¶ 8, 26). Dr. Oskooii also conducted an analysis of voter turnout by race over time in Nassau County and found substantial differences in the racial composition of the electorate between even-year and odd-year elections: White voters consistently comprise a substantially larger share of the electorate in odd-numbered years. (PX 6, Oskooii Rebuttal Report at ¶ 29).

469. Dr. Oskooii reported that his determination that substantial differences between odd-year and even-year elections warranted focusing on odd-year elections was also supported by his comparative analysis of Dr. Lockerbie's estimates of White bloc voting in odd-year and even-year contests (PX 6, Oskooii Rebuttal Report at ¶ 30). Dr. Oskooii found that Dr. Lockerbie's results showed that on average, compared to state and federal offices, White bloc voting in elections for county offices was approximately 9 percentage points higher for candidates opposing the preferred candidates of minority voters: Minority-preferred candidates averaged support from 42.3% of White voters in state and federal elections, but averaged only 33.4% support from White voters in County elections (*id.* [comparing DX 106, Lockerbie Opening Report at Table 2 reporting estimates of White bloc voting using VAP in even-year elections with Table 8 reporting estimates of White bloc voting using VAP in odd-year elections]).

470. Dr. Oskooii's findings about the substantial differences between even and odd-year elections are also consistent with the testimony of the Legislature's Presiding Officer, Howard Kopel. Mr. Kopel testified that holding Nassau County elections in even-numbered years would be "significantly different" from holding them in odd-numbered years (PX 242, Kopel deposition tr. 60:18-61:22). Mr. Kopel testified that turnout in even-year elections is higher than in odd-year elections (*id.* at 62:9-63:25), and that odd-year county elections have a more robust discussion of local issues than in even-year elections, where voters are confronted with more national, partisan issues and interests (*id.* at 66:24-67:21).

471. Second, Dr. Oskooii testified that recent elections are generally more probative than older elections in determining whether voting is racially polarized and whether minority-preferred candidates are usually defeated and that, therefore, he gave more recent elections greater weight in his analysis (PX 1, Oskooii Opening Report at ¶¶ 32, 62).

472. Third, Dr. Oskooii testified that interracial elections, *i.e.*, those involving candidates of different races, tend to be more probative of racial voting patterns than elections between candidates of the same race (PX 1, Oskooii Opening Report at ¶¶ 33, 62; PX 6, Oskooii Rebuttal Report at ¶ 43).

473. Fourth, Dr. Oskooii testified that *Thornburg v Gingles* (478 US 30, 57 [1986]), instructs analysts of racial voting patterns to discount elections in which successful minority-preferred candidates were incumbents at the time of their election (PX 10, Oskooii Reply Report at ¶ 9 & n 1).

2. Estimating racial voting patterns at multiple levels of geographic granularity.

474. Dr. Oskooii analyzed racial voting patterns in Nassau County in two ways. First, using both ecological inference methods (King’s Iterative EI and RxC), he estimated the vote choice of White voters versus the vote choice of Black, Latino, and Asian voters combined (collectively referred to as “POC”) for all eight contests for county-wide office in the three most recent county-wide election cycles—2021, 2019, and 2017 (PX 1, Oskooii Opening Report at ¶ 43). Dr. Oskooii next used the same elections and methods to estimate White vote choice and the vote choice of Black, Latino, and Asian voters as individual groups (*id.*). Dr. Oskooii then supplemented his analysis by estimating the vote choice of White voters and of POC voters in all five contests for county-wide office in the 2015 and 2013 election cycles for a more longitudinal look at Nassau County voting patterns (*id.* at ¶ 44).

475. Dr. Oskooii estimated racial voting patterns at three levels of geographic granularity: (1) county-wide; (2) the “region of interest”—a cluster of the 12 districts in the Enacted Map in the region of the county where the Cervas Illustrative Plan showed that districts could be drawn to protect Black, Latino, and Asian voters from racial vote dilution; and (3) each

individual district of the Enacted Map in the region of interest (*see* PX 1, Oskooii Opening Report at ¶¶ 49–60; PX 6, Oskooii Rebuttal Report at ¶¶ 80–81).

476. Dr. Oskooii found that—across all three levels of geography—Black, Latino, and Asian voters are politically cohesive both as individual groups and across groups. That is, majorities of Black, Latino, and Asian voters consistently favor the same candidates in every contest (PX 1, Oskooii Opening Report at ¶ 47).

477. At the county-wide level, Dr. Oskooii found that in every election for Nassau County offices between 2013 and 2021, over 81% of all POC voters preferred the same candidates; in the three most recent election cycles between 2017 and 2021, over 89.8% of all POC voters preferred the same candidates in every contest (PX 1, Oskooii Opening Report at ¶¶ 50, 54, Figures 1–2 at ¶ 19, 5–6 at ¶ 60).

478. At the county-wide level, Dr. Oskooii also found high levels of political cohesion when examining vote choice for Black, Latino, and Asian voters as individual groups. Black, Latino, and Asian voters supported the same candidates in all 8 of the most recent county-wide elections between 2017 and 2021 (PX 1, Oskooii Opening Report at ¶¶ 55–57, Figures 3–4 at ¶ 56).

479. Next, focusing on the region of interest, Dr. Oskooii found that Black, Latino, and Asian voters are politically cohesive both within and across groups—substantively consistent with Dr. Oskooii’s results at the county-wide level (PX 6, Oskooii Rebuttal Report at ¶¶ 89–90, Figure 8 at ¶ 89).

480. Finally, looking at each legislative district within the region of interest, Dr. Oskooii again found political cohesion among Black, Latino, and Asian voters (PX 6, Oskooii Rebuttal Report at ¶¶ 96–120, Figures 9–32 at ¶¶ 96–119).

481. Defendants' expert witnesses agree that Black, Latino, and Asian voters in Nassau County are politically cohesive.

482. Dr. Lockerbie testified to that fact in his deposition (*see* DX 179, Lockerbie deposition tr at 133:19–134:7 [“Q . . . So, in your opinion, based on the -- your ecological regression analysis shown in these two tables, are black voters politically cohesive? A Overall, they appear to be politically cohesive. Q And then in your opinion, based on your ecological regression analysis, are Hispanic voters politically cohesive? A That is my recollection. Yes. Q And in your opinion, based on your ecological regression analysis, are Asian voters politically cohesive? A Yes. But not quite as much as the other groups.”]).

483. Dr. Trende similarly testified that minority voters in Nassau County are politically cohesive (*see* DX 180, Trende deposition tr at 63:10–12 [“Q: Is it your opinion that minority voters in Nassau County are politically cohesive? A: I think they typically are. Yes.”]).

484. The Court should find that Black, Latino, and Asian voters in Nassau County are politically cohesive both within each group and across groups.

C. Voting Is Racially Polarized in Nassau County and the Preferred Candidates of Black, Latino, And Asian Voters Are Usually Defeated.

485. Dr. Oskooii further found that voting in Nassau County is racially polarized: not only do Black, Latino, and Asian residents of Nassau County vote cohesively at the county-wide level, in the region of interest as a whole, and in each district within the region of interest (*see* PX 1, Oskooii Opening Report at ¶¶ 55–57, Figures 3–4 at ¶ 56), but White Nassau County residents also vote cohesively as a bloc against the preferred candidates of POC voters at all three levels of geography (*id.*).

1. Dr. Oskooii found that voting is racially polarized at all levels of geographic granularity in Nassau County.

486. First, on the county-wide level, Dr. Oskooii found that a majority of white voters preferred different candidates from Black, Latino, and Asian voters in seven out of the eight contests for Nassau County offices between 2017 and 2021 (PX 1, Oskooii Opening Report at ¶¶ 47, 51, Figures 1–2 at ¶ 49). The sole contest in that timeframe that was not polarized was the 2019 District Attorney race in which the incumbent, Singas, won, receiving approximately 50 percent support from White voters and over 93 percent from POC voters (*id.* at ¶ 52).

487. Dr. Oskooii found that of the contests in which White voters voted cohesively as a bloc against the preferred candidates of POC voters, the minority-preferred candidate was defeated in 5 out of 7 (71%) contests (PX 1, Oskooii Opening Report at ¶ 51).

488. Out of these eight elections for Nassau County offices between 2017 and 2021, there were two contests between candidates of different races: the 2017 and 2021 elections for County Clerk each featured a White candidate and a Black candidate (PX 1, Oskooii Opening Report at ¶¶ 53–54). Dr. Oskooii found that voting was racially polarized in both interracial contests as POC voters favored the Black candidates while White voters favored the White candidates (*id.*). And the minority-preferred Black candidates were defeated in each contest (*id.*). In the 2017 County Clerk election, the Black candidate lost even as White candidates of the same party won their elections in the same year (PX 6, Oskooii Rebuttal Report at ¶¶ 38, 43, 45; PX 10, Oskooii Reply Report at ¶ 22). In both 2017 and 2021, Dr. Oskooii’s ecological inference estimates showed that the Black candidates each received less support from White voters than the White candidates of the same party running on the same ballot (PX 6, Oskooii Rebuttal Report at ¶ 88).

489. In the five county-wide contests between 2013 and 2015, Dr. Oskooii found that White voters voted cohesively against the POC-preferred candidates in 3 out of 5 (60%) contests

(PX 1, Oskooii Opening Report at ¶ 60, Figures 5-6 at ¶ 60). In all three contests in which voting was racially polarized, the POC-preferred candidates were defeated by the White-preferred candidates (*id.*). In both contests where Dr. Oskooii found that voting was not racially polarized—the 2013 and 2015 District Attorney races—the winning candidates were incumbents who were preferred by approximately 50% of White voters and between 81.5 and 93.5% of POC voters (*id.*).

490. Overall, at the county-wide level, Dr. Oskooii found that in the 13 elections of Nassau County between 2013 and 2021, voting was racially polarized in 10 out of 13 (77%) contests (PX 1, Oskooii Opening Report at ¶ 62, Table 8; PX 6, Oskooii Rebuttal Report at ¶ 40). And in the 10 contests in which voting was racially polarized, minority-preferred candidates were defeated in 8 out of 10 (80%) contests (PX 1, Oskooii Opening Report at ¶ 62, Table 8; PX 10, Oskooii Reply Report at ¶ 23). In all three contests in which there was no racially polarized voting, the successful candidate preferred by both White and POC voters was an incumbent (PX 1, Oskooii Opening Report at ¶¶ 52, 60; PX 10, Oskooii Reply Report at ¶ 23).

491. Second, looking at the cluster of 12 districts in the region of interest on the Enacted Map, Dr. Oskooii again found that voting was racially polarized in all eight elections for Nassau County offices between 2017 and 2021 (PX 6, Oskooii Rebuttal Report at ¶¶ 86-87, Figure 7 at ¶ 85). That is, a majority of White voters opposed the minority-preferred candidates in every contest (*id.*). Dr. Oskooii testified that his ecological inference estimates showed slightly higher degrees of racially polarized voting in the region of interest than his county-wide estimates, but were substantively similar to his analysis of county-wide voting patterns (*id.* at ¶ 87).

492. Finally, for an even more granular view, Dr. Oskooii conducted a district-level analysis of racial voting patterns in each of the 12 individual districts in the region of interest (PX 6, Oskooii Rebuttal Report at ¶ 92).

493. Dr. Oskooii detailed the limitations of analyzing racial voting patterns at this level of granularity. He explained that it becomes more difficult to generate precise and reliable estimates of racial voting patterns for areas where the number of precincts is low and there is less variation in their racial composition (PX 6, Oskooii Rebuttal Report at ¶¶ 54-65). To illustrate, Dr. Oskooii's rebuttal report showed how Defendants' expert, Dr. Brad Lockerbie, generated anomalous estimates of Black voting patterns at the legislative district-level in those districts where Black residents were an extremely small percentage (less than 4%) of the VAP (PX 6, Oskooii Rebuttal Report at ¶¶ 65-69). For example, in the 2021 County Clerk contest in Legislative District 16, Dr. Lockerbie estimated that *negative* 68% of Black voters voted for the Black Democratic candidate—a stark contrast with Dr. Lockerbie's own estimate showing that 125% of Black voters preferred that candidate county-wide (PX 6, Oskooii Rebuttal Report at ¶ 66). To mitigate these issues, Dr. Oskooii explained that he limited his district-level analysis of voting patterns for individual racial groups to those groups that constituted at least 10% of the district's CVAP (PX 6, Oskooii Rebuttal Report at ¶ 93). Dr. Oskooii also estimated racial voting patterns for White and POC voters in all districts in the region of interest (*id.* at ¶ 95).

494. Dr. Oskooii's analysis of racial voting patterns at the district level found that voting was racially polarized in legislative districts throughout the region of interest where Dr. Cervas's illustrative map shows that districts could have been drawn to protect against racial vote dilution (PX 6, Oskooii Rebuttal Report at ¶ 120; *see id.* at ¶¶ 92-119).

2. Dr. Oskooii's performance testing shows that minority-preferred candidates are usually defeated outside of majority-minority districts.

495. To examine whether minority-preferred candidates in the specific districts in the region of interest are usually defeated when voting is racially polarized, Dr. Oskooii conducted an

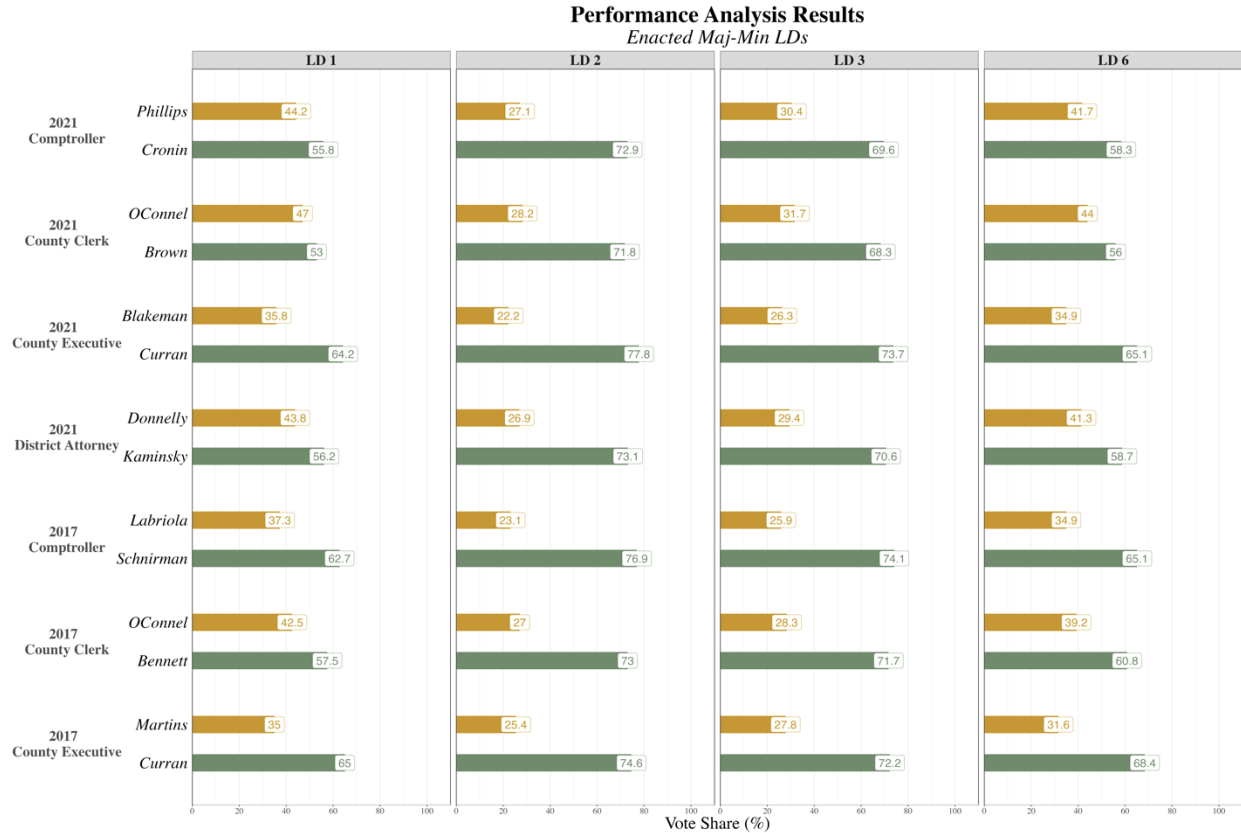
electoral performance analysis of the Enacted Map (PX 6, Oskooii Rebuttal Report at ¶¶ 123-125), similar to the performance analysis conducted by Dr. Cervas (*see supra* Section V.C.2.d).

496. To conduct his electoral performance analysis, Dr. Oskooii identified the precincts that fall inside the legislative districts in the Enacted Map and then aggregated the candidate's votes across all precincts in each legislative district (PX 6, Oskooii Rebuttal Report at ¶ 123). He then divided the aggregated vote total for each candidate by the total number of votes cast in that district in the chosen election to produce vote percentages for each candidate (*id.*). In cases in which precincts are split between two or more legislative districts, Dr. Oskooii apportioned the votes in those split precincts based on the VAP of the Census blocks inside the split precincts (*id.*).

497. Dr. Oskooii conducted an electoral performance analysis of the Enacted Map using the results of all seven elections for Nassau County offices between 2017 and 2021 in which voting was racially polarized (PX 6, Oskooii Rebuttal Report at ¶ 122). As Dr. Oskooii explained, he omitted the 2019 District Attorney race from his performance testing because his analysis did not show a clear pattern of racially polarized voting in that contest (*id.*).

498. Dr. Oskooii found that in the each of the four majority-minority districts in the Enacted Map (Enacted Districts 1, 2, 3, and 6) the minority-preferred candidate won 100% of the time—28 out of 28 contests across the seven elections (PX 6, Oskooii Rebuttal Report at ¶ 124, Figure 33 at ¶ 124).

PX 6, Oskooii Rebuttal Report Figure 33 at ¶ 124. Performance of Minority-Preferred Candidates in Majority-Minority Legislative Districts in Enacted Map, Nassau County General Elections 2017-2021

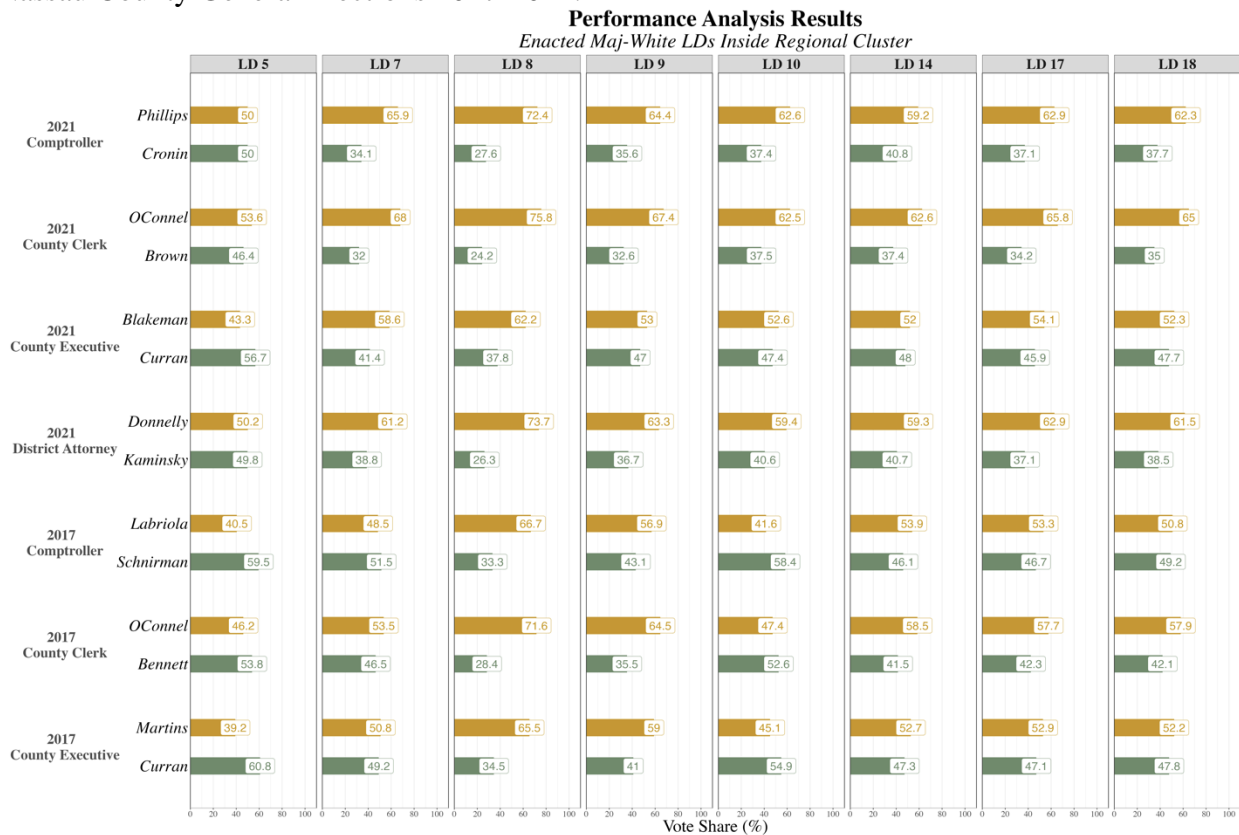


499. Outside of the four majority-minority districts, Dr. Oskooii found that minority-preferred candidates were rarely successful—especially in the most probative elections (PX 6, Oskooii Rebuttal Report at ¶ 125). In the eight majority-White districts in the region of interest, across the seven contests between 2017 and 2021, minority-preferred candidates were successful only 14.2% (8 out of 56) or 16.0% (9 out of 56) of the time, depending on whether a statistical tie in one contest in Enacted District 5 is counted as a win or a loss (*id.* at ¶ 126 & Figure 34 at ¶ 124).

