

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

PAUL NICHOLS, GAVIN WAX, and GARY  
GREENBERG

Petitioners,

v.

GOVERNOR KATHY HOCHUL, SENATE  
MAJORITY LEADER AND PRESIDENT PRO  
TEMPORE OF THE SENATE ANDREA STEWART-  
COUSINS, SPEAKER OF THE ASSEMBLY CARL  
HEASTIE, NEW YORK STATE BOARD OF  
ELECTIONS, THE NEW YORK STATE  
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC  
RESEARCH AND REAPPORTIONMENT, NEW  
YORK STATE INDEPENDENT REDISTRICTING  
COMMISSION, KEN JENKINS, DR. JOHN  
FLATEAU, YOVAN SAMUEL COLLADO,  
IVELISSE CUEVAS-MOLINA, ELAINE FRAZIER,  
ROSS BRADY, JOHN CONWAY III, LISA HARRIS,  
CHARLES NESBITT, and WILLIS H. STEVEN,

Respondents.

**New York County**  
**Index No. 154213/2022**

**Appellate Division**  
**Case No. 2022-02301**

**NOTICE OF APPEAL**


**PLEASE TAKE NOTICE** that Petitioners Paul Nichols and Gary Greenberg, pursuant to CPLR § 5601(b), hereby appeal as of right to the New York Court of Appeals from the Decision and Order of the Supreme Court, Appellate Division, First Department, decided on January 24, 2023, filed and entered by Notice of Entry with the Office of the Clerk of the New York State Supreme Court, Appellate Division, First Department on January 24, 2023 (NYSCEF No. 194), and Remitted to the Clerk of the Court on January 31, 2023 (NYSCEF No. 198).

This appeal is taken from each and every part of the Decision and Order that aggrieves Petitioners and is appealable by them.

Dated: New York, NY  
February 15, 2023

Respectfully submitted,

**WALDEN MACHT & HARAN LLP**

By:   
\_\_\_\_\_  
Jim Walden  
Peter A. Devlin  
250 Vesey Street, 27<sup>th</sup> Floor  
New York, NY 10281  
Tel: (212) 335-2030  
jwalden@wmhlaw.com  
pdevlin@wmhlaw.com

*Attorneys for Petitioners Paul Nichols and Gary Greenberg*

TO: All Counsel on record **via NYSCEF**

LETITIA JAMES, NEW YORK ATTORNEY GENERAL  
*Attorneys for Respondent Governor Kathy Hochul*  
Seth Farber  
Andrea Trento  
Jeffrey Lang  
28 Liberty Street  
New York, NY 10005  
(212) 416-8029  
seth.farber@ag.ny.gov  
andrea.trento@ag.ny.gov  
jeffrey.lang@ag.ny.gov

CUTI HECKER WANG LLP  
*Attorneys for Respondent Senate Majority Leader Andrea Stewart-Cousins*  
Eric J. Hecker  
Alexandra Goldenberg  
Alice G. Reiter  
305 Broadway, Suite 607  
New York, New York 10007  
(212) 620-2600  
ehecker@chwllp.com  
agoldenberg@chwllp.com  
areiter@chwllp.com

GRAUBARD MILLER  
*Attorneys for Respondent Speaker of the Assembly Carl Heastie*  
C. Daniel Chill

Joseph H. Lessem  
 Elaine M. Reich  
 The Chrysler Building  
 405 Lexington Avenue, 11th Floor  
 New York, New York 10174  
 (212) 818-8800  
 dchill@graubard.com  
 jlessem@graubard.com  
 ereich@graubard.com

PHILLIPS LYTLE LLP

*Attorneys for Respondent Speaker of the Assembly Carl Heastie*

Craig R. Bucki  
 Steven B. Salcedo  
 Rebecca A. Valentine  
 One Canalside  
 125 Main Street  
 Buffalo, New York 14203-2887  
 Telephone No. (716) 847-8400  
 cbucki@phillipslytle.com  
 ssalcedo@phillipslytle.com  
 rvalentine@phillipslytle.com

NEW YORK STATE BOARD OF ELECTIONS

*Attorneys for Respondent*

Kevin G. Murphy  
 Brian Lee Quail  
 Aaron K. Suggs  
 New York State Board of Elections  
 40 N. Pearl Street, Suite 5  
 Albany, New York 12207  
 (518) 474-2063  
 kevin.murphy@elections.ny.gov  
 brian.quail@elections.ny.gov  
 aaron.suggs@elections.ny.gov

MESSINA PERILLO HILL LLP

*Attorneys for Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H.*

*Stephens*

Timothy Hill  
 285 West Main Street, Suite 203  
 Sayville, New York 11782  
 (613) 582-9422  
 thill@mphilawgroup.com

**JENNER & BLOCK LLP**

*Attorneys for David Imamura, Ken Jenkins, Ivelisse Cuevas-Molina, Elaine Frazier,  
Yovan Samuel Collado, and John Flateau*