500. Focusing specifically on the two interracial contests—the 2017 and 2021 County Clerk races—Dr. Oskooii found that minority-preferred candidates were successful only 12.5% (2 out of 16) of the time in the eight majority-White districts in the region of interest (PX 6, Oskooii Rebuttal Report at ¶ 126 & Figure 34 at ¶ 124).

501. Dr. Oskooii’s analysis revealed that in the most recent—and therefore most probative—contests for Nassau County offices, the success rates for minority-preferred candidates outside of majority-minority districts is even lower: in 2021, minority-preferred candidates outside of majority-minority districts won only 3.7% (1 out of 27) of contests, with a statistical tie in the 2021 comptroller race in Enacted District 5 (PX 6, Oskooii Rebuttal Report at ¶ 127). And in the 2021 County Clerk election—a contest between candidates of different races for county office in the most recent election year—the minority-preferred candidates of color won *zero* districts outside of the four majority-minority districts (*id.* at ¶ 128).

PX 6, Oskooii Rebuttal Report, Figure 34 at ¶ 126. Performance of Minority-Preferred Candidates in Majority-White Legislative Districts in the Region of Interest of the Enacted Map, Nassau County General Elections 2017-2021.



502. Out of the eight majority-white districts in the region of interest, Dr. Oskooii found that in five—Enacted Districts 8, 9, 14, 17, and 18—minority-preferred candidates had not won

any contest in which voting was racially polarized between 2017 and 2021 (PX 6, Oskooii Rebuttal Report at ¶ 129 and Figure 34 at ¶ 126).

503. Dr. Oskooii found only three majority-White districts in the region of interest where minority-preferred candidates won at least one contest of the seven contests in which voting was racially polarized between 2017 and 2021 (*see* PX 6, Oskooii Rebuttal Report at ¶¶ 130-134). He also found that the success rate of minority-preferred candidates in those three districts dropped significantly between 2017 and 2021 (*id.*). Dr. Oskooii reported that the reduction in the success of minority-preferred candidates over this time period occurred in the context of increased White bloc voting and increased overall polarization in those districts (*id.*).

504. In Enacted District 7, only one minority-preferred candidate was successful in three contests in 2017 and none was successful over four contests in 2021 (PX 6, Oskooii Rebuttal Report at ¶ 133). In 2017, Dr. Oskooii found that on average across all three contests, minority-preferred candidates received support from 74.9% of POC voters and the opposing candidates received support from 58.5% of White voters (*id.*). In 2021, on average across all four contests, minority-preferred candidates received support from 80.9% of POC voters and the opposing candidates received support from 73.4% of White voters—a nearly 15 percentage point increase in White voter cohesion from 2017 that overcame a 6-percentage point increase in POC voter cohesion (*id.*). The result is that minority-preferred candidates in Enacted District 7 have an overall success rate of only 14.3% (1 out of 7) across 2017 and 2021 with the more recent results showing no success at all (*id.*).

505. In Enacted District 5, minority-preferred candidates were successful in all three contests in 2017 where voting was racially polarized (PX 6, Oskooii Rebuttal Report at ¶ 131). In 2017, on average across all three contests, minority-preferred candidates received support from

92.5% of POC voters and the opposing candidates received support from 55.4% of White voters (*id.*). In 2021, on average across all four contests, minority-preferred candidates received support from 88.7% of POC voters and the opposing candidates received support from 62.7% of White voters (*id.*). The result is that minority-preferred candidates in Enacted District 5 went from a 100% success rate in 2017 to a 25%–50% success rate in 2021, depending on how a statistical tie is counted (*id.*). Dr. Oskooii noted that Enacted District 5 has the lowest share of eligible White voters (55.9% CVAP) and the highest concentration of eligible Black, Latino, and Asian voters (43.1% CVAP) of all the majority-White districts in the region of interest, which he stated explains the success of some minority-preferred candidates there (*id.* at ¶ 132). As Dr. Oskooii explained, this shows that as the share of minority voters increases in a district, the odds of minority-preferred candidates prevailing over White-preferred candidates increase, underscoring the necessity of drawing additional majority-minority or/and influence districts in a racially polarized region (*id.*).

506. Lastly, in Enacted District 10, the reduction in the success of minority-preferred candidates and the concomitant increase in polarization over time are even more pronounced (PX 6, Oskooii Rebuttal Report at ¶ 134). In Enacted District 10, minority-preferred candidates were successful in all three contests in 2017 where voting was racially polarized (*id.*). But in 2021, minority-preferred candidates were defeated in all four contests (*id.*). On average across all three contests in 2017, minority-preferred candidates received support from 70.4% of POC voters and the opposing candidates received support from 47.5% of White voters (*id.*). In 2021, on average across all four contests, minority-preferred candidates received support from 75.3% of POC voters and the opposing candidates received support from 66.2% of White voters—a 19-percentage point increase in White bloc voting against minority-preferred candidates that overcame a 5-percentage point increase in political cohesion among POC voters (*id.*). The result is that minority-preferred

candidates in Enacted District 10 are usually defeated, with a trend towards minority-preferred candidates always being defeated and POC voters suffering diminishing political influence even as they become more cohesive (*id.*).

507. Dr. Oskooii concluded on the basis of his analysis of racially polarized voting and electoral performance that minority-preferred candidates are usually defeated outside of majority-minority districts in the region of interest (PX 6, Oskooii Rebuttal Report at ¶ 135).

508. Dr. Oskooii further concluded that under the Enacted Map, increasing White bloc voting and overall racial polarization are diminishing minority political influence outside of majority-minority districts and/or impairing the ability of POC voters to elect their candidates of choice (PX 6, Oskooii Rebuttal Report at ¶ 135).

509. As detailed above, Plaintiffs' expert, Dr. Cervas, also conducted an electoral performance analysis of the Enacted Map, comparing it to the electoral performance of his illustrative map in the region of interest (*see supra* Section V.C.2.d.). The results of Dr. Cervas's performance analysis of the Enacted Map were consistent with the results of Dr. Oskooii's performance analysis.

3. Defendants' Expert: Dr. Brad Lockerbie

510. Defendants' expert Dr. Brad Lockerbie opined on the issue of whether voting in Nassau County is racially polarized and whether minority-preferred candidates are usually defeated by cohesive White bloc voting.

511. Dr. Lockerbie used a statistical method of analyzing racial voting patterns known as ecological regression (DX 106, Lockerbie Opening Report at ¶ 18). Conducting an ecological regression analysis of racial voting patterns requires the analyst to select the inputs for the analysis, namely, the elections to analyze and the demographic data used to estimate the racial composition of each electoral district (DX 179, Lockerbie deposition tr at 67:9-14).

512. Dr. Lockerbie acknowledges that ecological regression is an older technique for analyzing racial voting patterns than the ecological inference methodology that Dr. Oskooii and Dr. Trende used to generate their estimates of racial voting patterns (DX 179, Lockerbie deposition tr at 76:16-18).

513. Ecological inference uses more information from the available data than ecological regression does in generating estimates, including by using maximum likelihood statistics and the method of bounds (PX 6, Oskooii Rebuttal Report at ¶ 14). As Dr. Lockerbie concedes, ecological regression instead assumes a linear relationship between the percentage of minority voters in a precinct and the votes cast for each candidate (DX 179, Lockerbie deposition tr at 71:19-72:6; PX 6, Oskooii Rebuttal Report at ¶ 14). In other words, ecological regression assumes that in every precinct, the percentage of minority voters voting for each candidate is the same (*id.*).

514. As Dr. Lockerbie also concedes, ecological regression often produces estimates outside the logical bounds of 0 to 100%, whereas ecological inference uses the method of bounds to constrain vote estimates so that they do not exceed these logical bounds (DX 179, Lockerbie deposition tr at 74:10-19; PX 6, Oskooii Rebuttal Report at ¶ 15). That is why Dr. Lockerbie reports estimates that fall well below 0% or well above 100% (*see e.g.* DX 106, Lockerbie Opening Report at Table 9e [reporting estimates as high as 255% and as low as -84%]).

515. Dr. Lockerbie likewise concedes that in conducting his ecological regression analysis in this case, he used a linear regression that did not weight precincts by the number of votes cast, thereby treating all precincts—large and small—the same in his models (DX 179, Lockerbie deposition tr at 74:20-75:10; PX 6, Oskooii Rebuttal Report at ¶ 16). This means that a precinct in which 5 votes were cast has the same effect on Dr. Lockerbie’s estimates as a precinct in which 2000 votes were cast (PX 6, Oskooii Rebuttal Report at ¶ 16). Dr. Lockerbie admitted

that it is “possible to do ecological regression in a way that does weigh precincts by the number of votes cast,” but that he did not, for “[n]o specific reason” (DX 179, Lockerbie deposition tr at 74:20-75:10). Ecological inference weights precincts according to the number of votes cast in each precinct (PX 6, Oskooii Rebuttal Report at ¶ 16).

516. Dr. Lockerbie has never used any methods other than ecological regression to analyze racial voting patterns (DX 179, Lockerbie deposition tr at 67:5-8).

517. As a demographic input for his ecological regression analysis, Dr. Lockerbie relied on data on Voting Age Population (VAP) to generate his estimates of racial voting patterns for elections in both even-numbered years and odd-numbered years (DX 106, Lockerbie Opening Report at Table 2 [reporting voting by race in Nassau County in even years]; Lockerbie Deposition tr. at 143:18-144:5).

518. Dr. Lockerbie also used Citizen Voting Age Population (CVAP) as an input for estimating racial voting patterns in even-numbered years, but not odd-numbered years. (DX 106, Lockerbie Opening Report at Table 3 [reporting voting by race for citizens in Nassau County in even years]).

519. For even-numbered years, Dr. Lockerbie estimated racial voting patterns for White, Black, Hispanic, and Asian voters (DX 106, Lockerbie Opening Report at Table 2 and Table 3).

520. For odd-numbered years, Dr. Lockerbie estimated racial voting patterns for White and Black voters only (DX 106, Lockerbie Opening Report at Table 8).

521. Although Dr. Lockerbie identified candidates of color in analysis of even-year contests, he did not do so for his odd-year contests (*compare* DX 106, Lockerbie Opening Report at Table 3 [putting names of candidates of color in state and federal elections in bold type], *with id.* at Table 8 [omitting names and racial identification of candidates for county office]).

522. Dr. Lockerbie noted in his report that using CVAP data for his ecological regression analysis showed substantial increases in the degree of political cohesion among Hispanic and Asian voters (DX 106, Lockerbie Opening Report at ¶¶ 25-31).

523. The set of election data that Dr. Lockerbie analyzed shows troubling inconsistency.

524. Dr. Lockerbie analyzed ten races for state and federal office between 2012 and 2020, but he only analyzed elections for county office dating back to 2017 (DX 179, Lockerbie deposition tr at 87:13-20).

525. Dr. Lockerbie did not conduct ecological regression or performance analysis on the elections for any county offices in 2013 or 2015 or the 2022 state and federal elections. (DX 179, Lockerbie deposition tr at 87:13-89:16). Dr. Lockerbie analyzed only the election data that was made available to him by Defendants' counsel, and he did not make any request or independently look for odd-year election data prior to 2017 or for data from the 2022 elections (DX 179, Lockerbie deposition tr at 87:13-89:16; 135:16-136:16) Dr. Lockerbie also was initially not provided data for the 2021 District Attorney contest and did not analyze it.

526. Dr. Lockerbie did not conduct any analysis or form any opinions as to whether there are differences in overall turnout or turnout by race between even-year and odd-year elections (DX 179, Lockerbie deposition tr at 92:14-93:3.). Dr. Lockerbie did not examine in this case whether elections for the Nassau County Legislature appear on the same ballot as any of the elections he analyzed (DX 179, Lockerbie deposition tr at 93:19-95:2).

527. Dr. Lockerbie received election data from counsel at Troutman for a total of 17 contests—7 odd-year contests for county offices between 2017 and 2021 and 10 even-year contests for state and federal office between 2012 and 2020 (DX 106, Lockerbie Opening Report at Tables

2-3, 8). Dr. Lockerbie did not receive data from counsel on the 2021 District Attorney contest and did not analyze it initially.

528. According to analyses by Dr. Oskooii and Dr. Trende, out of the 10 contests that occurred in 2013, 2015, 2021, and 2022 for which Dr. Lockerbie was not initially provided data, voting was racially polarized in 8 out of the 10 contests and the minority-preferred candidates were defeated in all 8 contests in which voting was racially polarized (PX 1, Oskooii Opening Report at ¶ 62). In the 2 out of 10 contests where voting was not racially polarized—the 2013 and 2015 District Attorney contests—the winner was an incumbent white Democrat (PX 6, Oskooii Rebuttal Report at ¶ 40; PX 10, Oskooii Reply Report at ¶ 23).

529. In light of the fact that Dr. Lockerbie (a) did not undertake any analysis to determine whether there were differences in turnout patterns between even and odd-year elections (DX 179, Lockerbie deposition tr at 92:14-93:3); (b) weighted all elections equally in forming his conclusions (DX 179, Lockerbie deposition tr at 86:21-87:12); and (c) uncritically analyzed the set of elections he received from Defendants' counsel (DX 179, Lockerbie deposition tr at 87:13-89:16; 135:20-136:16), the omission of these ten elections from his analysis undermines the weight of his opinions.

530. To the extent Dr. Lockerbie's analysis of racial voting patterns has probative value, it shows that voting in Nassau County is racially polarized and that minority-preferred candidates are usually defeated by white-preferred candidates—consistent with Dr. Oskooii's analysis (*see* PX 6, Oskooii Rebuttal Report at ¶ 39).

531. Dr. Lockerbie analyzed seven out of the eight most recent elections for Nassau County offices, which occurred in odd-numbered years between 2017 and 2021 (DX 106, Lockerbie Opening Report at Table 6).

532. In the seven elections he analyzed, Dr. Lockerbie found that voting was racially polarized in all seven (DX 106, Lockerbie Opening Report at ¶ 82 & Table 8; *see* PX 6, Oskooii Rebuttal Report at ¶ 42). He further found that the minority-preferred candidate was defeated in 4 out of 7 (57%) contests (DX 106, Lockerbie Opening Report at ¶ 67 & Table 6; *see* PX 6, Oskooii Rebuttal Report at ¶ 42).

533. Dr. Lockerbie omitted the 2021 District Attorney race from the analysis in his opening expert report (*see* DX 106, Lockerbie Opening Report at Table 6; DX 179, Lockerbie deposition tr at 136:17-20). As Dr. Oskooii observes, Dr. Lockerbie omitted that race without explanation even though his analysis includes the 2019 District Attorney race and every other 2021 race for Nassau County offices (PX 6, Oskooii Rebuttal Report at ¶ 44). Dr. Lockerbie testified in his deposition that he did not initially analyze the 2021 District Attorney race because Defendants' counsel did not provide him with that election data (DX 179, Lockerbie deposition tr at 135:16-136:16; 137:11-20).

534. Dr. Oskooii's analysis of the 2021 District Attorney race determined that it was racially polarized and that the White-preferred candidate defeated the minority-preferred candidate in that contest (PX 6, Oskooii Rebuttal Report at ¶ 44). Dr. Lockerbie testified that he subsequently performed an ecological regression and performance analysis of the 2021 District Attorney race. Although he did not report the estimates he generated for that race (DX 179, Lockerbie deposition tr at 84:12-14, 140:1-9), Dr. Lockerbie testified that he recalled that voting was racially polarized and that the minority-preferred candidate was defeated (DX 179, Lockerbie deposition tr at 138:12-19; 142:4-143:17).

535. Thus, overall, Dr. Lockerbie testified that in the eight most recent elections for Nassau County offices, voting was racially polarized in all eight and the minority-preferred candidate was defeated in five out of eight contests (62.5%).

536. Dr. Lockerbie also analyzed ten elections for state and federal office occurring in even years between 2012 and 2020 (*see* DX 106, Lockerbie Opening Report at Table 2). Dr. Lockerbie did not analyze the results of the 2022 elections (DX 179, Lockerbie deposition tr at 89:7-16). When asked whether there was a reason he did not analyze the 2022 elections, Dr. Lockerbie simply responded, “No.” (*id.*).

537. Dr. Lockerbie found that voting was racially polarized in 8 out of 10 (80%) of these even-year elections (DX 179, Lockerbie deposition tr at 104:6-15; *see* DX 106, Lockerbie Opening Report at Table 2).

538. The two even-year contests in which Dr. Lockerbie found that voting was not racially polarized were the 2012 U.S. Senate race and the 2016 U.S. Senate race (DX 179, Lockerbie deposition tr at 103:6-12; *see* DX 106, Lockerbie Opening Report at Table 2). In both of those races, the candidates who prevailed (Kirsten Gillibrand and Charles Schumer) were incumbents who won re-election (DX 179, Lockerbie deposition tr at 103:13-104:5).

539. In the ten even-year contests that Dr. Lockerbie analyzed, the successful candidate was an incumbent in seven of those contests (Obama in 2012, Gillibrand in 2012 and 2018, Cuomo in 2014 and 2018, Schneiderman in 2014, and Schumer in 2016) (DX 179, Lockerbie deposition tr at 126:12-127:15). Among those federal and state incumbents, only Obama in 2012 was a candidate of color (DX 106, Lockerbie Opening Report at Table 2-3, ¶ 22).

540. Overall, Dr. Lockerbie conducted ecological regression and performance testing analysis using a total of 18 elections: 8 odd-year contests for Nassau County office between 2017

and 2021 and 10 even-year contests for state and federal office between 2012 and 2020 (DX 179, Lockerbie deposition tr at 104:6-18). Dr. Lockerbie found racially polarized voting in 16 out of 18 contests (8 out of 8 odd-year contests and 8 out of 10 even-year contests) (DX 179, Lockerbie deposition tr at 104:10-15, 105:9-106:16, 138:17-19, 142:4-143:17).

541. Accordingly, Dr. Lockerbie testified that overall, voting in Nassau County is racially polarized (DX 179, Lockerbie deposition tr at 107:10-12).

542. Dr. Lockerbie identified several factors that are used to evaluate which elections are more probative in analyzing whether voting is racially polarized and minority-preferred candidates are usually defeated in a racial vote dilution case (DX 179, Lockerbie deposition tr at 85:6-86:16). Among the factors Dr. Lockerbie identified are whether the elections were more recent or distant in time, other elections that may be on the same ballot at the same time as the ballot for the office in question, and incumbency status of candidates (*id.*).

543. Dr. Lockerbie testified, however, that in forming his opinions on whether voting is racially polarized and whether minority voters are able to elect their candidates of choice, he gave equal weight to all elections in his analysis. Thus, Dr. Lockerbie did not consider whether the elections he analyzed were more recent or older (DX 179, Lockerbie deposition tr at 85:22-86:2; 86:21-87:8); whether elections were between candidates of different races (DX 179, Lockerbie deposition tr at 101:5-7); whether candidates were incumbents (*id.* 87:9-12) or any other “special circumstances” with the meaning of the Supreme Court’s *Gingles* decision (*id.* 99:11-101:1); or whether the elections were held in even or odd-numbered years (*id.* 93:4-18).

544. Dr. Lockerbie does not know whether elections for the Nassau County Legislature appeared on the same ballot as any other elections (DX 179, Lockerbie deposition tr at 92:10-13). Nor did he conduct any analysis to determine whether elections that might appear on the same

ballot as county legislative elections would be probative in his analysis (DX 179, Lockerbie deposition tr at 93:19-94:22).

4. Defendants' Expert: Dr. Trende

545. Defendants' expert, Dr. Sean Trende also conducted an analysis of racially polarized voting, although more limited in scope than Dr. Oskooii and Dr. Lockerbie.

546. Like Dr. Oskooii, Dr. Trende used ecological inference as a method of estimating racial voting patterns (DX 111, Trende Rebuttal Report at 78).

547. Like Dr. Lockerbie, Dr. Trende used VAP as the demographic input for his estimates (DX 180, Trende deposition tr at 179:6-14).

548. Dr. Trende only generated estimates of voting patterns for non-Hispanic white voters and the combined POC category, which is an aggregate of Black, Latino, and Asian voters (DX 111, Trende Rebuttal Report at 82, Figure 49 at 82; DX 180, Trende deposition tr at 179:15-180:3). He did not conduct any analysis of voting patterns by individual racial group for Black, Latino, or Asian voters (DX 180, Trende deposition tr at 179:25-180:3).

549. Dr. Trende did not generate estimates of racial voting patterns for any odd-year elections.

550. Instead, Dr. Trende generated estimates for racial voting patterns for nine races for state and federal office between 2016 and 2022 (DX 111, Trende Rebuttal Report at 78-82). Five of those races—from 2016 to 2022—were also analyzed by Dr. Lockerbie and Dr. Trende's estimates were directionally consistent with Dr. Lockerbie.

551. The only additional elections that Dr. Trende analyzed were four races in the 2022 election, which showed racially polarized voting and that the minority-preferred candidate was defeated in all four contests (DX 111, Trende Rebuttal Report at 78-82).

552. Looking at the eight contests analyzed by Dr. Trende and Dr. Lockerbie over the two most recent elections—2021 and 2022—voting has been racially polarized and the minority-preferred candidate has been defeated in all eight contests.

553. Analyzing Dr. Trende’s estimates of racial voting patterns, Dr. Oskooii found that they “show an increasing degree of White bloc voting in state and federal elections over the period of time between 2016 and 2022 while POC cohesion remains fairly consistent. Dr. Trende’s estimates show average White bloc voting against minority-preferred candidates increasing every year—with average White voter support *against* minority-preferred candidates increasing by nearly 10 percentage points between 2016 and 2022. During the same period of time, Dr. Trende’s estimates show a differential of less than 3 percentage points from the highest and lowest average support of POC voters for their preferred candidates.” (PX 10, Oskooii Reply Report at ¶ 38).

554. Dr. Trende criticized Dr. Oskooii’s decision to focus his analysis solely on odd-year elections, calling Dr. Oskooii’s dataset of elections “*sparse*” (DX 111, Trende Rebuttal Report at 77-78).

555. Notwithstanding that Dr. Trende incorrectly identifies the number of election years that Dr. Oskooii analyzed as only three (Dr. Oskooii analyzed 13 contests over 5 election years), Dr. Trende’s criticism here undermines the credibility of the “*Gingles* precondition analysis” he conducted as a consultant during the redistricting process, where he analyzed a total of three contests over only two elections—the 2018 Gubernatorial and Attorney races and the 2020 Presidential race (PX 10, Oskooii Reply Report at ¶¶ 32-34). None of those three contests appeared on the same ballot as a county legislature election.

556. The Court should find that there are significant differences between elections for county offices conducted in odd-numbered years and elections for state and federal offices conducted in even numbered years.

557. Among those differences are that (1) White voters make a consistently and substantially larger share of the electorate in odd-numbered years, (2) White bloc voting and racial polarization are higher in odd-numbered years than in even-numbered years; and (3) Defendants recognize that elections conducted in odd-numbered years have a significantly greater focus on Nassau County issues, compared to presidential and midterm elections in even-numbered years.

558. In determining whether voting in Nassau County is racially polarized and whether minority-preferred candidates are usually defeated by White bloc voting, the Court should afford significant weight to elections for Nassau County office conducted in odd-numbered years and little weight to elections for state and federal offices conducted in even-numbered years.

559. The Court should weigh more heavily the results of more recent elections.

560. The Court should weigh more heavily the results of elections in which a minority-preferred candidate of color was on the ballot.

561. The Court should discount the weight of elections where a successful minority-preferred candidate was an incumbent.

562. The Court should find that voting is racially polarized in Nassau County on a county-wide basis and in each of the areas where Dr. Cervas demonstrated that it is possible to draw more majority-minority districts than the Enacted Map.

563. The Court should find that the preferred candidates of Black, Latino, and Asian voters are usually defeated on a county-wide basis.

564. The Court should find that the preferred candidates of Black, Latino, and Asian voters are usually defeated by racially polarized voting in Enacted Districts 5, 7, 9, 10, 14, and 18.

VII. THE TOTALITY-OF-CIRCUMSTANCES FACTORS UNDER THE NYVRA AND THE VRA.

565. The Court now turns to the evidence concerning the conditions within Nassau County that affect the ability of Black, Latino, and Asian residents to elect candidates of their choice or otherwise influence the outcome of elections. As discussed further below, this evidence is relevant to whether the Map complies with both the NYVRA and the VRA.

566. Plaintiffs called Dr. Thomas Sugrue to testify to social, historical, economic, and political conditions of Nassau County relevant to the totality of circumstances inquiry under either the VRA or the NYVRA.

A. The History of Discrimination Against Black, Latino, and Asian Residents of Nassau County

567. There is a long-standing history of discrimination against Black, Latino, and Asian residents of Nassau County both by government officials and more broadly. As discussed below, this discrimination is manifested in the County through, among other things, voting policies, housing policies, government employment and contracting, tax assessment policies, education, and restrictive covenants.

568. Nassau County officially recognizes that it remains more racially segregated than many other major regions in the country (PX 3, Sugrue Opening Report at ¶ 20).

569. Among the best-known roots of that segregation are the racially restrictive covenants that Nassau County's most famous housing developer, Levitt and Sons, applied to the 17,000-plus houses in the Levittown development, specifying that "the use of these premises by persons other than Caucasians" was forbidden (PX 3, Sugrue Opening Report at ¶ 60). These covenants were rigorously enforced through eviction proceedings, even for minor violations (*id.*).

When the construction of Levittown was completed in 1953, “it was the largest community in the United States without a single nonwhite resident” (*id.*).

570. This kind of government-sanctioned discrimination is durable and has far-reaching impacts. “The evils emanating from governmental acceptance of housing discrimination permeate our entire society. Generations of governmental participation in racial zoning have yielded a bitter harvest of racially segregated schools, unequal employment opportunity, deplorable overcrowding in our center cities, and virtually intractable racial polarization” (*Mayers v Ridley*, 465 F2d 630, 632 (DC Cir 1972)).

571. The vestiges of longstanding discrimination by Nassau County officials remain today and hinder the ability of Black, Latino, and Asian residents to participate effectively in the political process. Persistent private discrimination also contributes to today’s status quo, where Black, Latino, and Asian residents are elected to office, contribute to political campaigns, and vote all at substantially lower rates than their white neighbors.

1. Nassau County Has a Long History of Official Discrimination that Continues to Present Day

a. Historical Discrimination in Voting Policies

572. Nassau County’s history of voting policies disenfranchised minority residents throughout the twentieth century, a disenfranchisement that persists today.

573. From 1922 through 1969, Nassau County required each citizen to present a certificate of literacy in order to vote, which was proven to have a disproportionate impact on the minority population’s ability to vote (PX 3, Sugrue Opening Report at ¶¶ 130-133; *see also* DX 178, Critchlow deposition tr at 209:6-13).

574. The County Legislature, as it exists today, was created in response to the historical disenfranchisement of voters of color living in Nassau County, as detailed below. Prior to the mid-

1990s, the County elected a “board of supervisors” that was elected using a system of weighted voting (*see Jackson v Nassau County Bd. of Supervisors*, 818 F Supp 509, 511 [ED NY 1993]).

575. The board of supervisors system was challenged as both a form of racial vote dilution under the federal Voting Rights Act and under the Fourteenth Amendment’s one person, one vote principle (*id.*). The court in *Jackson* ultimately held the system violated the Fourteenth Amendment, and a court-ordered commission was created to ensure that all residents’ votes were counted equally (*id.* at 535; PX 84, Nassau County History). As the Legislature’s website explains, this was the first change in the County’s form of government in 100 years and “increase[ed] representation” by mandating two “minority” legislative districts (PX 84, Nassau County History).

576. The Town of Hempstead, which contains more than half the population of Nassau County, was sued under Section 2 of the Voting Rights Act in *Goosby v Town Bd. of the Town of Hempstead, New York* and, in 1997, was ordered to replace its at-large election system with a single-member district system for its Town Board (956 F Supp 326, 356 [ED NY 1997], *affd sub nom. Goosby v Town Bd. of Town of Hempstead, New York*, 180 F3d 476 [2d Cir 1999]).

577. More recently, while Nassau County’s population has grown increasingly diverse, the County has been slow to comply with Section 203 of the Voting Rights Act, which requires the County to provide voting materials in languages that are applicable to minority groups as well as in English. In 2005, the County was found out-of-compliance with federal law requiring Spanish-language access to its voters. (PX 3, Sugrue Opening Report at ¶ 133). Nassau County and its political subdivisions within the County remain subject to the requirement to provide Spanish language assistance under Section 203 of the Voting Rights Act (*id.*).

b. Historical Discrimination in Housing Policies and Underenforcement of Laws Forbidding Discrimination

578. Elected officials in Nassau County continue to play a central role in the significant housing discrimination and segregation that persists in the County.

579. Nassau's residential segregation is deeply rooted in the County's early history as a suburban haven for wealthy whites with Black service workers and manual laborers mainly concentrated in small enclaves (PX 3, Sugrue Opening Report at ¶ 19).

580. Beginning in the 1940s and 1950s, local officials in Nassau demolished these longstanding Black enclaves (PX 3, Sugrue Opening Report at ¶ 56). So-called "negro removal policies" were undertaken by communities, including Glen Cove, Rockville Center, and Long Beach, and involved condemning older houses that were home to many Black residents and evicting tenants who had few housing options in the segregated housing market (PX 3, Sugrue Opening Report at ¶ 56). Many Black residents were forced into crowded apartments or single-family homes converted to multi-family use, worsening racial segregation (*id.*). After demolition, many Black neighborhoods were rezoned for industrial or commercial use (*id.*). In Rockville Center, for example, a bulldozed Black neighborhood was replaced by factories, office buildings, and a tennis court (*id.*).

581. Blacks and whites lived separate and unequal lives in Nassau County. Most of the County's early Black population was confined to what historian Timothy Keogh calls "suburban tenements," consisting of shabby multifamily rental housing on marginal lands adjacent to wealthy white communities, in places like the swampy Frog Hollow in Inwood and Bennington Park in Freeport (PX 3, Sugrue Opening Report at ¶ 52). Domestic servants who did not live in the "servant's quarters" in the homes of wealthy whites were confined to older houses near rail lines or industrial and commercial districts in Huntington, Glen Cove, and Rockville Center, and the

Hill section of Hempstead Village (*id.*). Others lived in self-built homes (often described as shacks) in unincorporated areas with few, if any, utilities or public services, and with largely unregulated land use and zoning laws, especially in New Cassel, Roosevelt, and Manhasset (*id.*).

582. Local officials also engaged in “suburban renewal policies,” reinforcing segregation (PX 3, Sugrue Opening Report at ¶ 57). In the 1950s, several Nassau County municipalities used federal housing funds to clear Black settlements and replace them with racially segregated housing projects (*id.*). In 1951, for example, nearly all of the houses in Manhasset Valley were demolished for the construction of the Spinney Homes, a public housing project that was built next to a majority Black elementary school and separated from other parts of Manhasset by parkland (*id.*).

583. Other discriminatory federal housing programs further deepened residential segregation. As Dr. Sugrue explains, these programs favored white borrowers, which led to substantial residential growth on Long Island, but also solidified segregation (PX 3, Sugrue Opening Report at ¶ 62).

584. It was not until 1969 that Nassau passed a law forbidding housing discrimination after a seven-year campaign by civil rights leaders. But, ten years after its passage, Nassau County’s district attorney could not confirm whether his office had ever prosecuted anyone under the law (PX 3, Sugrue Opening Report at ¶¶ 67-68).

585. More recently, local officials have continually failed to enforce anti-discriminatory housing laws. Prior to 2005, the Nassau County Commission on Human Rights (NCCHR) had not conducted any fair housing investigations or engaged in enforcement activities (PX 3, Sugrue Opening Report at ¶ 69). In 2020, when Nassau County filed its most recent mandated report on

fair housing to HUD, the County itself highlighted concerns about the slow response to fair housing complaints at all levels of government (PX 3, Sugrue Opening Report at ¶ 70).

586. Local officials have also failed to combat pervasive discrimination from real estate agents and home sellers (PX 3, Sugrue Opening Report at ¶¶ 64-68, 75-78). Indeed, it was only after an undercover expose by *Newsday*, published in 2019, that the New York State Attorney General investigated and reached settlements with three Long Island real estate companies for engaging in discriminatory practices that violated state and federal housing laws (PX 3, Sugrue Opening Report at ¶¶ 76-78).

587. Zoning laws in Nassau County also perpetuate discrimination against minority residents. In the 1970s, 84 percent of the land in Nassau County was zoned exclusively for single-family housing, to prevent the construction of affordable, multi-unit rental housing (PX 3, Sugrue Opening Report at ¶¶ 79-80).

588. Efforts to rectify this zoning practice have been met with tension within the County. In 2013, a non-profit housing developer proposed constructing affordable housing in Garden City, a historically white and wealthy community, but was met with strong opposition by homeowners (PX 3, Sugrue Opening Report at ¶ 81). The village purposefully rezoned the site for single-family dwellings with discriminatory intent and impact, leading a federal district court in *Mhany Management Inc. v Incorporated Village of Garden City* to conclude that “at least some of the expressions by Garden City residents of disapproval for affordable housing reflected race-based animus or at least could have been construed as such by the Board” (*id.*, citing 985 F Supp 2d 390, 418 [ED NY 2013]).

589. Many communities in Nassau County, including Bayville, Massapequa Park, South Floral Park, Stewart Manor, and Williston Park, continue to have exclusionary zoning laws (PX 3, Sugrue Opening Report at ¶ 82).

590. As Black, Latino, and Asian people began moving into Nassau County, the county and local town police forces played a crucial role in maintaining racial boundaries, often in collaboration with white elected officials and white citizens (PX 3, Sugrue Opening Report at ¶ 125). In the 1980s, for example, when Black residents began to cross the Queens-Nassau border and move into North Elmont and Valley Stream, a local elected official claimed to have “sensitized local patrolmen to the special concerns of the community,” which a court ruling found “meant that police were to act as an unofficial border patrol, confronting black youths from Queens who ventured into the Town.” (PX 3, Sugrue Opening Report at ¶ 125, citing *Goosby*, 180 F3d at 488 [internal citations omitted]).

c. Historical Discrimination in Government Employment and Underenforcement of Laws Forbidding Discrimination in Hiring

591. Local officials have also played a role in Nassau County’s long history of discriminating against workers of color, including Puerto Rican immigrants and Black workers.

592. In the 1960s, there were large-scale protests in and around Nassau County because Puerto Rican and Black workers were being excluded by major employers, including Nassau County’s two public utilities—the Long Island Lighting Company and New York Telephone Company—and the Long Island Railroad (PX 3, Sugrue Opening Report at ¶ 43).

593. In the face of this widespread employment discrimination, New York established an agency to counter employment discrimination. But the agency was underfunded and ineffective (PX 3, Sugrue Opening Report at ¶ 42).

594. Discrimination endures today in the County's hiring practices. While only 64.3% of Nassau County's total civilian workforce is white, 77.8% of Nassau County's government employees are white (PX 3, Sugrue Opening Report at ¶ 121; *see also* PX 75, EEOC Form 164, NASSAU_00016222 at NASSAU_00016222; PX 76, EEO-4, NASSAU_00016246 at NASSAU_00016246). Latinos make up only 9.5% of government employees, but 17.2% of the total civilian workforce (PX 3, Sugrue Opening Report at ¶ 121). Blacks comprise 9.7% of government employees, but 12.4% of the total civilian workforce (*id.*). Asians are only 2.5% of government employees, but 10.4% of the total civilian workforce (*id.*).

595. Relative to their percentage of the population, white residents are strikingly overrepresented in critical positions, including financial administration, natural resources/parks and recreation, sanitation, and corrections (PX 3, Sugrue Opening Report, Figure 11 at ¶ 122).

596. The Nassau County Police Department ("NCPD") also has a history of racial discrimination in hiring. In 1968, only 24 of NCPD's officers were Black, less than 1% of the force at a time when the County's Black population was 3.5% (PX 3, Sugrue Opening Report at ¶ 127). As a result, the County has been under a consent decree for racial discrimination within its police department hiring for decades (PX 3, Sugrue Opening Report at ¶¶ 127-28; *accord* DX 178, Critchlow deposition tr at 114:18-23, 116:2-8).

597. In 2017, it was uncovered that the Nassau County Police Department designated three Asian officers as "Y" (for "yellow"), on official police department records, causing understandable public outcry (PX 3, Sugrue Opening Report at ¶ 47).

598. Additionally, there are no Latino or Asian officials and only one Black official among the top ranks of NCPD and Emergency Management (PX 3, Sugrue Opening Report at ¶ 122). Similarly, among the NCPD's 178 Emergency Management technicians, a highly paid

category, only 10 are Black or Latino, and there are no Asian technicians (PX 3, Sugrue Opening Report at ¶ 122).

599. A study commissioned and released by Nassau County concludes that Black, Latino, and Asian individuals are significantly disadvantaged in the awarding of County contracts. This study by Mason Tillman Associates (the “Mason Tillman Report”) analyzed the participation of minority and women-owned business enterprises (MWBEs) in the County’s construction, personal services, and goods and services contracts between January 1, 2015 and December 31, 2019 (PX 122, Mason Tillman Report). A statistical analysis was conducted to determine whether the underutilization of MWBEs was significant and to ensure that the proportion of contract dollars awarded to MWBEs aligns with their availability in the market (*id.*). The results of the Mason Tillman Report, finalized in December 2023, showed significant racial and ethnic disparities in almost every area of contracting and revealed a particularly significant disparity for African American, Asian American, and Hispanic American prime contractors on informal contracts valued \$10,000 and under, and on formal prime contracts valued between \$10,000 and \$220,000 (*id.* at PX0122.25, p. 11-4).

600. The Mason Tillman Report also illustrated a statistically significant disparity for African American and Asian American prime contractors on personal services contracts valued at \$1,000 and under (PX 122, Mason Tillman Report at PX0122.26, p. 11-5); for African American, Asian American, and Hispanic American prime contractors on personal services prime contracts valued between \$1,000 and \$230,000 (*id.*); for African American, Asian American, and Hispanic American goods and services prime contractors on contracts valued \$10,000 and under, and on contracts between \$10,000 and \$140,000 (*id.* at PX0122.27, p. 11-6); and for African American,

Asian American, and Hispanic American MBWEs in the award of construction subcontracts, and in personal service contracts for African American subcontractors (*id.* at PX0122.28, p. 11-7).

601. The disparity analysis of all contracts shows that African Americans, Hispanic Americans, and Asian Americans combined received just over four percent of actual dollars awarded (4.19%) while non-minority males were awarded 91.08% of actual dollars awarded—nearly \$1.4 *billion* in total (PX 122, Mason Tillman Report at PX0122.29-30, pp. 11-8, 11-9).

602. The Mason Tillman Report concludes that the effects of past and present discrimination are well-documented, and there is substantial evidence that the race neutral programs utilized over nearly 20 years to eradicate discrimination in contracting have been ineffective (PX 122, Mason Tillman Report at PX0122.30, p. 11-9).

d. Historical Discrimination in Tax Assessment Law and Policy

603. Discrimination has also historically infiltrated property tax practices in Nassau County. Until the late 1990s, Nassau County relied on a tax assessment of residential properties based on 1938 market values (PX 3, Sugrue Opening Report at ¶ 116). Communities with large minority populations paid substantially more in property taxes than their white counterparts because of an outdated and skewed assessment-to-market value ratio (PX 3, Sugrue Opening Report at ¶ 116). Historically, Nassau County's discriminatory property tax assessment policies has disproportionately affected Black and Latino communities (PX 3, Sugrue Opening Report at ¶ 116). In Nassau's predominantly Black and Latino communities, that ratio was 40 percent higher than in predominantly white communities (PX 3, Sugrue Opening Report at ¶ 116).

604. In 1999, residents of Nassau County sued the County for this discriminatory tax assessment system in *Coleman v Seldin* (PX 3, Sugrue Opening Report at ¶ 116). In that case, the parties reached a settlement which required Nassau County to implement a revaluation system of

property tax values and create a tax assessment roll that is nondiscriminatory, scientific, equitable, and based on current fair market value (PX 3, Sugrue Opening Report at ¶ 116).

605. While the required reform eliminated one source of racial disparity in property tax assessments, new developments post-settlement created new racial disparities (PX 3, Sugrue Opening Report at ¶ 117). There are significant gaps between the 61% of taxpayers in Nassau County who appeal their tax assessments, and the 39% who did not (PX 3, Sugrue Opening Report at ¶ 117). As Dr. Sugrue observes, these adversely-affected communities lack access to lawyers and other professionals to assist in the tax appeal processes (PX 3, Sugrue Opening Report at ¶ 117).

606. Despite improvements to the tax assessment system, inequality endures. Non-white communities continue to unfairly shoulder the cost of tax expenses. Over a seven-year period, the system shifted a \$1.7 billion tax burden from those who successfully appealed their property assessments to those who did not, further entrenching the wealth divide in the County (PX 3, Sugrue Opening Report at ¶ 117).

e. Historical Segregation and Discrimination in Education Law and Policy

607. Historical discrimination has also created a starkly segregated education system in Nassau County. The County's segregated schools are the result of decades of policies that deliberately separated schools by race (PX 3, Sugrue Opening Report at ¶¶ 83-84).

608. The County school districts have dramatically different levels of tax assessment and funding, reinforcing racial and ethnic inequality in education (PX 3, Sugrue Opening Report at ¶ 86).

609. The closely neighboring communities of Malverne and Lakeview are illustrative of the educational disparities in Nassau. The Malverne School District, which also serves Lakeview,

is highly segregated and was once a battle ground for civil rights (PX 3, Sugrue Opening Report at ¶¶ 105-106). The N.A.A.C.P. filed a successful federal lawsuit in the 1960s, which resulted in a court-ordered desegregation plan (PX 3, Sugrue Opening Report at ¶ 106). White parents in Malverne protested, demanding “white civil rights,” and when the integration plan was finally put into place, white residents voted against funding to transport children to schools outside of their neighborhoods (PX 3, Sugrue Opening Report at ¶ 106).

610. In Lakeview, Black students were districted into a single school to the east of Ocean Avenue, an unincorporated area that had been subject to racial steering and blockbusting since the early 1950s (PX 3, Sugrue Opening Report at ¶ 105). The Lakeview school was infamously overcrowded (PX 3, Sugrue Opening Report at ¶ 105).

611. This animosity towards integrating public schools in Malverne persists even today. During a 2023 legislative hearing on redrawing the legislative districts to combine Malverne and Lakeview into a single district, Lakeview residents emphasized this stark divide, stating that Malverne residents “don’t even want us there. They don’t even talk to us. We have no common interests And we had to fight like the dickens to even get Lakeview recognized to get busing in Malverne” (PX 63, Feb. 16, 2023 Hearing tr at 264:4-10). Plaintiff Chase confirmed this continued hostility in her deposition: “Malverne parents did not want their kids to come through Lakeview because they felt unsafe, but it was okay for our children to walk over a mile to their elementary schools. No bus. They refused to get buses for the kids. They had to fight.” (DX 186, Chase deposition tr at 115:6-11).

612. This continued educational and geographical segregation is bolstered by political officials who run on what are essentially “border protection” platforms that appeal to white voters’ concerns that they need to be protected from nonwhite outsiders who threaten to cross boundaries

and change racial and ethnic composition of public schools (PX 3, Sugrue Opening Report at ¶ 89).

613. As discussed *infra*, the echoes of this historic discrimination remain to this day with white students attending largely white, better-funded schools than Nassau’s Black and Latino students (PX 3, Sugrue Opening Report at ¶ 92).

2. The History of Private Discrimination Faced by Black, Latino, and Asian Residents in Nassau County

614. Both cause and effect of this history of official discrimination, Nassau County’s Black, Latino, and Asian residents have been subject to a long history of private discrimination and racial animosity from their white neighbors.

a. Restrictive Covenants and Discrimination in Real Estate Sales

615. Deeply rooted patterns of segregation in Nassau County have been compounded by private action that has created, maintained, and reinforced racial boundaries in Nassau County (PX 3, Sugrue Opening Report at ¶ 58).

616. The use of racially restrictive covenants in house deeds enforced racial segregation in Nassau County by effectively banning the sale of property to people of color, predominantly Black residents (PX 3, Sugrue Opening Report at ¶ 59). At one time, these restrictive covenants covered at least half of the subdivisions in Nassau County with 20 or more parcels (PX 3, Sugrue Opening Report at ¶ 59). To this day, restrictive covenants enforcing racial segregation remain in house deeds in Nassau County (PX 3, Sugrue Opening Report at ¶ 59).

617. In addition to racial covenants, real estate agents in Nassau County engage in a practice known as “steering,” whereby agents direct white homebuyers to all-white communities and non-white homebuyers to predominately non-white or racially transitional neighborhoods (PX 3, Sugrue Opening Report at ¶ 72; DX 178, Critchlow deposition tr at 210:10-21, 211:25-212:9).

These acts contribute to the continued racial segregation of neighborhoods and communities in Nassau County. Dr. Sugrue relied upon, among other sources, an undercover *Newsday* study which demonstrated that the practice of steering remains alive and well in Nassau and Suffolk counties (PX 3, Sugrue Opening Report at ¶¶ 76-77). This report culminated in the Attorney General of New York investigating the steering practices in Nassau (PX 3, Sugrue Opening Report at ¶ 78).

b. Discrimination in Employment

618. Private discrimination in the County extends beyond housing to employment, with private employers discriminating against Latino and Black residents.

619. In the 1960s, Black and Puerto Rican workers experienced discrimination in hiring by Nassau County's major retail centers, as well as other prominent Nassau County businesses, including Meadowbrook National Bank, Hempstead National Bank, Abraham & Straus, and Sealtest Ice Cream (PX 3, Sugrue Opening Report at ¶ 43).

620. Patterns of discrimination have continued to shape the experiences of Black and Latino residents in Nassau County. As a result of this discrimination, Latinos in Nassau County today are more likely to be employed in insecure, poor-paying service work and manual labor (PX 3, Sugrue Opening Report at ¶ 45). Latinos are also likely to work more than one job and rely on the labor of several family members to cover housing, transportation, and other expenses (PX 3, Sugrue Opening Report at ¶ 45).

3. Historical and present discrimination (both official and private) have had durable effects on the County.

a. Nassau County is one of the most segregated political subdivisions in the United States.

621. Nassau County's historical and present discrimination has had lasting effects felt by Black, Latino, and Asian residents in Nassau County. The County has acknowledged that the

region remains more segregated than most other major regions of the country. (PX 3, Sugrue Opening Report at ¶ 20).

622. Black residents in Nassau County are predominantly clustered in hamlets with a long history of Black settlement dating back to the late nineteenth and early twentieth centuries—like the Town of Hempstead and areas like Roosevelt, Lakeview, and Freeport (PX 3, Sugrue Opening Report at ¶ 21-22). Smaller concentrations of Black residents can also be found in Manhasset, New Cassel, and a section of Glen Cove that has historically relied on Black labor for manual and household work (PX 3, Sugrue Opening Report, Figure 1 at 13; PX 3, Sugrue Opening Report at ¶¶ 21-22).

623. Many Latino residents have moved into Black-majority or plurality neighborhoods, including Hempstead, Roosevelt, and Freeport, or nearby areas such as Uniondale, New Cassel, and Glen Cove (PX 3, Sugrue Opening Report at ¶ 23; PX 3, Sugrue Opening Report at 14, Figure 2). Latino residents also followed a pattern of second-hand suburbanization similar to Black residents, moving into areas that had been vacated by white residents, such as older, working-class neighborhoods (PX 3, Sugrue Opening Report at ¶ 23; PX 3, Sugrue Opening Report at 14, Figure 2).

624. The Asian population in Nassau County, which grew significantly after 2000, has predominantly settled along the Nassau-Queens border in hamlets like North Hills, University Park, Herricks, and New Hyde Park (PX 3, Sugrue Opening Report at ¶ 24; PX 3, Sugrue Opening Report at 15, Figure 3). Asian newcomers also moved into diverse areas like Elmont, Valley Stream, and Inwood, and into parts of Oyster Bay, a historically white area. Like Black and Latino residents, Asian residents also faced white flight as they moved in (PX 3, Sugrue Opening Report at ¶ 24; PX 3, Sugrue Opening Report at 15, Figure 3).

625. Empirical data confirms that Nassau County is one of America's most geographically segregated counties (PX 3, Sugrue Opening Report at ¶¶ 29-33). Relying on an index of dissimilarity, an accepted means of measuring the distribution of two groups, Dr. Sugrue demonstrated that Nassau has a (a) white-Black index of dissimilarity of 78, indicating these groups are very highly segregated; (b) white-Latino index of dissimilarity of 55 (highly segregated); and a (c) white-Asian index of dissimilarity is 54, which is on the cusp of moderate to highly segregated (PX 3, Sugrue Opening Report at ¶¶ 29-33).

626. These indices demonstrate that racial and ethnic segregation has persisted in Nassau County for decades, with increasing segregation for Latinos and Asians since the 1990s (*see e.g. United States v City of Euclid*, 580 F Supp 2d 584, 606 [ND Ohio 2008] [accepting Dr. Sugrue's expert analysis of the dissimilarity index to determine that Euclid was a racially segregated community]).

627. Defendants' expert, Dr. Critchlow, acknowledged "residential segregation in Nassau County is evidenced in the 2020 Census" and that the level of segregation in Nassau County is high (DX 103, Critchlow Opening Report at ¶ 49; DX 178 Critchlow deposition tr at 205:25-206:7).

628. But this residential segregation is not new; it has persisted for decades, as demonstrated by the HUD indices of dissimilarity for the period from 1990-2010 (PX 3, Sugrue Opening Report at ¶ 33, Figure 4).

629. As Nassau County acknowledged in 2020, "[a] review of complaint data, recent court cases, recent housing studies, and public surveys, as well as interviews and committee input, indicates that there remains overall discrimination in the Nassau County housing market." (PX 3, Sugrue Opening Report at ¶ 75).

b. Segregation is the result of patterns of historical discrimination.

630. As Dr. Sugrue explains, segregation is the result of historical and ongoing discriminatory practices (PX 3, Sugrue Opening Report at ¶ 145). Segregation and housing discrimination, for example, have been deep-rooted, persistent, and durable realities in Nassau County for more than a century, following patterns set during the County's earliest years (*id.*).

631. Black residents of Nassau County experienced isolation in residential spaces, as well as segregated school districts since the nineteenth century (PX 3, Sugrue Opening Report at ¶ 145). These areas were also burdened by disproportionately high property tax assessments which imposed undue burdens on Black homeowners (*id.* at ¶ 116). As a result, the County's Black population suffers from significant disparities in housing and lower rates of homeownership (*id.* at ¶ 145).

632. Latino residents similarly have been perceived and treated as inferior in Nassau County (PX 3, Sugrue Opening Report at ¶ 145). Latinos have experienced lower rates of homeownership and educational attainment as a result (*id.*).

633. Asian citizens of Nassau County may be the newest group to arrive to the area, but they face discrimination and stereotyping as foreigners or outsiders (PX 3, Sugrue Opening Report at ¶ 145). As Asians moved into Nassau communities, whites started moving out, leading to the formation of more concentrated Asian neighborhoods (*id.* at ¶ 24; *id.* at 15, Figure 3). The recent uptick in anti-Asian hate crimes and the use of derogatory language demonstrates the discrimination that Asians face (*see infra* VII.A.4.d.).

c. These effects of discrimination are durable and result in socioeconomic disparities.

634. As discussed further below, there are substantial socioeconomic disparities between non-whites and white residents in Nassau County (PX 3, Sugrue Opening Report at ¶ 146). These

socioeconomic disparities are also the result of a long history of discrimination. Dr. Sugrue explains that disparities in housing, for example, including lower rates of homeownership, are a result of discrimination (PX 3, Sugrue Opening Report at ¶ 145). Dr. Sugrue further explains that disparities in educational attainment, employment, and wealth are also a result of acts of discrimination (*id.*).

635. One of the starkest socioeconomic disparities is the wealth gap between whites, Blacks, and Latinos (PX 3, Sugrue Opening Report at ¶ 113). As discussed, one of the most substantial contributors to Nassau County's wealth gap was its discriminatory property tax assessments that fell particularly harshly on Black and Latino communities (PX 3, Sugrue Opening Report at ¶ 116).

636. Additionally, educational discrimination in Nassau County has also caused considerable disparities and has had long-term negative consequences for Black and Latino residents (PX 3, Sugrue Opening Report at ¶ 90). Segregation in housing discrimination has created fragmented school districts with widely varying tax assessments and funding bases (PX 3, Sugrue Opening Report at ¶ 86). For example, 98% of students in the Hempstead school district are Latino and Black, and 68% of Hempstead students come from economically disadvantaged backgrounds (PX 3, Sugrue Opening Report at ¶ 104; PX 167, NY State Education Department District Data Sets for Hempstead). In contrast, the neighboring Garden City school district is 79% white and is one of the best-funded and highest-achieving districts in the country (PX 3, Sugrue Opening Report at ¶ 104). Only 4% of students in Garden City come from economically disadvantaged families (*id.*). These are just a few of many examples of long-lasting acts of discrimination manifesting in socioeconomic disparities.

4. Black, Latino, and Asian Voters are Disadvantaged in Ways That Hinder Their Participation in the Political Process.

637. Black, Latino, and Asian voters bear the effects of the above-described discrimination in several contexts, which, in turn, hinders their ability to participate in the political process.

638. Continued discrimination and segregation have affected educational opportunities for Black, Latino, and Asian residents of Nassau County. Educational segregation is a historical and present reality in Nassau County.

a. Education

639. Continued discrimination and segregation have affected educational opportunities for Black, Latino, and Asian residents of Nassau County. Educational segregation is a historical and present reality in Nassau County.

640. Nassau County currently has 56 school districts. 41% of Nassau County's public-school enrollment is white; 28% of students are Latino; 18% are Asian, and 10% are Black (PX 3, Sugrue Opening Report at ¶ 94). Despite this demographic makeup of the public schools, students of color are still largely segregated from their white peers: Black students in Nassau largely attend schools in only a handful of districts with few white students; and Latino residents live in school districts with large Latino and Black populations but relatively small white populations (*id.* at ¶ 91).

641. Educational segregation and disparities are particularly apparent on either side of the Meadowbrook State Parkway. On one side of the Parkway are Freeport, Roosevelt, and Uniondale. Freeport schools are only 4% white (PX 3, Sugrue Opening Report at ¶ 107; PX 171, NY State Education Department, Freeport USFD Data [2022-2023]). Only six students in the entire Roosevelt school district are white; the district is 98% Black or Latino (PX 3, Sugrue

Opening Report at ¶ 107; PX 172, NY State Education Department, Roosevelt USFD Data [2022-2023]). Uniondale is also 98% Black or Latino (PX 3, Sugrue Opening Report at ¶ 107; PX 173, NY State Education Department, Uniondale USFD Data [2022-2023]). Meanwhile, across the Meadowbrook Parkway, Merrick schools are 80% white and North Merrick Schools are 69% white (PX 3, Sugrue Opening Report at ¶ 107; PX 174-175, NY State Education Department, Merrick and North Merrick USFD Data 2022-2023]).

642. Only a few school districts are representative of Nassau County’s diversity. Only 18 of 56 districts have Latino student populations within five percent of the percentage of Latino students in the public school population overall; only 8 of 56 districts have Black student populations within five percent of the overall Black public school population percentage; only 7 of 56 districts have Asian student populations within five percent of the county’s overall Asian public school population percentage; and only 4 of 56 districts have white student populations within five percent of the County’s overall white public school population percentage (PX 3, Sugrue Opening Report at ¶ 94).

643. Educational segregation leads to disparities in education outcomes for different groups. White adults significantly outpace Black, Latino, and Asian adults in high school graduation rates (PX 3, Sugrue Opening Report at ¶ 111). Only 1 in 20 white adults fail to graduate high school (*id.*). By contrast, more than 1 in 5 Latino adults do not graduate high school. Black and Asian adults are also less likely to have graduated high school than white adults in Nassau County (*id.*).

b. Economic Opportunity and Employment

644. Discrimination has greatly impacted economic advancement for Nassau County’s communities of color. Many of the best-paying jobs in Nassau’s major sectors, such as finance, healthcare, insurance, and real estate, require post-secondary education, hindering opportunities

for people of color who grew up in Nassau's segregated schools (PX 3, Sugrue Opening Report at ¶ 111).

645. According to a recent study conducted by Nassau County, 11.64% of white males and 15.08% of white females looking for work in Nassau and Suffolk Counties were unemployed, and 12.42% of Hispanic males and 14.30% of Hispanic females looking for work were unemployed. The statistics for other minorities were far higher: 22.50% of other minority males and 17.71% of other minority females looking for work were unemployed (PX 122, Mason Tillman Study at 9-5).

646. Further, poverty rates for Black, Latino, and Asian residents are significantly higher than those of white residents, indicating stark economic vulnerability among non-white residents (PX 3, Sugrue Opening Report at 60, Figure 9).

647. Homeownership is a primary vehicle for wealth building in the United States. In Nassau County, Black and Latino households are far less likely to own their homes than white residents, critically limiting their ability to accumulate wealth (PX 3, Sugrue Opening Report 61, Figure 10).

648. The lack of equity in homes of Black and Latino households prevents them from accessing credit, purchasing property, and progressing economically, perpetuating a cycle of intergenerational disadvantage for these communities. While the rate of homeownership among Asians in Nassau is higher than among Black and Latino residents, Asian residents' wealth accumulation is still limited by their relatively recent migration to the area, preventing them from benefiting from the same long-term advantages that have helped white households build wealth (PX 3, Sugrue Opening Report at ¶ 118).

649. Nassau County also exhibits glaring income disparities: white residents earn nearly \$32,000 more than Latino residents, \$24,000 more than Black residents, and \$12,000 more than Asian residents (PX 3, Sugrue Opening Report at ¶ 112).

c. Healthcare

650. Black, Latino, and Asian residents have significant health disparities compared to white residents in Nassau County.

651. For example, Blacks (51.3%), Latinos (54.4%), and Asians (42.7%) have a higher percentage of premature death (less than 75 years old) than whites (PX 213, Nassau County Health Indicators by Race and Ethnicity, 2019-2021). Further, Blacks (177.6 per 10,000) and Latinos (93.6 per 10,000) have higher rates of potentially preventable hospitalizations as compared to whites (76.4 per 10,000) (*id.*).

d. Racial Stigmatization, Harassment, and Violence

652. Historical and present-day discrimination has led to entrenched racial stigmatization, harassment, and violence in Nassau County.

653. For over a century, the KKK has maintained a notable Nassau County presence, targeting both Black residents and immigrants. Long Island was a national hub for the KKK at its peak in the 1920s. This entrenched presence of KKK ideology on Long Island played a key role in shaping the experiences of non-white residents—and the views of white residents—for decades. (PX 3, Sugrue Opening Report at ¶ 36). The legacy of the KKK is not merely historical: in Malverne, an elementary school and a street were named in honor of local KKK leader Paul Linder. The street was renamed as recently as 2023 (*id.* at ¶ 37; DX 186, Chase deposition tr at 47:13-25, 115:22-116:14).

654. Black residents of Nassau County have faced racial harassment for decades. These events are documented in detailed personal accounts, including those of plaintiffs in this action.

Plaintiff Stephanie Chase, for example, worked in Lynbrook, a predominantly white community in Nassau County, for 35 years. During her tenure as a postal worker, the police followed her nearly every day. Despite a uniform and truck identifying the purpose of her presence in the community, the police asked her what she was doing in Lynbrook (DX 186, Chase deposition tr at 48:1-7). She was also the subject of verbal racial harassment: “I had people calling the ‘N’ word from the windows. I’m in the street delivering mail, and that’s what I hear for the whole block.” (DX 186, Chase deposition tr at 48:1-7).

655. Nassau County’s Latino community has also faced a significant history of discrimination and segregation. The County’s Latino population began expanding in the 1930s with the arrival of new immigrants and refugees, and Nassau responded with hostility (PX 3, Sugrue Opening Report at ¶ 39). Latinos were frequently categorized as non-whites on government-issued identification documents despite their European ancestry (*id.*). The fact that many Latinos spoke Spanish as a first language also limited their opportunities and generated nativist rancor (*id.* at ¶ 40). Beginning in the mid-twentieth century, many whites began using the derogatory term “spic” or “spik,” to refer to Latinos, derived from the phonetic phrase “no spic English.” Even second- and third-generation Latinos who spoke English inflected with a “Spanish” accent were often branded as outsiders and inferior by the English-speaking majority (*id.*).

656. Asian Americans in Nassau have similarly faced stigmatization for decades (PX 3, Sugrue Opening Report at ¶¶ 46-47). Until recently, very few Asian Americans even lived in Nassau County due to nearly a century of policies that excluded Asians from the United States, including severe immigration restrictions not substantively lifted until 1965 (*id.*). Once given the opportunity to immigrate to New York, they faced harassment and violence. The U.S. Civil Rights Commission found evidence of significant harassment against Chinese and Indian Americans in

New York in the 1980s and 1990s. This harassment included hostility and vandalism by white neighbors who engaged in racially motivated boycotts of businesses, discrimination by race and language in the workplace, and harassment in schools (*id.*; PX 143, U.S. Commission on Civil Rights, “Civil Rights Issues Facing Asian Americans in the 1990s” [Feb. 1992]).

657. In the aftermath of the COVID-19 pandemic, Asian residents in Nassau have faced a new surge of racial harassment. The pandemic exhumed deep-rooted stereotypes about Asian foreignness, contagion, and disease with denunciations of the “China virus.” In 2020, three Asian middle-school aged children in Great Neck reported that they were physically attacked, verbally abused, and mocked for wearing protective masks. And a 14-year-old Asian American boy, who was canvassing for Nassau County District 10 legislative candidate Weihua Yan, was physically assaulted by a woman who shouted racially charged insults at him. (PX 3, Sugrue Opening Report at ¶ 49).

658. A 2022 survey found that 75% of Asians in New York, including Nassau County, were “very concerned” or “somewhat concerned” about “a future increase in hate crimes and discrimination” (PX 3, Sugrue Opening Report at ¶ 50). Defendants’ expert, Dr. Critchlow, himself acknowledged that Asian Americans have been heavily discriminated against both historically and today (DX 103, Critchlow deposition tr at 174:13-16).

B. Minority Candidates Have Rarely Been Elected to Nassau County Offices Outside of Majority-Minority Districts.

659. Candidates of color have rarely been elected to office in Nassau County. And minority-preferred candidates of color have rarely, if ever, been elected outside of the Legislature’s majority-minority districts.

660. Only one Black person has ever been elected to the Nassau County Legislature from a seat outside of a majority-minority district, and the weight of evidence shows that they were not

the minority-preferred candidate, but rather the preferred candidate of white voters (*see* PX 1, Oskooii Opening Report at ¶¶ 57-60; PX 6, Oskooii Rebuttal Report at ¶¶ 111-113, 118-120; *see also* DX 6, Lockerbie Report at ¶¶ 84-90 [high white bloc voting and racially polarized voting in current-LDs 9, 10, 18]).

661. Although the County’s Latino/Hispanic population has grown by 31% over the last decade, few people of Latino heritage have ever been elected to the County Legislature, and the weight of evidence shows that no minority-preferred legislator of Hispanic heritage is currently serving (DX 6, Lockerbie Report at ¶¶ 84-90).

662. Additionally, although the County’s Asian community has grown by more than 60% in the past decade, no Asian person has ever been elected to the County Legislature (PX 53, Aug. 31, 2021 TDAC Hearing tr at 76:9-77:9, NASSAU_00001994). Defendant’s own expert, Dr. Critchlow, acknowledged that no Asian person has ever served in the Legislature or held county-wide office (DX 178, Critchlow deposition tr at 174:17-23).

663. Today, racial minorities remain severely underrepresented in the Nassau County Legislature. As of 2024, only 4 of 19 legislators are non-white. Although Nassau County currently has a population that is less than 57% white, the Legislature is 79% white (PX 3, Sugrue Opening Report at ¶ 137).

664. Defendants’ expert admits that most instances of electoral success for candidates of color in Nassau have been in majority-minority districts (DX 178, Critchlow deposition tr at 220:2-5), and that the examples of “progress” in representation have been at the village, not the County level (*id.* at 219:20-220:1).

C. Black, Latino, and Asian Residents Contribute to Political Campaigns at Lower Rates Than White Residents in Nassau County.

665. Black, Latino, and Asian residents comprise a smaller share of individual contributors to campaigns for Nassau County offices relative to their share of the citizen voting age population, while white residents comprise a higher percentage of individual political campaign donors than their respective share of citizen voting age population (PX 1, Oskooii Opening Report at ¶¶ 12(e), 78-95; DX 183, Oskooii deposition tr at 202:17-25).

666. Defendants' experts cannot (and do not) credibly dispute these figures. Dr. Critchlow could not identify a single source to support his conclusion that African Americans, Asians and Latinos contribute to campaigns in different amounts in Nassau County and further acknowledged that quantitatively analyzing campaign contributions of racial and ethnic groups is outside the scope of his expertise (DX 178, Critchlow deposition tr 95:20-98:14; 99:24-100:4).

D. Black, Latino, and Asian Citizens Vote at Lower Rates than White Voters in Nassau County.

667. Black, Latino, and Asian residents of Nassau County consistently vote at substantially lower rates than white residents.

668. White voter turnout is higher than overall turnout in every single election year from 2013 to 2022 (PX 1, Oskooii Opening Report at ¶¶ 68-69, Table 9). Thus, white voter turnout rates have significantly exceeded minority turnout rates in every election from 2013 to 2022—with double-digit gaps in every year but 2016 and 2018 (PX 1, Oskooii Opening Report at ¶ 70).

669. The turnout gap between white and minority voters is even larger in most odd-year elections than in even-year elections (PX 1, Oskooii Opening Report at ¶ 71). That is, minority voters are even more underrepresented in the Nassau County electorate in odd-year elections than they are in even-year elections.

670. Black, Latino, and Asian voters comprise a larger share of the electorate in every even-numbered election year compared to the preceding odd-numbered election year. For example, Black, Latino, and Asian voters comprised 23.4% of the electorate in year 2022, but only 19.7% of the electorate in 2021 (PX 1, Oskooii Opening Report at ¶ 74). This even-odd year turnout gap holds for each individual minority group—Black, Latino, and Asian (*id.*).

671. By contrast, white voters comprise a larger share of the electorate in odd years in every even-odd election year pair. For example, whites comprised 75.8% of the electorate in 2019, but 68.3% of electorate in 2020 (PX 1, Oskooii Opening Report at ¶ 76).

672. Overall, the data shows that holding elections in odd-numbered years not only substantially reduces overall voter turnout regardless of race and ethnicity, but also reduces the share of Black, Latino, and Asian voters relative to even-numbered year elections (PX 1, Oskooii Opening Report at ¶ 77; DX 183, Oskooii deposition tr at 64:6-20, 146:19-147:25, 173:19-174:3, 175:9-17, 214:14-215:2). Accordingly, Dr. Oskooii concluded that Black, Latino, and Asian voters are disadvantaged in odd-numbered election years relative to even-numbered years (PX 1, Oskooii Opening Report at ¶ 72).

E. Certain Voting Procedures Used In Nassau County Have Also Contributed To Racial Vote Dilution.

673. The use of odd-year elections depresses turnout and exacerbates racial disparities in turnout rates. In Nassau County, turnout in odd-year elections for county office is significantly lower than turnout for even-year elections for state and federal offices *and* turnout remains racially disparate. The use of odd-year elections diminishes the ability of Black, Latino, and Asian voters to elect candidate of their choice and to influence the outcome of elections (PX 1, Oskooii Opening Report at ¶¶ 65-77; DX 183, Oskooii deposition tr at 149:24-150:5, 153:10-15, 172:19-173:1).

674. Defendants’ experts do not meaningfully dispute that the use of odd-year elections has the effect of depressing turnout in Nassau County (DX 103, Critchlow Opening Report at ¶¶ 67-70; DX 179, Lockerbie deposition tr at 92:14-95:5; 212:3-213:19). Dr. Critchlow admitted that the origins of odd-term elections and their implementation were intended to be discriminatory and that it has resulted in lower turnout for all voters (DX 178, Critchlow deposition tr at 77:13-21). And Dr. Lockerbie admitted that he did not perform any comparative analysis of the racial composition of the electorate between even-year and odd-year elections (DX 179, Lockerbie deposition tr at 92:14-95:5; 212:3-213:19).

F. Political Campaigns in Nassau County Have Featured Overt and Subtle Racial Appeals.

675. Both overt and subtle racial appeals have pervaded Nassau County political campaigns in recent election cycles. These racial appeals highlight racial demarcations, exacerbate racial anxieties and tensions, stoke fears of looming integration, and blame crime on people of color.

676. In the 2017 County Executive election, the New York Republican Senate Committee mailed out an ad reading “Meet Your New Neighbors!” above an image of three Latino men covered in face and body tattoos (PX 3, Sugrue Opening Report at ¶ 141). The mailer claimed “Laura Curran [Democratic candidate for Nassau County Executive] will roll out the welcome mat for violent gangs like MS-13!” (PX 223, Curran “Meet Your New Neighbors” Ad; PX 3, Sugrue Opening Report at ¶ 141, Figure 12). On November 5, 2017, the New York Times Editorial Board published a piece referring to this ad as “Willie Horton, Updated for the Trump Era” (PX 231).

677. The Nassau County Republican Committee circulated mailers attacking county Legislature candidate Joshua Lafazan during the November 2023 election cycle with the slogan “Lafazan’s Top Priority: Combating White Privilege” and depicting a young white student writing

out “I’m sorry for being white. I’m part of the problem” on a chalkboard (PX 222, “White Privilege” Ad).

678. In the 2023 election cycle, Joseph Saladino, a candidate for Town Supervisor of Oyster Bay who campaigned on his opposition to building affording house in the town while promoting the construction of luxury housing, distributed a campaign mailer featuring a photograph of an all-white slate of candidates with the slogan “Protecting Our Way of Life” (PX 3, Sugrue Opening Report at ¶ 142). The mailer’s message about protecting neighborhoods is part of a pattern of political messaging that reinforces and exacerbates racial tensions in Nassau County (*id.* ¶ 143).

679. On June 29, 2021, the Nassau County GOP posted on Facebook an image showing the mugshot of a Black man, Keshon Thorpe. Next to Mr. Thorpe’s image was text that claimed Mr. Thorpe committed an assault one day after being released from jail (PX 221, Nassau County GOP “Facebook Post” [June 29, 2021]).

680. On July 13, 2021, Nassau County GOP posted on Facebook an image of a Black man with his arms tied behind his back. The image was below text which said that a recent bail reform law “let thugs go free after arrest,” even though the arrest had occurred before the bail reform law went into effect (PX 216, Nassau County GOP, “Facebook Post” [July 13, 2021]).

681. These materials and more like them went beyond mere criticism of the bail reform law and crossed the line into racial appeals by showing a multitude of mugshots and images of Black and Latino men. The Nassau County GOP’s Facebook posts referred to the men as “thugs,” “drug dealers,” and gangbangers. (PX 216, Nassau County GOP, “Facebook Post” [July 13, 2021]; PX 223, Curran “Meet Your New Neighbors” Ad; PX 219, Nassau County GOP, “Facebook Post” [July 18, 2021]).

682. These appeals build on a history of racial tension over integration that was recognized by the United States District Court for the Eastern District of New York in *Goosby v Town Board of the Town of Hempstead, New York* (956 F Supp 326 [ED NY 1997]). That court held that a Hempstead Town Councilman’s campaign brochure was a racial appeal because it stated that the Councilman was an opponent of individuals who sought to “‘Queensify’ North Valley Stream and its environs.” The court held that this ad was an attempt to appeal to anti-Black sentiments aroused by the migration of Black residents into the communities of Elmont and North Valley Stream (*id.* at 342-43).

683. President-elect Trump, campaigning for candidates running for Nassau County office, fomented fear of migrants from Africa, the Middle East, and Asia at a September 18, 2024 political rally at the Nassau Coliseum in Uniondale. President-elect Trump said, “I’ve been talking about migrant crime for five years, I said, if you let them in, it’s going to be hell. They are vicious, violent criminals that are being let into our country . . . They’re coming from the Congo. They’re coming from Africa. They’re coming from the Middle East. They’re coming from all over the world. Asia. They’re coming from Asia. And what’s happening to our country is we’re just destroying the fabric of life in our country, and we’re not going to take it any longer. And you’ve got to get rid of these people” (PX 224, Donald J. Trump Nassau County Rally). President-elect Trump animated fears of Black, Latino, and Asian individuals moving to Nassau County through his explicit reference to these countries and regions. Moreover, his reference to “the fabric of life in our country” being “destroy[ed]” by Black, Latino, and Asian individuals simply moving to Nassau County preyed on racial tension and anxiety (*id.*).

684. During the same Nassau Coliseum rally, Nassau County Executive Bruce Blakeman said, “We have to stop the foreign invasion of our borders” (PX 224, Donald J. Trump

Nassau County Rally). President-elect Trump later called back to Mr. Blakeman's appeal and asked, "Bruce, would you let people come in from a foreign county like Venezuela where, by the way, their crime rate is down 72% because they've taken their prisoners, they've taken their gangs, they've taken their drug dealers and they've shipped them all to the United States so their crime rate is down?" (*id.*). President-elect Trump also said, "We have massive numbers of terrorists coming into our country. You have everybody coming in, we have people that can't speak the language." (*Id.*). He further said, "We're going to get these violent criminals behind bars, we're going to get them out of this country, we're going to take them back to the country from which they came." (*Id.*).

G. Elected Officials in Nassau County Are Unresponsive to the Needs of Black, Latino, and Asian Residents as Compared to White Residents

685. Elected officials in Nassau County are not responsive to the needs of Black, Latino, and Asian residents as compared to white residents.

686. The agencies responsible for responding to the needs of Nassau County's Black, Latino, and Asian residents have been significantly underfunded. The County's Office of Asian American Affairs, Office of Hispanic Affairs, Office of Minority Affairs, and the Commission on Human Rights are collectively funded by a paltry 0.07% of the County's budget (PX 11, Sugrue Reply Report at ¶ 54).

687. The Nassau County Commission on Human Rights, which is tasked with investigating and enforcing civil rights laws, has received consistent criticism for being understaffed, underfunded, and unresponsive for decades (*see* PX 3, Sugrue Opening Report at ¶ 69).

688. Another area of non-responsiveness is government contracting. In 2021, the County retained the Mason Tillman firm to conduct a disparity study concerning the ability of minority-

owned businesses to obtain County contracts (PX 122, Mason Tillman Report). The study was commissioned on the heels of a *Newsday* report that the Nassau Department of Public Works had been falling short of minority contracting goals, which noted that the County had not studied contracting disparities in sixteen years. (PX 245, Scott Eidler, “*Nassau Contract Data for Women- and Minority-Owned Firms Prompts Concern*, *Newsday* [Jan. 4, 2021]).

689. Once completed, Nassau County, at minimum, slow-played and obscured the release of the Mason Tillman Report. As the Report explains, work for reports for Nassau and Suffolk were undertaken together beginning in 2021. Work on both reports appears to have concluded in 2023. Indeed, on December 22, 2023, the Suffolk County Executive announced Mason Tillman’s “abysmal” findings as to Suffolk County (PX 244, Candice Ferrette, “*Suffolks Study Shows ‘Abysmal’ Disparity in Vendor Contracts.*” *Newsday* [Dec. 22, 2023]).

690. While dated December 2023, Nassau County’s report was not released then. It had still not been released in April 2023, when Plaintiffs requested the report in discovery. Months later, in September 2023, Defendants produced a version to Plaintiffs that they represented was a “draft.” In October 2023, Defendants indicated that the draft version was to be released as the final, “public” version, but it does not appear that the Defendants ever actually announced the findings or made any sort of public statement about the report.

691. The concentration of Black and Latino residents in “unincorporated” areas of the County provides strong evidence of non-responsiveness. Without the tax bases of incorporated villages, these areas suffer from inferior infrastructure and public services (*cf. Ortiz v Phila. Off. of City Commissioners Voter Registration Div.*, 824 F Supp 514, 538 [ED Pa 1993] [stating that minority residents received inequitable distribution of services]).

H. The Reasoning for the Enacted Map’s Departures from Past Compliance with Prohibitions on Racial Vote Dilution Are Tenuous.

692. The Court should find that Defendants’ justifications for the Enacted Map’s departures from past compliance with the VRA in legislative redistricting plans is, at best, tenuous.

693. Defendants acknowledge that if the relevant legal requirements are met under Section 2 of the VRA, the creation of majority-minority districts are warranted to ensure that minority groups do not “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice” (*see* PX 80, Feb. 16, 2023 Troutman Memo at 4-5, quoting 52 USC § 10301 [a])—in other words, to prevent racial vote dilution. Defendants also acknowledge that the NYVRA similarly proscribes racial vote dilution (*see id.* at 6).

694. Defendants repeatedly represented to the public that there was no basis under the VRA or the NYVRA for creating *any* majority-minority districts in the Enacted Map.

695. The February 16 Troutman Memo represented that Dr. Trende “conducted a *Gingles* precondition analysis of the County and the proposed map, and concluded that Nassau County contains *no* districts meeting the *Gingles* preconditions that would require or permit the creation of *any* race-focused districts, for purposes of compliance with Section 2 of the VRA” (PX 80, Feb. 16, 2023 Troutman Memo at 5 (emphasis added)). The Memo cited the same “*Gingles* precondition analysis” by Dr. Trende as the basis of Defendants’ conclusion that there was no need to draw any majority-minority districts for purposes of complying with the NYVRA (PX 80, Feb. 16, 2023 Troutman Memo at 6).

696. The February 27 Troutman Memo repeated the same representations that Defendants found no basis to draw any majority-minority districts for purposes of complying with the VRA and the NYVRA (PX 81, Feb. 27, 2023 Troutman Memo at 9-10). The Memo stated that,

for this reason, the Enacted Map was drawn without any racial considerations (PX 81, Feb. 27, 2023 Troutman Memo at 8).

697. Misha Tseytlin testified repeatedly to the same effect at the February 16, 2023 legislative hearing. For example, he represented: “Mr. Trende did a Section 2 VRA analysis under the *Gingles* factors, and he informed us there were no districts that needed to be drawn to comply with Section 2 of the VRA” or the NYVRA (PX 63, Feb. 16, 2023 Hearing tr at 101:25-102:5); “[Mr. Trende] analyzed all three *Gingles* Preconditions, and he determined no VRA districts were mandated” (*id.* at 118:0-6); “[W]e looked at the same Section 2 voting rights and analysis that Sean Trende had done. There was no requirement to create a race focused district there . . .” (*id.* at 31:11-15).

698. Dr. Trende’s ensemble analyses—both contemporaneously generated during the redistricting process and as an expert here—both contradict Mr. Tseytlin’s representation that the *Gingles* preconditions were not satisfied in Nassau County.

699. Dr. Trende’s own “race-blind” map ensemble contains almost 59,000 maps with at least six majority-minority districts by CVAP (*see* DX 111, Trende Rebuttal Report at 87; PX 72, Cervas Reply Report at ¶ 11). Over 2,000 more of Dr. Trende’s maps contain seven such districts.

700. Dr. Trende’s admission that Defendants knew prior to the Map’s enactment that the *Gingles* preconditions were met is consistent with Mr. Tseytlin’s acknowledgement during the February 16, 2023 hearing that “[t]here is some racially polarized voting in some parts of Nassau” (PX 63, Feb. 16, 2023 Hearing tr at 117:4-6). When pressed for further details about this aspect of Defendants’ *Gingles* analysis, Mr. Tseytlin refused to elaborate, claiming, “I do not have those numbers in front of me” (*id.* at 117:7-17). Those analyses by Dr. Trende that Defendants withheld

during the redistricting process confirmed that voting is racially polarized in Nassau County (*see* PX 10, Oskooii Reply Report at ¶ 34; PX 87-91, PX 121).

701. Troutman’s own map made clear that eligible Black, Latino, and Asian voters were sufficiently numerous and compact to form a majority in at least four districts. The February 27 Troutman Memo noted that the Enacted Map contains “four districts where racial minorities make up the majority of the district, as measured by CVAP” (PX 81, Feb. 27, 2023 Troutman Memo at 8).

702. Moreover, Defendants were aware that the 2013 redistricting plan included three majority-minority districts drawn for the stated purpose of complying with Section 2 of the VRA (PX 128, Feb. 11, 2013 Rules Committee tr at 196:18-199:21; *see also* PX 242, Kopel deposition tr at 105:5-17). The Black, Latino, and Asian share of the Nassau County electorate increased markedly from the 2013 redistricting cycle to the 2023 redistricting cycle, as Dr. Oskooii’s analysis shows and Defendants’ expert does not dispute (*see* PX 1, Oskooii Opening Report at ¶¶ 17-22, Tables 1-6; DX 179, Lockerbie deposition tr at 237:19-238:19).

703. The evidence also does not support Mr. Tseytlin’s claim at the February 16, 2023 hearing that “we did not analyze race of the map after Mr. Trende concluded that there was no VRA Section 2 district” (PX 63, Feb. 16, 2023 Hearing tr at 57:13-58:2). Emails reveal that both before and after February 16, 2023, Dr. Trende performed statistical analyses of the racial demographics of Mr. Nicoletto’s proposed maps which he provided to the rest of the mapmaking team, including Mr. Tseytlin (*see e.g.* PX 32, February 3, 2023 Email and Attachments at NASSAU_00000075-76; PX 27, February 17, 2023 Email and Attachments at NASSAU_00000035-36). This analysis showed that a large majority of the maps in Dr. Trende’s ensemble contained more majority-minority districts than the Presiding Officer’s maps (*see id.*).

704. In telling the public that they found no basis to draw any majority-minority districts, Defendants misrepresented the law on racial vote dilution. In his February 16 testimony, Mr. Tseytlin stated that Defendants’ conclusion that the *Gingles* preconditions were not satisfied was based upon their position that the VRA protects only “a single minority” group from racial vote dilution (PX 63, Feb. 16, 2023 Hearing tr at 117:7-17). That is, Defendants informed the public that the law does not recognize “coalition districts”—districts where multiple minority groups that are politically cohesive are combined to protect their members against racial vote dilution.

705. But, as Dr. Trende recognized in *Harkenrider*, however, “the majority rule among [federal] circuits” is that “the VRA requires the creation of districts where multiple minority groups can form a cohesive majority.” (DX 111, Trende Rebuttal Report, Ex. C at 15). This includes the Second Circuit (*see Bridgeport Coalition for Fair Representation v City of Bridgeport*, 26 F3d 271, 275-77 [2d Cir 1994], *vacated on other grounds*, 512 US 1283 [1994] [identifying a VRA Section 2 violation in a lawsuit on behalf of Black and Hispanic voters]).

706. Defendants are familiar with legal protections for coalition districts. During the 2013 redistricting cycle, the Nassau County Legislature created a Black-Latino coalition district for the purpose of protecting those groups against racial vote dilution (*see* PX 242, Kopel deposition tr at 105:5-110:6 [“Q. So is it your understanding that the legislative map in 2013 included one coalition district? A. That’s what this transcript seems to indicate, yes.”]).

707. Moreover, the NYVRA expressly protects coalition districts (*see* Election Law § 17-206 [8] [“Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate.”]).

708. The evidence likewise does not support Defendants’ stated justifications for splitting or isolating many minority communities of interest in the Enacted Map. The Enacted Map splits the Village of Hempstead, the Village of Freeport, Elmont, Mill Brook and the Greater Hyde Park area—all of which are communities of interest with significant populations of voters of color (*see* PX 242, Kopel deposition tr at 283:25-284:8, 313:21-317:5, 328:17-20; PX 2, Cervas Opening Report at ¶¶ 50-54, 97, 115-16). The Map also separated the predominantly Black neighborhood of Lakeview from nearby communities of color and instead drew it into a district with majority-white areas where Black Lakeview residents testified they felt unwelcome (*see* PX 242, Kopel deposition tr at 244:8-245:24, 317:10-319:23; PX 63, Feb. 16, 2023 Hearing tr at 259:7-264:17, 264:20-268:18, 268:22-271:17, 271:21-273:6, 279:25-283:4).

709. Defendants gave the public the impression that dividing these communities was necessary for the Map to comply with the law. For example, the February 27 Troutman Memo stated that the mapmakers were “unable to accommodate” requests to include Lakeview in a majority-minority district (PX 81, Feb. 27, 2023 Troutman Memo at 2 n 3). The Memo also stated that “population-equality requirements largely require [the Village of Hempstead] to be split to make most maps work” (*id.* at 2). And the Memo indicated that although Elmont and Mill Brook were split, the mapmakers had “accommodat[ed]” requests to keep them whole “as much as possible.” (*Id.*).

710. The evidence shows that it is eminently possible to draw a map that complies with all redistricting requirements and keeps the South Valley Stream CDP (including the Mill Brook community) undivided and together with an undivided Valley Stream; keeps Elmont whole in a single district; keeps the Village of Hempstead whole in a single district; keeps Lakeview in a district with neighboring villages and CDPs with which it shares a community of interest; and

keeps an Asian community of interest together in a single district (PX 2, Cervas Opening Report at ¶¶ 56-62; PX 232, Cervas Illustrative Plan). The Cervas Illustrative Plan does just that—all while creating six majority-minority districts without treating race as a predominant consideration *and* performing as well as or better than the Enacted Map on every traditional and statutory redistricting criterion (PX 2, Cervas Opening Report at ¶¶ 131, 133-34 & Table 14).

711. The Cervas Illustrative Plan fulfills all these requirements while respecting communities of interest by taking a “relative[ly] objectiv[e] and transparen[t]” approach to considering communities of interest: “maintaining the integrity of political subdivisions, including villages and CDPs.” (PX 2, Cervas Opening Report at ¶ 122). This approach is relatively objective and transparent because political subunits are well established, clearly demarcated geographically, and “cognizable to ordinary citizens.” (*Id.*).

712. By contrast, Defendants invoked subjective, shifting, and sometimes contradictory justifications for the communities of interest they drew in the Enacted Map (*see* PX 81, Feb. 27, 2023 Troutman Memo, Appendix). Dr. Trende criticized this kind of “ad hoc reasoning” in *Harkenrider* because it can serve as cover for the manipulation of districts: “this is the district we want, find a community of interest to justify it” (DX 111, Trende Rebuttal Report, Ex. C at 19). During the February 16 Hearing, when pressed by legislators to explain the choices to maintain certain communities of interest together in the Enacted Map and to split communities of interest elsewhere, Mr. Tseytlin refused to elaborate on the Troutman Memo (*see e.g.* PX 63, Feb. 16 Hearing tr at 53:16-55:17, 58:3-59:9, 61:6-64:16).

CONCLUSIONS OF LAW

I. THE ENACTED MAP VIOLATES THE MUNICIPAL HOME RULE LAW'S REDISTRICTING REQUIREMENTS FOR COUNTY LEGISLATURES

713. The Municipal Home Rule Law prescribes redistricting criteria for county legislatures that must be uniformly applied throughout New York State (*Tokos v County of Broome*, 221 AD3d 1392, 1395 [3d Dept 2023]). The MHRL sets forth a ranked-order system of enumerated standards, “which shall have priority in the order herein set forth, to the extent applicable.” (MHRL § 34 [4]).

714. The Enacted Map violates the MHRL’s ranked-order criteria in two distinct ways.

715. First, the Enacted Map violates the strict prohibition on drawing districts with the intent to favor a political party or discourage competition. (MHRL § 34 [4] [b] [second criterion])

716. Second, the Enacted Map violates the prohibition on drawing districts with the intent or effect of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process. (MHRL § 34 [4] [e] [fifth criterion])

717. As discussed further below, when the Enacted Map is compared to other benchmarks, including the Cervas Illustrative Plans or ensemble analysis (i.e. randomized redistricting plans created by algorithm), it becomes clear that both MHRL violations were not a coincidence. Rather, the Legislature disregarded these criteria in service of achieving discriminatory effects.

A. The Enacted Map Violates The Prohibition On Drawing Districts With The Intent To Favor A Political Party.

718. The language of the Municipal Home Rule Law § 34 [4] [e]’s prohibition on illicit partisan intent in redistricting is identical to the state constitutional bar on partisan gerrymandering in statewide redistricting (*see* NY Const art. III, § 4 [c] [5] [proscribing that “Districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other

particular candidates or political parties”]). It “permits no level of intentional discouragement of competition or partisan favoritism” (*Harkenrider v Hochul*, 204 AD3d 1366, 1370 [4th Dept 2022], *appeal dismissed, lv to appeal denied*, 38 NY3d 1168 [2022], and *affd as mod*, 38 NY3d 494 [2022]). “Such 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 (i.e., lines that impactfully and unduly favor or disfavor a political party or reduce competition)” (*Harkenrider v Hochul*, 38 NY3d 494, 519 [2022]).

719. Plaintiffs have presented compelling evidence that the Map was drawn with impermissible partisan intent.

1. The Enacted Map Was Developed and Passed Through a Partisan Process that Excluded Participation by the Minority Party

720. Evidence of a “largely one-party process used to enact” a challenged redistricting plan can establish impermissible partisan intent (*Harkenrider*, 204 AD3d at 1371; *see also Harkenrider*, 38 NY3d at 519-20). In *Harkenrider*, the Fourth Department characterized the redistricting process as “largely one-party” based on two factors: first, the map was adopted without a single minority-party vote in favor of it; and second, the map was drawn without meaningful input from the minority political party (*Harkenrider*, 204 AD3d at 1371). Both factors are present in this case.

721. As detailed in Section V.A. above, Plaintiffs have presented ample evidence showing “proof of a partisan process excluding participation by the minority party” in adopting the Enacted Map.

2. Statistical Evidence Shows that the Enacted Map Impactfully and Unduly Favors Republicans, Disfavors Democrats, and Reduces Competition.

722. Where plaintiffs adduce “evidence of discriminatory results (i.e., lines that impactfully and unduly favor or disfavor a political party or reduce competition)” (*Harkenrider*,

38 NY3d at 519), courts will rely on “the inference of gerrymandering evident ‘by the application of simple common sense’ from the enacted map itself and its likely effects on particular districts” (*Harkenrider*, 204 AD3d at 1374, quoting *Adams v DeWine*, 195 NE3d 74, 77 [Ohio 2002]).

723. In *Harkenrider*, the Fourth Department recognized that partisan gerrymandering occurs “where the voters of the disfavored party are disproportionately ‘packed’ into districts already favoring that party in order to make the districts around them either flip or become less competitive” (204 AD3d at 1372). There, the challenged map’s “nine most competitive districts” were more democratic than in nearly all the simulated maps in Dr. Trende’s non-partisan ensemble (*id.* at 1373; *see also id.* at 1372 [“[T]he more competitive districts were made safer [for Democrats] by packing republican voters into other republican-leaning districts.”]).

724. As detailed in Sections V.B.-C. above, statistical evidence—including both ensemble analysis and comparison to an illustrative map—shows that the Enacted Map produces discriminatory results and supports the common-sense conclusion that Defendants’ map was drawn with impermissible intent to favor Republicans and discourage competition.

B. The Enacted Map Violates The Municipal Home Rule Law’s Prohibition On Drawing Districts With The Effect Or Intent Of Discriminating Against Minority Voters.

725. Municipal Home Rule Law § 34 [4] [b] prohibits the drawing of districts “with the intent *or* the result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process or to diminish their ability to elect representatives of their choice” (emphasis added).

726. Section 34[4] of the MHRL was enacted in October 2021 (2021 NY Senate Bill S5160B, 2021 NY Assembly Bill A229C), before the NYVRA passed in June 2022 (2022 NY Senate Bill S1046E, 2022 NY Senate Bill A6678E). It is clear from the statute’s plain language

that this MHRL provision was meant to incorporate the standards of the federal Voting Rights Act into New York.

727. The MHRL’s prohibition on drawing districts that have the “intent or result of denying or abridging the equal opportunity of racial or language minority groups to participate in the political process,” MHRL § 34[4] [b], is drawn from Section 2 of the federal Voting Rights Act, which provides:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which *results in a denial or abridgement* of the right of any citizen of the United States to vote on account of race or color.

(52 USC § 10301 [a] (emphasis added)).

728. Liability under Section 2 “turns on the presence of discriminatory effects, not discriminatory intent” (*Allen*, 599 US at 25).

729. The MHRL’s prohibition on drawing districts that have the “intent or result of . . . diminish[ing]” the ability of racial or language minority groups to “elect representatives of their choice,” MHRL § 34 [4] [e], is drawn from Section 5 of the federal Voting Rights Act, which provides:

Any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting that *has the purpose of or will have the effect of diminishing* the ability of any citizens of the United States on account of race or color . . . *to elect their preferred candidates of choice* denies or abridges the right to vote within the meaning of subsection (a) of this section.

(52 USC § 10304 [b]).

730. As the Troutman Memos recognized, Section 34 [4] [b] of the MHRL also incorporated the protections of the NYVRA when that law was enacted in June 2022 (PX 80, Feb. 16, 2023 Troutman Memo at 5; PX 81, Feb. 27, 2023 Troutman Memo at 9).

731. As the Troutman Memos recognized, Section 34 [4] [e] of the MHRL also incorporated the protections of the NYVRA when that law was enacted in June 2022 (PX 80, Feb. 16, 2023 Troutman Memo at 5; PX 81, Feb. 27, 2023 Troutman Memo at 9).

732. The NYVRA is more expansive in its protections against racial vote dilution than Section 2 of the federal VRA. But the scope of the NYVRA's protections is inclusive of Section 2 claims. Put differently, laws or practices that violate Section 2 of the federal VRA also violate the NYVRA.

733. Defendants have challenged the NYVRA's constitutionality to the extent the statute's protections are not co-extensive with Section 2 of the federal VRA (*see* NYSCEF Doc No. 282, Mem of Law in Supp of Defendants' Mots for Summary Judgment at 12-13, in Action II, Sup Ct, Nassau County, index No. 602316/2024).

734. Although this Court rejected Defendants' arguments and upheld the NYVRA as a constitutionally permissible exercise of the State Legislature's power, to conserve judicial resources and avoid any need for further proceedings, the Court ought to first evaluate Plaintiffs' racial vote dilution claim within the familiar framework of Section 2 of the VRA. The Court should then conduct a separate evaluation of Plaintiffs' racial vote dilution claim under the NYVRA.

735. Under Section 2 of the federal VRA:

A violation of subsection (a) [of 52 USC § 10301] is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

(52 USC § 10301 [b]).

736. For decades, the U.S. Supreme Court “ha[s] evaluated claims brought under § 2 using the three-part framework developed in . . . *Thornburg v. Gingles*” (*Allen*, 599 US at 17). Because MHRL Section 34[4][b] was meant to incorporate the standards of Section 2, this Court should apply the *Gingles* test to claims alleging discriminatory results under Section 34 [4] [b].

737. The “essence” of a Section 2 vote-dilution “claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives.” (*Thornburg v Gingles*, 478 US 30, 47 [1986]). There is a two-step process for determining whether a Section 2 has been violated; a plaintiff must prove both steps are met by a preponderance of the evidence (*see Arbor Hill Concerned Citizens Neighborhood Assn. v County of Albany*, 281 F Supp 2d 436, 443 [ND NY 2003], *revd in part on other grounds*, 357 F3d 260 [2d Cir 2004]).

738. First, the Court must determine whether plaintiffs have met three preconditions to establishing a claim, as laid out in *Gingles*. These are: (1) whether the minority group is “able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district;” (2) whether the minority group is “able to show that it is politically cohesive;” and (3) whether the minority group is “able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority’s preferred candidate.” (*Gingles*, 478 US at 50-51 [citation omitted]).

739. Second, if the preconditions are satisfied, the Court evaluates the “totality of the circumstances” to determine “whether the political process is equally open to minority voters.” (*id.* at 79 [quotation omitted]). The Supreme Court has identified nine factors to assist the Court in this inquiry. These are:

- (1) whether there is a history of official discrimination;
- (2) whether voting is racially polarized;
- (3) whether electoral mechanisms enhance vote dilution;
- (4) if there is a candidate slating process, whether access to such a process is denied to minorities;
- (5) the extent to which members of the minority group bear the effects of discrimination in education, employment, and health, that hinder their ability to participate in the political process;
- (6) whether overt or subtle racial appeals have formed part of political campaigns;
- (7) the extent to which minorities have been elected to public office in the jurisdiction;
- (8) whether elected officials have failed to respond to minority needs; and
- (9) whether the policy underlying the contested practice or structure is tenuous.

(*id.* at 44-45 (citing S Rep 97-417, 97th Cong [1982])). Together, these are commonly known as the “Senate Factors.”

740. Both the VRA and the NYVRA recognize that Plaintiffs need not meet all or even any specific number of factors—or that most of the factors point “one way or the other.” (*id.* at 45; *see Clerveaux v E. Ramapo Cent. Sch. Dist.*, 984 F3d 213, 230 [2d Cir 2021]; *accord* Election Law § 17-206 [3] [k] (“Nothing in this subdivision shall preclude any additional factors from being considered, nor shall any specified number of factors be required in establishing that such a violation has occurred.”). Nor is this Court limited to this set of factors in performing its evaluation (*see Clerveaux*, 984 F3d at 230 [“This list of nine factors is ‘neither exclusive nor comprehensive.’”], quoting *Goosby v Town Bd. of Town of Hempstead, New York*, 180 F3d 476,

492 [2d Cir 1999]). “[T]he ultimate conclusions about equality or inequality of opportunity were intended by Congress to be judgments resting on comprehensive, not limited, canvassing of relevant facts” (*id.*, quoting *Goosby*, 180 F3d at 492).

741. It is understood that “it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” (*N.A.A.C.P., Inc. v City of Niagara Falls, N.Y.*, 65 F3d 1002, 1019 n 21 [2d Cir 1995], quoting *Jenkins v Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F3d 1103, 1135 [3d Cir 1993]).

742. Proof of intent is not needed to succeed in a Section 2 case (*see id.* at 1006 [holding that amendments to Section 2 and the accompanying Senate Judiciary Committee Report “made clear that proving such discriminatory intent was not a statutory requirement”]). “Instead, § 2 plaintiffs [can] prevail by proving that minorities were denied an equal opportunity to participate in the political process and elect candidates of their choice as a result of an electoral practice” (*id.*).

743. While not required to prove a Section 2 claim, evidence of intentional discrimination can be considered as part of the “totality of circumstances” framework. With respect to the “eighth” and “ninth” “Senate Factors,” courts have found that “a tenuous explanation” for the challenged electoral system “is circumstantial evidence that the system is motivated by discriminatory purposes” (*United States v Marengo County Commn.*, 731 F2d at 1546, 1571 [11th Cir 1984]). Similarly, courts consider a lack of responsiveness on the part of elected officials to be probative of discriminatory intent (*id.* at 1552 [“unresponsiveness is not an essential element of a claim of unconstitutional vote dilution . . . ‘but only one of a number of circumstances a court should consider in determining whether discriminatory purpose may be inferred,’” quoting *Rogers v Lodge*, 458 US 613, 625, n 9 [1982]]).

744. The Court can therefore consider Plaintiffs’ evidence of intentional discrimination within the “totality of circumstances” framework of Section 2 of the Voting Rights Act.

1. Plaintiffs Have Satisfied Their Burden in Establishing the VRA’s *Gingles* Preconditions are Satisfied with Regards to the Enacted Map

a. The First *Gingles* Precondition Is Satisfied

745. The first *Gingles* precondition requires plaintiffs to show that the “minority group [is] sufficiently large and [geographically] compact to constitute a majority” in a district that “comports with traditional districting criteria, such as being contiguous and reasonably compact” (*Allen*, 599 US at 18 [citations omitted]). Although “[t]he relative size of a minority group’s majority in a district may well be among the totality of circumstances that can inform the ultimate determination of vote dilution,” “a simple majority rule usefully serves at the outset to screen out cases in which there is no point in undertaking a full Section 2 analysis” (*Pope v County of Albany*, 687 F3d 565, 574-75 [2d Cir 2012]). This understanding is bolstered by other circuits who have “agreed that nothing more than a simple majority is necessary to satisfy the first *Gingles* factor” (*id.* at 577 [collecting cases]).

746. Most federal appellate circuit courts that have considered have recognized that the VRA permits “coalition districts”, that is, “[d]iverse minority groups can be combined to meet VRA litigation requirements . . . provided they are shown to be politically cohesive” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 182, 379 [SD NY 2020], *affd*, 984 F3d 213, 237 [citations omitted]; *see Badillo v City of Stockton*, 956 F2d 884, 886 [9th Cir 1992]; *Concerned Citizens of Hardee County v Hardee County Bd. of Comm’rs*, 906 F2d 524, 526-527 [11th Cir 1990]). District courts in other circuits have also found coalition claims permissible under the VRA. *See Holloway v City of Virginia Beach*, 531 F Supp 3d 1015, 1047–48 [ED Va 2021] (finding that racial coalitions, claiming voter dilution based

on race, can bring a § 2 claim because it is consistent with the language and purpose of the VRA as well as Supreme Court precedent, namely *Gingles*”), *vacated as moot on other grounds and remanded*, 42 F4th 266 (4th Cir 2022); *Huot v City of Lowell*, 280 F Supp 3d 228, 236 (D Mass 2017) (ruling as a matter of first impression in the First Circuit “in order properly to serve Section 2’s legislative intent of curing past discrimination and remain faithful to the reasoning of the majority of the circuit and district courts which have considered the issue . . . minority coalition claims are cognizable under Section 2”).

747. The NYVRA follows this majority rule among the federal courts and permits coalition claims by politically cohesive groups (*see* Election Law § 17-206[2][iii] [“where there is evidence that more than one protected class of eligible voters are politically cohesive in the political subdivision, members of each of those protected classes may be combined”]; *id.* at § 17-206 [8] [“Members of different protected classes may file an action jointly pursuant to this title in the event that they demonstrate that the combined voting preferences of the multiple protected classes are polarized against the rest of the electorate”]).

748. Recently, the U.S. Court of Appeals for the Fifth Circuit declined to follow the precedent of most of its sister circuits, concluding that “coalition claims” are not viable under the federal Voting Rights Act (*see Petteway v Galveston County*, 111 F4th 596, 613-14 [5th Cir 2024]). Defendants have urged this Court to follow this decision (*see* NYSCEF Doc No. 282, Mem of Law in Supp of Defendants’ Mots for Summary Judgment at 13, 24, in Action II). The Court should reject Defendants’ invitation to endorse the Fifth Circuit’s interpretation of Section 2 because this is still the minority view among the federal circuits, as the Fifth Circuit itself recognizes (*Petteway*, 111 F4th at 603). Of course, in any event, the *Petteway* decision is not binding on this Court.

749. As detailed in Sections V.C. and VI.A. above, Plaintiffs have presented ample evidence that minority groups in Nassau County are “sufficiently large and [geographically] compact” to sustain majorities in at least two additional reasonably configured districts compared to the Enacted Map, satisfying the first *Gingles* precondition (*Allen*, 599 US at 19 [citations omitted])—*i.e.*, a total of six majority minority districts.

750. Although the Enacted Map contains only four majority-minority districts, PX 2, Cervas Opening Report at ¶¶ 2.b., 44-54, Plaintiffs’ expert Dr. Cervas presented the “Cervas Illustrative Plan”, which shows that it is possible for Black, Latino, and Asian citizens of voting age to form a majority in at least six reasonably configured single-member districts (*id.* at ¶¶ 2.c.-d., 55-81, 131).

751. The Cervas Illustrative Plan also demonstrates that the Enacted Map impairs the electoral opportunities of Black, Latino, and Asian voters in Nassau County. The Cervas Illustrative Plan would improve those opportunities. (PX 2, Cervas Opening Report at ¶¶ 63-81; PX 72, Cervas Reply Report at ¶¶ 55-67).

752. Moreover, Defendants’ expert Dr. Trende performed a race-blind, party-blind “ensemble” analysis in which he generated 500,000 simulated redistricting maps for the Legislature. As part of that analysis, Dr. Trende conceded that the simulations yielded over 58,000 maps with six-majority minority CVAP districts and over 2,000 that contain seven such districts. (DX 180, Trende deposition tr at 191:4-192:11; DX 111, Trende Rebuttal Report at 87; PX 72, Cervas Reply Report at ¶ 42). Dr. Trende’s maps independently support the conclusion that Plaintiffs have satisfied the first *Gingles* precondition.

753. Plaintiffs have shown that minority groups in Nassau County are “sufficiently large and [geographically] compact” to sustain majorities in at least two additional reasonably

configured districts, satisfying the first *Gingles* precondition (*Allen*, 599 US at 19 [citations omitted]).

b. The Second *Gingles* Precondition Is Satisfied

754. “Where a ‘significant number of minority group members usually vote for the same candidates,’ the minority group is politically cohesive and satisfies the second *Gingles* precondition” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 380, quoting *Thornburg v Gingles*, 478 US 30, 56 [1986]).

755. Courts rely on statistical evidence to estimate the proportion of each racial group that voted for each candidate (*see e.g. Gingles*, 478 US at 52-54). Although there are multiple methods of estimating racial vote choice, courts have recognized that “ecological inference”—the method used by Plaintiffs’ Expert Dr. Oskoi and Defendants’ Expert Dr. Trende—“is currently the ‘gold standard’ for use in racial bloc voting analyses” *Wright v Sumter County Bd. of Elections & Registration*, 301 F Supp 3d 1297, 1305 [MD Ga 2018], *affd* 979 F3d 1282 [11th Cir 2020].

756. As detailed in Section VI.B. above, Plaintiffs have amply satisfied the second *Gingles* precondition by demonstrating that Black, Latino, and Asian voters are politically cohesive in Nassau County and in the areas of the county in which remedial districts could be drawn.

c. The Third *Gingles* Precondition Is Satisfied

757. The third *Gingles* precondition is satisfied where the majority votes as a bloc to, in the absence of special circumstances, usually defeat the minority’s preferred candidate (*Pope v County of Albany*, 94 F Supp 3d 302, 335 [ND NY 2015], quoting *Gingles*, 478 US at 51). “The key components of the final *Gingles* factor are the presence of racial bloc voting, identifying the minority-preferred candidate, and the extent to which racial bloc voting results in defeat of the minority’s preferred candidate” (*id.*).

758. To satisfy the third *Gingles* precondition, “[p]laintiffs are not required to show that minority candidates always lose to white candidates, only that they usually do.” *Arbor Hill Concerned Citizens Neighborhood Assn. v County of Albany*, 281 F Supp 2d 436, 450 [ND NY 2003], citing *Gingles*, 478 US at 75. Minority-preferred candidates’ success “does ‘not necessarily negate’ a finding of bloc voting, particularly if ‘elections are shown usually to be [racially] polarized’ or the success of minority candidates in particular elections can be explained by ‘special circumstances, such as the absence of an opponent [or] incumbency.’” (*Pope*, 687 F3d at 582, quoting *Gingles*, 478 US at 57).

759. As this Court recognized “legal significance of racial bloc voting depends on the factual circumstances and must be based upon a practical, commonsense examination of all the evidence” (NYSCEF Doc No. 334, decision and order at 24, in Action II; see *Pope*, 94 F Supp 3d at 335 [collecting cases]; *Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 380). This inquiry “is not measured by mathematical formula but by the trial court’s searching assessment of statistical and other evidence presented” (*Yumori-Kaku v City of Santa Clara*, 59 Cal App 5th 385, 413 [Cal Ct App 2020]).

760. Recognizing that “[c]ertain elections are more probative than others of minority electoral success,” courts evaluating racial vote-dilution claims have identified several factors to determine which elections are most probative (*Pope v County of Albany*, 94 F Supp 3d 302, 332 [ND NY 2015]).

761. First, “exogenous elections—those not involving the particular office at issue—are less probative than [endogenous] elections involving the specific office that is the subject of the litigation” (*Goosby v Town Bd. of Town of Hempstead, New York*, 180 F3d 476, 497 [2d Cir 1999], [citation omitted]). Thus, in *Pope*, a court considering a New York county’s legislative

redistricting plan “accord[ed] more weight to endogenous County Legislature elections and other County-wide elections than to City and state elections, as they are more probative of voting patterns in the relevant political subdivision” (94 F Supp 3d at 333).

762. Second, more recent elections are more probative than older ones (*id.*; see *United States v Vill. of Port Chester*, 2008 WL 190502, *26 [SD NY Jan. 17, 2008, No. 06 Civ 15173]).

763. Third, elections between candidates of different races are “especially probative” (*Pope*, 94 F Supp 3d at 333; see *Uno v City of Holyoke*, 72 F3d 973, 988 n 8 [1st Cir 1995]).

764. Fourth and finally, courts discount elections where minority-preferred candidates win due to “special circumstances, such as the absence of an opponent” or “incumbency” (*Gingles*, 478 US at 57).

765. Determining whether minority-preferred candidates are “usually” defeated by racially polarized voting is “not merely an arithmetic exercise that consists of toting up columns of numbers,” but a flexible and fact-intensive inquiry (*Pope*, 94 F Supp 3d at 338 [citation omitted]). In *Yumori-Kaku v. City of Santa Clara*, a racial vote-dilution brought under the California Voting Rights Act, the California Court of Appeals surveyed federal case law on the meaning of the word “usually” within the context of the third *Gingles* precondition (see 59 Cal App 5th at 411-416). That court observed that federal precedents “evinced a flexible approach to ascertaining the third *Gingles* factor,” which “cannot be reduced to a simple mathematical or doctrinal test” (*id.* at 416). It concluded that “the ‘usually’ threshold stated in the third *Gingles* factor does not *as a matter of law* preclude a determination of racially polarized voting when the factual findings point to an equal number of polarized and nonpolarized elections over time” (59 Cal App 5th at 416).

766. The Court ought to give weight to more recent contests and to contests where a minority-preferred candidate was a candidate of color (*see Pope*, 94 F Supp 3d at 321 [“The Court will also weigh more heavily the results of more recent elections, and elections showing minority-preferred candidate success outside of [majority-minority districts]”]; *cf. Clerveaux*, 984 F3d at 241 [when weighing the election of minority candidates under the totality of circumstances, “[w]e consider not only whether minority candidates have been elected, but whether minority residents can ‘elect *their preferred candidates*,’” quoting *Goosby*, 180 F3d at 495-97).

767. That *some* majority-White districts of the Enacted Map may elect *some* Democrats does not overcome a finding that the *Gingles* preconditions are satisfied. The Supreme Court has “reject[ed] the premise that a State can always make up for the less-than-equal opportunity of some individuals by providing greater opportunity to others” (*League of United Latin Am. Citizens v Perry*, 548 US 399, 429 [2006]; *see id.* at 437 [“[A] State may not trade off the rights of some members of a racial group against the rights of other members of that group,” citing *De Grandy*, 512 US at 1019). Thus, a jurisdiction that could have drawn a majority-minority district in an area where the *Gingles* preconditions were satisfied but instead diluted a racial group’s voting power cannot escape Section 2 liability by drawing a majority-minority district elsewhere (*id.*).

768. As detailed in Section VI.C. above, Plaintiffs have amply satisfied the third *Gingles* precondition by demonstrating that minority-preferred candidates are usually defeated by racially polarized voting.

769. The Court should conclude that Plaintiffs have satisfied all three *Gingles* preconditions.

2. Plaintiffs have demonstrated that, under the totality of circumstances, the Enacted Map violates both the VRA and the NYVRA.

770. Under the VRA, “if a plaintiff satisfies the *Gingles* preconditions, the court must then examine the totality of the circumstances, including by assessing the [Senate Factors]” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 182, 378 [SD NY 2020]).

771. Under the NYVRA, unlawful vote dilution can be established where, “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.” (Election Law § 17-206 [2] [b] [i] [B]).

772. To make this determination, the NYVRA enumerates a number of non-exclusive factors that a court may consider, which are patterned on the VRA’s “Senate Factors” and similarly guide a reviewing court in assessing under the “totality of circumstances . . . based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters” in the context of racial vote dilution claims (*Gingles*, 478 US at 79; *see also* NYSCEF Doc No. 334, decision and order at 17 n 11, in Action II). The NYVRA’s enumerated, but non-exclusive, “totality of the circumstances” factors include:

- (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.

(Election Law § 17-206 [3]).

773. Although the NYVRA enumerates more factors in its totality-of-circumstances inquiry than the VRA does, even those distinct factors are closely related. Because both the NYVRA and the VRA provide that their enumerated totality-of-circumstances factors are not exclusive, this Court’s analysis of the Senate Factors is also applicable to its analysis of the NYVRA’s totality-of-circumstances test. The Court should therefore consider these factors together.

- a. The History and Ongoing Effects of Discrimination Against Black, Latino, and Asian Residents of Nassau County (NYVRA Factors [a], [e]-[h] & Senate Factors 1, 5).

774. The history and effects of discrimination against minority groups is part of the totality of the circumstances inquiry under both the NYVRA and the VRA. Under the VRA, “[t]wo Senate factors touch on historical discrimination: (1) history of official discrimination affecting

the right of a member of a minority group to participate in the democratic process; and (5) the extent to which minority group members in the state or political subdivision bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process.” (*Patino v City of Pasadena*, 230 F Supp 3d 667, 713 [SD Texas 2017], *judgment entered*, 2017 WL 10242075 [SD Texas, Jan. 16, 2017, No. CV H-14-3241]).

775. Evidence of official historical discrimination under Senate Factor 1 is not required to find that minority group members bear the effects of past discrimination under Senator Factor 5 (*compare Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 392, 408, *affd sub nom. Clerveaux*, 984 F3d 213). Courts recognize, however, that the “continuing effects of past and contemporaneous official and private discrimination are among the complex reasons for lower voter registration and turnout” among minority communities (*Patino*, 230 F Supp 3d at 713). The examination of past discrimination that the VRA requires demonstrates Congress’s concern “not only with present discrimination, but with the vestiges of discrimination which may interact with present political structures to perpetuate a historical lack of access to the political system.” (*Rodriguez v Harris County*, 964 F Supp 2d 686, 778-79 [SD Texas 2013], citing *Thornburg v Gingles*, 478 US 30, 69 [1986]).

776. Historical discrimination contributes to ongoing racial residential segregation, socioeconomic disadvantage, and racial bias, which contribute to a lack of equal opportunity for racial minority groups in the political process (*see Westwego Citizens for Better Govt. v City of Westwego*, 946 F2d 1109, 1122 [5th Cir 1991]). “[O]n-going racial separation . . .—socially, economically, religiously, in housing and business patterns—makes it especially difficult for [minority] candidates seeking . . . office to reach out to and communicate with the predominantly

white electorate from whom they must obtain substantial support to win . . . elections” (*United States v. Charleston County*, 316 F Supp 2d 268, 291–92 [DSC 2003]).

777. And “where minority group members suffer effects of prior discrimination and the level of minority participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation.” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 407 [cleaned up]).

778. The NYVRA takes the inquiry that has been developed by the federal courts from the spare text of Section 2 of the VRA and fleshes it out into five enumerated factors: evidence of discrimination, both official and unofficial, are addressed under Election Law § 17-206 [3] [a]; evidence of relative socioeconomic disadvantages are addressed under the factors enumerated in Election Law § 17-206 [3] [g] and [h]; and evidence of depressed political participation among the minority groups of interest are addressed under the factors enumerated in Election Law § 17-206 [3] [e] [f].

779. Given the NYVRA’s more granular framework, the Court’s analysis of discrimination and socioeconomic disparities, as well as their effects, should be largely guided by these five enumerated factors.

- i. There is a history of discrimination against Black, Latino, and Asian residents of Nassau County (Senate Factor 1/NYVRA factor (a)).

780. A history of discrimination and its lingering effects are relevant to the issue of vote dilution because “(1) that the present day acts of elected officials are motivated by the same purpose, or by a desire to perpetuate the effects of that discrimination, (2) that the present day ability of minorities to participate on an even footing in the political process has been seriously impaired by the past discrimination, and (3) that past discrimination has also led to present socio-

economic disadvantages, which in turn reduces participation and influence in political affairs (*Bone Shirt v Hazeltine*, 336 F Supp 2d 976 [DSD 2004], citing *United States v Marengo County Commn.*, 731 F2d 1546, 1567 [11th Cir 1984]).

781. Courts have already recognized historical, official racial discrimination with respect to voting in Nassau County. In *Goosby v Town Bd. of the Town of Hempstead, New York*, 956 F Supp 326, 337-338 [ED NY 1997], the court emphasized the role of historical literacy requirements and discriminatory purging of voter rolls in finding that the Town Board election had operated to “invidiously exclude blacks from effective participation in political life” in violation of the VRA.

782. As detailed in Section VII.A. above, Plaintiffs have demonstrated there is a history of official racial discrimination as it relates to: (1) voting, (2) housing, (3) economic opportunities and government employment/contracting, (4) tax assessments, and (5) education. In addition to the County’s considerable history of official discrimination, evidence of private discrimination also bears on the analysis. (*See e.g. Mhany Mgmt. Inc. v Incorporated Village of Garden City*, 985 F Supp 2d 390, 419 [ED NY 2013] (village in Nassau County found liable for discriminating against affordable housing developer through zoning laws); *Ortiz v Phila. Off. of City Commissioners Voter Registration Div.*, 824 F Supp 514 [ED Pa 1993] (analyzing discrimination in housing under the VRA); *Mich. State A. Philip Randolph Inst. v Johnson*, 326 F Supp 3d 532, 574 [ED Mich 2018] (discrimination in employment was official discrimination under VRA); *Colman v Seldin*, 181 Misc 2d [Sup Ct 1999] (suit brought against Nassau County’s discriminatory tax assessment system); *Luna v County of Kern*, 291 F Supp 3d 1088, 1133 (ED NY 2018) (discrimination in education was official discrimination under VRA)). In addition to the County’s considerable history of official discrimination, evidence of private discrimination also bears on the

analysis. *Accord Terrazas v Celements*, 581 F Supp 1329, 1349 [ND Texas 1984] (weighing effects of private discrimination on the exercise of voting rights under VRA).

783. Applying the law to these facts, the Court should find that Senate Factor 1 and NYVRA factor (a) weigh in Plaintiffs' favor.

- ii. The lingering effects of discrimination have hindered the ability of minority voters to participate in the political process (Senate Factor 5/NYVRA factors (e)-(h)).

784. Federal courts have recognized that “political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.” (*Gingles*, 478 US at 69; *Kirksey v Bd. of Supervisors of Hinds County*, 554 F 2d 139, 145-46 [5th Cir 1977]; see also *United States v Vill. of Port Chester*, 704 F Supp 2d 411, 445 [SD NY 2010]). Conversely, low turnout by voters of color may be indicative of the presence of “the various circumstances and conditions that contribute to the inability of the [minority] community to elect candidates of its choice.” (*Vill. of Port Chester*, 704 F Supp 2d at 445).

785. It is not necessary to show a causal relationship between these socioeconomic disparities and reduced political participation. “[W]here minority group members suffer effects of prior discrimination’ and ‘the level of minority participation in politics is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation.” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch v E. Ramapo Cent. Sch. Dist.*, 462 F Supp 3d 182, 407 [SD NY 2020]; *N.A.A.C.P., Inc. v City of Niagara Falls*, 65 F3d 1002, 1021 [2d Cir 1995], citing Senate Report, No. 417, 97th Cong., 2d Sess. at 29 & n 114 [1982]; 1982 U.S.C.C.A.N. at 206-07]).

786. Instead, once disparate socioeconomic conditions are shown, the burden falls on the Defendant to establish that the cause [of depressed political participation] is something else.”

(*Vill. of Port Chester*, 704 F Supp 2d at 445 [finding that “substantial differences in education and income between Hispanics and non-Hispanics” are factors “limit[ing] the opportunities of the Hispanic community to participate in the political process and elect candidates of their choice”]; *see also e.g. Luna*, 291 F Supp 3d at 1138 [finding defendant’s failure to present evidence of “no education gap between Latinos and non-Hispanic whites” and “testimony rebutting the disparities in income and homeownership” were “insufficient to negate the compelling evidence of socioeconomic disparities between Latinos and non-Hispanic whites” in the defendant county]).

787. Finally, while official acts of discrimination are more probative than private acts of discrimination, “under the results standard of [S]ection 2 [of the VRA], pervasive private discrimination should be considered, because such discrimination can contribute to the inability of [minorities] to assert their political influence and to participate equally in public life.” (*Patino*, 230 F Supp 3d at 685, quoting *Marengo County Commn.*, 731 F2d at 1567 n 36).

788. The “totality of circumstances” test under the NYVRA also includes these same considerations in more granular fashion. The NYVRA inquires into “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,” and “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” (Election Law § 17-206 [3] [g]-[h]; *compare Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 378 [examining, under Senate Factor 5, whether a protected class “bears the effects of past discrimination in areas such as education, employment, and health”]). The NYVRA also considers whether members of a protected class experience depressed political participation in terms of lower rates of contributing to political campaigns and voting (Election Law § 17-206 [3] [e]-[f]).

- iii. Black, Latino, and Asian residents of Nassau County are disadvantaged compared to white residents on numerous socioeconomic indicators (Senate Factor 5, NYVRA Factors (g)-(h))

789. As detailed in Section VII.A. above, Plaintiffs have demonstrated that Black, Latino, and Asian residents of Nassau County bear the lingering effects of discrimination and are disadvantaged in areas including education, economic opportunity and employment, and healthcare. The Court should find that NYVRA Factors (g) and (h) weigh in Plaintiffs' favor.

- iv. Black, Latino, and Asian Residents Contribute to Political Campaigns at Lower Rates Than White Residents in Nassau County (Senate Factor 5, NYVRA Factor (e))

790. Black, Latino, and Asian residents do, in fact, participate in the political process to a lesser extent than white residents. For starters, residents of color contribute to political campaigns at lower rates (*see* Election Law § 17-206 [3] [e]).

791. Courts have considered racial disparities in campaign contributions and receipts to be probative in racial vote dilution cases (*see e.g. Rose v Raffensperger*, 619 F Supp 3d 1241, 1265 [ND Ga 2022] [noting that “Black voters turnout at lower rates and donate to campaigns at lower rates because of the lingering economic disparities caused by historical discrimination.”]; *Terrebonne Parish Branch N.A.A.C.P. v Jindal*, 274 F Supp 3d 395, 448 [MD La 2017], *revd sub nom. Fusilier v Landry*, 963 F3d 447 [5th Cir 2020] [finding vote dilution in part because, although a black candidate was elected to office, that black candidate “was monetarily supported by some of the most prominent opponents of a black opportunity district.”]).

792. As detailed in Section VII.C. above, Plaintiffs have demonstrated that Black, Latino, and Asian residents of Nassau County comprise a substantially smaller share of individual contributors to campaigns for Nassau County offices relative to their share of the citizen voting age population, while white residents comprise a higher share.

v. Black, Latino, and Asian Voters Vote at Lower Rates Than White Voters in Nassau County (Senate Factor 5, NYVRA Factor (f)).

793. NYVRA factor (f) examines “the extent to which members of a protected class in the [] political subdivision vote at lower rates than other members of the electorate.” (Election Law § 17-206 [3] [f]). The U.S. Supreme Court and other federal courts have long recognized that “political participation by minorities tends to be depressed where minority group members suffer effects of prior discrimination such as inferior education, poor employment opportunities, and low incomes.” (*Thornburg v Gingles*, 478 US 30, 69 [1986]; *Kirksey*, 554 F 2d at 145-146; *see also Vill. of Port Chester*, 704 F Supp 2d at 445). Conversely, low turnout by voters of color may be indicative of the presence of “the various circumstances and conditions that contribute to the inability of the [minority] community to elect candidates of its choice.” (*Vill. of Port Chester*, 704 F Supp 2d at 426).

794. As detailed in Section VII.G. above, Plaintiffs have amply demonstrated that in Nassau County, Black, Latino, and Asian citizens vote at lower rates than white voters.

795. As described above, historical racial discrimination in Nassau County and the effects of that discrimination are still felt today by the County’s Black, Latino, and Asian residents, as reflected across a wide range of socioeconomic disparities with white residents. In light of Plaintiffs’ substantial evidence establishing these conditions and depressed political participation among racial minorities, the Court should find that NYVRA Factors (a), (e), (f), (g), and (h) and Senate Factors 1 and 5 each weigh in Plaintiffs’ favor.

b. Voting in Nassau County Is Racially Polarized (Senate Factor 2, unenumerated NYVRA Factor).

796. The next factor to consider is whether voting is racially polarized in Nassau County (see *Pope v County of Albany*, 94 F Supp 3d 302, 342 [ND NY 2015], quoting *Goosby v Town Bd. of Town of Hempstead, New York*, 180 F3d 476, 491 [2d Cir 1999]). Racially polarized voting exists when “[racial minority] communities are politically cohesive and . . . the white majority votes as a bloc.” (*Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 381).

797. Although not enumerated in the statutory text, courts evaluating claims under the NYVRA may consider the extent of racially polarized voting as a factor in the “totality of circumstances” inquiry (Election Law § 17-206 (k) [“Nothing in this subdivision shall preclude any additional factors from being considered . . . in establishing that such a violation has occurred.”]).

798. “Defendants concede that ‘the evidence is very strong that voting in Nassau County is racially polarized.’” NYSCEF Doc No. 334, decision and order at 23, in Action II (citation omitted).

799. And as detailed in Section VI.C. above, Plaintiffs have presented extensive evidence that voting is racially polarized in Nassau County. The Court should find that Senate Factor 2 weighs in favor of Plaintiffs.

c. Conducting Elections in Odd-Numbered Years Enhances the Dilutive Effect of the 2023 Nassau County Redistricting Plan (Senate Factor 3, NYVRA Factor [c]).

800. The third Senate factor examines “the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for

discrimination against the minority group” (*Gingles*, 478 US at 37). NYVRA factor [c] similarly considers “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” (Election Law § 17-206 [3] [c]).

801. Courts have recognized that off-cycle elections enhance the risk of racial vote dilution (*see Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 401 [“dilutive practices include . . . off-cycle elections” because voter “awareness and information is lower” and “voters who feel disenfranchised tend to stay home during off-cycle elections”]; *Vill. of Port Chester*, 704 F Supp 2d at 444).

802. As detailed in Section VII.E., Plaintiffs have presented ample evidence that the practice of holding odd-year elections for the Nassau County Legislature enhances vote dilution. The Court should find that Senate Factor 3 and NYVRA factor (c) weigh in favor of Plaintiffs.

d. Political Campaigns in Nassau County Have Featured Overt and Subtle Racial Appeals (Senate Factor 6, NYVRA Factor [i]).

803. Both the VRA and NYVRA consider “whether political campaigns have been characterized by overt or subtle racial appeals.” (*Gingles*, 478 US at 37; Election Law § 17-206 [3] [i]). Racial appeals include a variety of tactics and comments that do not always explicitly invoke race (*see e.g. Goosby*, 180 F3d at 494, citing campaign literature on Long Island “warning of the spillover of urban crime from New York City” as evidence of anti-Black sentiment and an implied promise to prevent racial integration in Nassau County; *Meek v Metro. Dade County*, 805 F Supp 967 [SD Fla 1992], *affd in part, revd in part*, 985 F2d 1471 [11th Cir 1993]). “Political ads can contain coded language to trigger deeply seated racial stereotypes and animus and to catalyze white communities to vote in opposition.” (*Holloway v City of Virginia Beach*, 531 F Supp 3d 1015, 1090 & n 34 [ED Va 2021]).

804. As detailed in Section VII.F. above, Plaintiffs have demonstrated that recent political campaigns in Nassau County have been characterized by both overt and subtle racial appeals, including social media posts referring to Black and Latino individuals as “thugs,” “gangbangers,” and “career criminals.” (PX 215-223). The ads are part of a pattern that reflects political rhetoric and campaign tactics employed by Nassau politicians in recent years, including most recently by President-elect Trump at the Nassau Coliseum on September 18, 2024 (PX 3, Sugrue Opening Report at ¶¶ 138-143; PX 224, Donald J. Trump Nassau County Rally).

805. Therefore, the Court should find that Senate Factor 6 and NYVRA Factor (i) weigh in favor of Plaintiffs.

- e. Black, Latino, and Asian Candidates Have Rarely Been Elected to Nassau County Offices Outside of Majority-Minority Districts (Senate Factor 7, NYVRA Factor [b]).

806. Senate Factor 7 requires courts to consider “the extent to which members of the minority group have been elected to public office in the jurisdiction” (*Goosby*, 180 F3d at 491 [quoting *Thornburg v Gingles*, 478 US 30, 44-45 [1986]]). NYVRA Factor [b] similarly considers “the extent to which members of the protected class have been elected to office in the political subdivision” (Election Law § 17-206 [3] [b]). As courts recognize, the election “of a few minority candidates does not ‘necessarily foreclose the possibility of dilution of the black vote’” (*Gingles*, 478 US at 75).

807. The focus of the inquiry is not simply on whether candidates of color experience electoral success, but whether the minority candidate is actually preferred by minority voters (*see Natl. Assn. for Advancement of Colored People, Spring Val. Branch*, 462 F Supp 3d at 409 [“The election of a minority candidate is [] discounted where whites preferred the minority candidate”]; *United States v Charleston County*, 316 F Supp 2d 268, 279 n 14 [DSC 2003] [discounting the

election of a minority candidates who received only 30.7% of support from minority voters and was “emphatically not the candidate of choice of the county’s African-American voters”).

808. As detailed in Section VII.B. above, Plaintiffs have demonstrated that despite the significant growth of the Black, Latino, and Asian communities in Nassau County, people of color continue to be underrepresented in the Legislature—particularly in terms of their ability to elect minority-preferred candidates of color. Thus, the Court should find that Senate Factor 7 and NYVRA (b) factor weigh in favor of Plaintiffs.

f. Nassau County Elected Officials Have Exhibited a Significant Lack of Responsiveness to the Needs of Black, Latino, and Asian Residents of Nassau County (Senate Factor 8, NYVRA Factor (j)).

809. The next factor weighed under both the NYVRA and federal VRA is whether elected officials are “responsive” to the needs of members of a minority group (Election Law § 17-206 (3); *Gingles*, 478 US at 37). This inquiry requires a holistic view of the evidence (*see Goosby v Town Bd. of the Town of Hempstead, New York*, 956 F Supp 326, 344-46 [ED NY 1997]). Evidence of responsiveness to some minority concerns or evidence of improvements in responsiveness is insufficient on its own to demonstrate that elected officials are “responsive” for purposes of this factor (*see id.*; *Jenkins v Manning*, 116 F3d 685, 698 [3d Cir 1997]; *Buchanan v City of Jackson, Tenn.*, 683 F Supp 1515, 1536 [WD Tenn 1988]).

810. *First*, the County’s underfunding of the very agencies tasked with responding to the needs of minority groups demonstrates a lack of responsiveness to Black, Latino, and Asian communities (PX 11, Sugrue Reply Report at ¶ 54). As the *Goosby* court explained, it is not sufficient for elected officials to merely have policies, officers, or agencies aimed at addressing the needs of minorities (*Goosby*, 956 F Supp at 344-46). There must be actual substance and action behind those policies. There is nothing in the record to suggest that this is the case with respect to Nassau County.

811. *Second*, the County’s disparate treatment of Black, Latino, and Asian-owned entities in awarding County contracts further shows non-responsiveness (*see Holloway*, 531 F Supp 3d at 1096 [results of racial disparity concerning contract procurement demonstrated non-responsiveness]). The un rebutted results of Mason Tillman’s *Nassau County Disparity Study*, demonstrating significant disparities in awarding County contracts to minority business enterprises, speak for themselves (*see* PX 122, Mason Tillman Report). Further, the County’s efforts to keep the study’s conclusions from the public eye reinforce the County’s lack of responsiveness (*cf. Holloway*, 531 F Supp 3d at 1096 [years-long refusal to conduct disparity study is additional evidence of non-responsiveness]).

812. *Third*, the underrepresentation of Black, Latino, and Asian residents in Nassau County government provides further support of non-responsiveness (*see Ortiz v Phila. Off. of City Commissioners Voter Registration Div.*, 824 F Supp 514, 538 [ED Pa 1993] (underrepresentation in police force and abuse of Black citizens residents “more regularly than white citizens” were evidence of non-responsiveness); PX 75, Nassau County EEOC Form 164 (2021); PX 76, Nassau County EEO-4 (2021); PX 3, Sugrue Opening Report at ¶¶ 120-122, 127-128).

813. *Fourth*, the concentration of Black and Latino residents in “unincorporated” areas of the County provides strong evidence of non-responsiveness, as without the tax bases of incorporated villages, these areas suffer from inferior infrastructure and public services (PX11, Sugrue Reply Report at ¶ 57; *cf. Ortiz*, 824 F Supp at 538 [minority residents received inequitable distribution of services]).

814. Accordingly, the Court should find that Senate Factor 8 and NYVRA Factor (j) favor Plaintiffs.

g. The Policy Underlying the 2023 Nassau Redistricting Plan Is Tenuous (Senate Factor 9, NYVRA Factor [k]).

815. In addition to the seven enumerated Senate Factors, the Senate Report highlighted “additional factors that in some cases have had probative value as part of plaintiffs’ evidence to establish a violation,” including “whether the policy underlying the state or political subdivision’s use of [the challenged voting practice] is tenuous” (*Gingles*, 478 US at 37). Federal courts have referred to this as the ninth Senate Factor (*see e.g. Goosby*, 956 F Supp at 330). This factor is mirrored by the final factor in the NYVRA’s totality-of-circumstances inquiry, which considers “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” (Election Law § 17-206 [3] [k]).

816. Even though neither the VRA nor the NYVRA requires plaintiffs to show illicit intent to prove racial vote dilution, a tenuous justification for a voting practice can be “circumstantial evidence that the system is motivated by discriminatory purposes.” (*United States v Marengo County Commn.*, 731 F2d 1546, 1571 [11th Cir 1984]). Mere proof of non-tenuousness, however, cannot defeat a claim of liability (*see Clark v Calhoun County*, 88 F3d 1393, 1401 [5th Cir 1996], quoting *League of United Latin Am. Citizens, Council No. 4434 v Clements*, 999 F2d 831, 871 [5th Cir 1993]).

817. In *Goosby*, the Second Circuit affirmed the trial court’s conclusion that the Town of Hempstead maintained a tenuous policy underlying its defense of maintaining at-large elections, including the alleged “drawbacks of ‘more government’; the difficulties residents would suffer if a weak representative were elected from their district; and a parochial approach to Town government”; and—most tenuous according to the trial court—the assertion that at-large elections

“result[] in better government for the black communities.” (*Goosby v Town Bd. of Town of Hempstead, New York*, 180 F3d 476, 295 [2d Cir 1999]). Further, in *N.A.A.C.P., Inc. v City of Niagara Falls*, the Second Circuit explained, in the context of a tenuous practice, that “a ‘marked[] depart[ure] from past practices or from practices elsewhere in the jurisdiction’ would ‘bear[] on the fairness of [a practice’s] impact.’” (65 F3d 1002, 1007 n 6 [2d Cir 1995]).

818. As detailed in Section VII.H above, Plaintiffs have demonstrated that the Defendants’ justifications for the Enacted Map and, in particular, their decision to draw no districts to protect Black, Latino, and Asian residents from racial vote dilution are tenuous at best. Accordingly, the Court should find that Senate Factor 9 and NYVRA Factor (k) favor Plaintiffs.

819. For the foregoing reasons, the Court should find that under the “totality of the circumstances” factors set forth in the VRA and NYVRA, the ability of Black, Latino, and Asian residents of Nassau County to elect candidates of their choice or influence the outcome of elections is impaired.

II. THE ENACTED MAP DILUTES THE VOTING STRENGTH OF BLACK, LATINO, AND ASIAN VOTERS IN NASSAU COUNTY IN VIOLATION OF THE JOHN R. LEWIS VOTING RIGHTS ACT OF NEW YORK.

820. The NYVRA’s protections against vote dilution are inclusive of and broader than those under Section 2 of the federal VRA. In other words, the NYVRA protects against the kind of racial vote dilution anticipated by the federal VRA *and* provides additional safeguards against dilution. (*See* NYSCEF Doc No. 334, decision and order at 16, in Action II [“There is no rule that a state legislature can never extend civil rights beyond what Congress has provided.”, quoting *Sanchez v City of Modesto*, 145 Cal App 4th 660, 687-88 [2006]]; *id.* at 22 [noting that the NYVRA is “not limited to vote dilution; it also addresses influence districts”]).

821. First, laws or practices that violate Section 2 of the federal VRA also violate the NYVRA. The NYVRA allows for a finding of liability upon two avenues of proof, either (a) a showing of racially polarized voting, (Election Law § 17-206[2] [b] [ii] [A], *see also id.* § 17-204 [6] [defining racially polarized voting]); or (b) electoral impairment under the totality of the circumstances, which is similar to Section 2’s totality of the circumstances test (Election Law § 17-206 [2] [b] [ii] [B]-[C] [listing NYVRA totality factors]; *see also Gingles*, 478 US at 36-37). Under either route, the NYVRA also requires a plaintiff to prove that the preferred candidates of the protected class “would usually be defeated” (Election Law § 17-206[2][b][ii]). And finally, like its sister statutes—the federal VRA and other state VRAs—an NYVRA plaintiff must show that there is an effective, workable remedy for the alleged vote dilution (*see Pico Neighborhood Assn. v City of Santa Monica*, 15 Cal 5th 292, 314-15, 320-21 [2023]; *see also* Election Law § 17-206 [5]). Accordingly, the above conclusions of law supporting a finding of Section 2 liability also support liability under the NYVRA and are thus incorporated here by reference.

822. Second, the NYVRA is also more expansive in its protections against racial vote dilution than Section 2 of the federal VRA. As relevant here, the NYVRA, unlike the federal VRA but like several other state VRAs, safeguards the ability of “a protected class to . . . influence the outcome of elections.” (Election Law § 17-206 [2][a]; Cal. Elec. Code § 14027; Conn. Gen. Stat. Ann. § 9-368j[b][1]).

A. The Enacted Map Violates The NYVRA Because Evidence Underlying Plaintiffs’ Showing Of Traditional Vote Dilution Under Section 2 Also Supports A Finding Of Traditional Vote Dilution Under The NYVRA

823. Because Plaintiffs have shown the Enacted Map violates Section 2 of the FVRA, they have also shown it violates the NYVRA’s prohibition on vote dilution for district-based elections, Election Law § 17-206 [2][b][ii], in at least two ways. (See Election Law § 17-206[2] [b] [ii]).

824. First, Plaintiffs have shown evidence sufficient to support the third *Gingles* precondition, which aligns with the NYVRA’s prohibition of vote dilution where elections are racially polarized and candidates preferred by members of a protected class are usually defeated. The third *Gingles* precondition for proving a Section 2 violation requires plaintiffs to show that the majority “votes sufficiently as a bloc to enable it—in the absence of special circumstances . . .—usually to defeat the minority’s preferred candidate” (*Pope v County of Albany*, 94 F Supp 3d 302, 335 [ND NY 2015], quoting *Gingles*, 478 US at 51).

825. The NYVRA’s vote dilution prohibition is patterned on Section 2 of the FVRA. As with Section 2, the NYVRA proscribes use of a challenged districting plan where candidates “preferred by members of the protected class would usually be defeated, and . . . voting patterns of members of the protected class within the political subdivision are racially polarized” (Election Law § 17-206 [2] [b] [ii] [A]). As explained in Section VI.C. above, voting is racially polarized and candidates preferred by Black, Latino, and Asian voters are usually defeated in Nassau County as a whole and in the particular areas where additional remedial districts could be drawn. Thus, because Plaintiffs adduced evidence to meet the third *Gingles* precondition showing racially polarized voting sufficient to usually defeat candidates preferred by Black, Latino and Asian voters, Plaintiffs have also proven a violation of the NYVRA’s vote dilution prohibition under Election Law § 17-206 [2] [b] [ii] [A].

826. Second, the evidence that Plaintiffs’ have adduced with respect to the *Gingles* preconditions and Senate Factors under Section 2 of the VRA are sufficient to support a claim under the NYVRA’s “totality of the circumstances” test. The NYVRA permits plaintiffs to prove a violation where candidates preferred by members of a protected class in a district-based election system are usually defeated and “under the totality of the circumstances, the ability of members of

the protected class to elect candidates of their choice . . . is impaired.” (Election Law § 17-206 [2] [b] [ii] [B]). As explained previously, the factors weighed under the totality of the circumstances for the NYVRA are patterned on the Senate Factors considered by courts in Section 2 cases. Plaintiffs have shown evidence sufficient to meet both the Senate Factors and the NYVRA totality of the circumstances inquiry under Election Law §§ 17-206 [2] [b] [ii] [B], 17-206 [2] [c].

B. The Enacted Map Violates The NYVRA Because It Interferes With The Ability Of Asian Voters To Influence The Outcome Of Elections

827. The Enacted Map violates the NYVRA for the additional reason that it impairs the ability of Asian voters in the Greater New Hyde Park community of interest to “influence the outcome of elections” (Election Law § 17-206 [2] [a]; *see* NYSCEF Doc No. 334, decision and order at 16, 22, in Action II [recognizing that the NYVRA “addresses influence districts” and explaining that state legislatures can “extend civil rights beyond what Congress has provided”]). The NYVRA—like other state voting rights acts—protects substantial, compact, politically cohesive communities that cannot otherwise form a majority-minority district from the gratuitous cracking that will leave communities marginalized by racially polarized voting effectively ignored. Instead, the protection for influence districts enables those communities to have an opportunity to engage in the rough and tumble of coalition politics.

828. Though the federal VRA does not protect influence districts, the Supreme Court has acknowledged that “[v]arious studies suggest that the most effective way to maximize minority voting strength may be to create more influence or coalitional districts,” and established several standards for identifying influence districts. (*Georgia v Ashcroft*, 539 US 461, 463-64 [2003]). For starters, an influence district exists “where minority voters may not be able to elect a candidate of choice but can play a substantial, if not decisive, role in the electoral process.” (*Id.*; *see also Bartlett*

v Strickland, 556 US 1, 13 [2009] [defining an influence district as one where “a minority group can influence the outcome of an election even if its preferred candidate cannot be elected”]).

829. The Supreme Court has also offered numerical guidelines, suggesting that an influence district exists where a cohesive minority voting population accounts for between 25% and 50% of the relevant total voting age population. In *Ashcroft*, for example, the Court viewed “13 [] districts with a black voting age population of between 30% and 50%, and 4 [] districts with a black voting age population of between 25% and 30%” as Black influence districts. (*Id.* at 470). State courts and legislatures across the country have adopted these standards in service of their own VRAs. (*See e.g.*, Ill. Comp. Stat. 120/5-5 [b] [defining influence district as “a district where a racial minority or language minority can influence the outcome of an election even if its preferred candidate cannot be elected”]; *Pico Neighborhood Assn.*, 15 Cal 5th at 323-24 [explaining that the influence prong in the California VRA “suggests a focus broader than the class’s ability to elect its preferred candidates (with or without the help of crossover voters)”]; *In re Senate Joint Resol. of Legislative Apportionment 1176*, 83 So 3d 597, 622-623 [Fla 2012] [echoing the Supreme Court’s standards in *Ashcroft* and *Bartlett*]; *McNeil v Legislative Apportionment Commn. of State*, 177 NJ 364, 385-876 [2003] [same]). The Court follows suit in this case.

830. The Supreme Court adopted the compactness precondition for Section 2 claims to ensure that a remedy is available to plaintiffs alleging a Section 2 violation—namely, that a single-member majority-minority district could be drawn. “After all, ‘the very concept of vote dilution implies—and, indeed, necessitates—the existence of an ‘undiluted’ practice against which the fact of dilution may be measured’” (*Pico Neighborhood Assn.*, 15 Cal 5th at 315, quoting *Reno v Bossier Parish Sch. Bd.*, 520 US 471, 480 [1997]). The *Gingles* compactness precondition is a matter of statutory interpretation that, at its broadest reading, simply requires Section 2 plaintiffs

to show the viability of relief where a Section 2 violation is alleged. Compactness is not a constitutional requirement for all vote dilution claims.

831. To be sure, “federal courts ‘have strongly preferred single-member districts’ as the remedy of choice” in Section 2 cases (*Portugal v Franklin County*, 530 P3d 994, 1001 [Wash 2023], quoting *Grove v Emison*, 507 US 25, 40 [1993]). But state VRAs may, consistent with the constitution, “contemplate[] a much broader range of remedies” (*id.* at 1002). As Justice Brandies famously noted, “[i]t is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory” (*New State Ice Co. v Liebmann*, 285 US 262, 386–8711 [1932] [Brandeis, J., dissenting]). Put differently, plaintiffs alleging an NYVRA violation are not confined to single-member district remedies. And the NYVRA’s expansion on the remedies contemplated by the FVRA does not make it unconstitutional.

832. Courts have upheld state VRAs that, like the NYVRA, do not contain a threshold compactness requirement. The Washington Supreme Court reasoned that “[b]ecause the WVRA contemplates a broader range of remedies than Section 2, a WVRA plaintiff can state a redressable injury under a broader range of circumstances than a Section 2 plaintiff” (*Portugal*, 530 P3d at 1003). So too, in California, “[i]t would make little sense to require CVRA plaintiffs to show that the protected class could constitute a majority in a hypothetical district, given that the CVRA is not limited to ability-to-elect claims nor are its remedies limited to district elections” (*Pico Neighborhood Assn.*, 15 Cal 5th at 317). Just the same here: the NYVRA includes remedies not contemplated by the FVRA. Like its sister state VRAs, the NYVRA does not contain a threshold compactness requirement because it contains alternative remedies not contemplated by the FVRA.

833. Plaintiffs amply meet the Supreme Court’s standards for finding an influence district in the Greater New Hyde Park area.

834. The Enacted Map splits the large and growing Asian community across three legislative districts – Enacted Districts 9, 10, and 18 – two of which are oddly shaped (see PX 2, Cervas Opening Report at ¶¶ 82, 84). The effect of these oddly configured districts is that Asian residents do not exceed 22.6% of the citizen voting age population in any individual district (see PX 2, Cervas Opening Report at ¶ 84 & Table 9). These low Asian CVAP figures at the district level belie the fact that Nassau County’s entire Asian population constitutes the equivalent of one and a half districts (see PX 2, Cervas Opening Report at ¶¶ 83-84).

835. As detailed in Section VI.C. above, Plaintiffs have demonstrated that the preferred candidates of Asian voters in Nassau County and in the greater New Hyde Park area would usually be defeated by racially polarized voting.

836. As detailed in Section VII above, under the totality of circumstances, Plaintiffs have demonstrated the ability of Asian voters in the greater New Hyde Park area to influence electoral outcomes is impaired and their preferred candidates would usually be defeated under the Enacted Map.

837. As detailed in Section V.C.2. above, Plaintiffs have demonstrated that there is a workable, non-dilutive alternative district that could be drawn in the Greater New Hyde Park area consistent with traditional districting principles that does not impair Asian voters’ ability to influence electoral outcomes (*see* PX 2, Cervas Opening Report at ¶ 137). Electoral performance testing confirms that the Enacted Map dilutes Asian voters’ influence (see PX 2, Cervas Opening Report at ¶¶ 132-133, 137; *Nairne v Ardoin*, 715 F Supp 3d 808, 862-865 [MD La 2024] [employing performance analysis to determine whether an enacted plan reduces minority electoral opportunities compared to plaintiffs’ illustrative plan]; see also *Alpha Phi Alpha Fraternity Inc. v*

Raffensperger, 587 F Supp 3d 1222, 1314 [ND Ga 2022]; *Rodriguez v Bexar County, Tex.*, 385 F3d 853, 861[5th Cir 2004]).

838. As detailed in Section V.C.2. above, Plaintiffs have also demonstrated that the Enacted Map deviates from traditional redistricting principles, splitting the Greater New Hyde Park Asian community of interest into three legislative districts, two of which are oddly configured (*see* PX 2, Cervas Opening Report at ¶¶ 84-86). Such deviations serve as circumstantial evidence of racial vote dilution (*see League of United Latin Am. Citizens v Perry*, 548 US 399, 495 [2006] [stating that manipulating district lines to “disperse[] [voters] among districts when they might control” one or more districts dilutes minority votes]).

839. Ultimately, the Enacted Map’s deviation from traditional districting principles to engage in gratuitous cracking of the greater New Hyde Park community of interest impairs Asian voters’ ability to influence electoral outcomes in violation of the NYVRA (*see* Election Law § 17-206 [2] [a]).

III. PLAINTIFFS ARE ENTITLED TO A FULL AND COMPLETE REMEDY

840. Having proven that the Enacted Map violates the NYVRA and the MHRL, Plaintiffs are entitled to a full and complete remedy.

841. First, this Court should enter a declaratory judgment that the Enacted Map violates Section 34 (4) of the Municipal Home Rule Law and the John R. Lewis Voting Rights Act of New York, Election Law § 17-206 (2)(b)(ii).

842. Second, this Court should enter a declaratory judgment that the 2013 redistricting map for the Nassau County Legislature is now malapportioned in violation of the one-person, one-vote principle of Article I, Section 11 of the New York State Constitution and Section 34 (4)(a) of the Municipal Home Rule Law.

843. Third, this Court should act immediately to prevent further disenfranchisement by issuing an order that enjoins the Defendants from further using the Enacted Map to elect members of the Nassau County Legislature (Election Law § 17-206 (5); *see Pope*, 94 F Supp 3d at 351-52 (enjoining further elections under current election scheme); *see also Reynolds v Sims*, 377 US 533, 585 [1964] (“In awarding or withholding immediate relief, a court is entitled to, and should . . . act and rely upon general equitable principles.”)).

844. Fourth, this Court should require the parties to propose expeditiously “appropriate remedies” that comply with the NYVRA and MHRL to be applied in the 2025 elections and to remain in place until redistricting occurs again after the 2030 United States Census (Election Law § 17-206 (5); Election Law § 17-216). Consistent with Election Law § 17-206(5)(b), “[t]he court shall consider proposed remedies by any parties and interested non-parties, but shall not provide deference or priority to a proposed remedy offered by the political subdivision.” As courts routinely do when confronting the remedial phase of redistricting cases, the Court should consider appointing a special master to assist with evaluating or fashioning any proposed remedial plans.

845. Fifth, this Court should retain jurisdiction to ensure that the District complies fully with Section 34 (4) of the Municipal Home Rule Law and the NYVRA, Election Law § 17-206(5)(xvi).

846. Sixth, this Court should award Plaintiffs’ attorneys’ fees and costs, including witness expert fees and expenses (Election Law § 17-218).

847. Seventh, this Court should grant Plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Dated: Bronx, New York
December 9, 2024

Respectfully submitted,

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