Jacob D. Alderdice

Allison N. Douglis

1155 Avenue of the Americas

New York, NY 10036

(212) 891-1600

[jalderdice@jenner.com](mailto:jalderdice@jenner.com)

[adouglis@jenner.com](mailto:adouglis@jenner.com)

Jessica R. Amunson

Samuel Hirsch

1099 New York Avenue, NW, Suite 900

Washington, DC 20001

(202) 639-6000

[jamunson@jenner.com](mailto:jamunson@jenner.com)

[shirsch@jenner.com](mailto:shirsch@jenner.com)

RETRIEVED FROM DEMOCRACYDOCKET.COM

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF NEW YORK

---

PAUL NICHOLS, GAVIN WAX, and GARY  
GREENBERG,

Petitioners,

v.

GOVERNOR KATHY HOCHUL, SENATE MAJORITY  
LEADER AND PRESIDENT PRO TEMPORE OF THE  
SENATE ANDREA STEWART-COUSINS, SPEAKER OF  
THE ASSEMBLY CARL HEASTIE, NEW YORK STATE  
BOARD OF ELECTIONS, NEW YORK STATE  
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC  
RESEARCH AND REAPPORTIONMENT, NEW YORK  
STATE INDEPENDENT REDISTRICTING  
COMMISSION, KEN JENKINS, DR. JOHN FLATEAU,  
YOVAN SAMUEL COLLADO, IVELISSE CUEVAS-  
MOLINA, ELAINE FRAZIER, ROSS BRADY JOHN  
CONWAY III, LISA HARRIS, CHARLES NESBITT, and  
WILLIS H. STEVEN,

Respondents.

---

**NOTICE OF ENTRY**

A.D. Case No.  
2022-04649

New York County  
Index No.  
154213/2022

PLEASE TAKE NOTICE that a Decision and Order (First Department  
NYSCEF Dkt. No. 24), a copy of which is attached as **Exhibit A**, was duly filed and  
entered in this special proceeding in the Office of the Clerk of the New York State Supreme  
Court, Appellate Division, First Department, on January 24, 2023.



## LAW OFFICE OF AARON S. FOLDENAUER

Aaron S. Foldenauer, Esq.  
Attorneys for Petitioner  
*Gavin Wax*  
30 Wall Street, 8th Floor  
New York, New York 10005  
(212) 961-6505  
aaron@nyelectionlaw.com

## CUTI HECKER WANG LLP

Eric Hecker, Alexander Goldenberg, and Alice Reiter, Esqs.  
Attorneys for Respondent  
*Senate Majority Leader Andrea Stewart-Cousins*  
305 Broadway, Suite 607  
New York, New York 10007  
(212) 620-2600  
ehecker@chwllp.com  
areiter@chwllp.com  
agoldenberg@chwllp.com

## LETITIA JAMES, NEW YORK STATE ATTORNEY GENERAL

Seth Farber, Esq.  
Attorneys for Respondent  
*Governor Kathy Hochul*  
28 Liberty Street  
New York, New York 10005  
(212) 416-8029  
seth.farber@ag.ny.gov

## NEW YORK STATE BOARD OF ELECTIONS

Brian Quail, Kevin Murphy, and Aaron Suggs, Esqs.  
Attorneys for Respondent  
*New York State Board of Elections*  
40 N. Pearl Street, Suite 5  
Albany, New York 12207  
(518) 474-2063  
brian.quail@elections.ny.gov  
kevin.murphy@elections.ny.gov  
aaron.suggs@elections.ny.gov

JENNER & BLOCK LLP

Allison N. Douglass and Jacob D. Alderdice, Esqs.  
1155 Avenue of the Americas  
New York, New York 10036  
(212) 303-2505  
adouglass@jenner.com  
jalderdice@jenner.com

Jessica Ring Amunson and Samuel Hirsch, Esqs.  
1099 New York Avenue, NW  
Washington, D.C. 70001-4412  
(202) 639-6023  
jamunson@jenner.com  
shirsch@jenner.com

Attorneys for Respondents  
*Ken Jenkins, Ivelisse Cuevas-Molina, and Elaine Frazier*

PERILLO HILL LLP

Timothy F. Hill, Esq.  
Attorneys for Respondents  
*Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H Stephens, Jr.*  
285 W Main Street, Suite 203  
Sayville, New York 11782  
(631) 582-9422  
thill@mphilawgroup.com

Dr. John Flateau  
New York State Independent Redistricting Commission  
250 Broadway, 22nd Floor  
New York, New York 10007

Yovan Samuel Collado  
New York State Independent Redistricting Commission  
250 Broadway, 22nd Floor  
New York, New York 10007

The New York State Legislative Task Force on Demographic Research and  
Reapportionment  
198 State Street  
Lobby  
Albany, New York 12210



Notice of Entry  
**Exhibit A**

RETRIEVED FROM DEMOCRACYDOCKET.COM

**Supreme Court of the State of New York**

**Appellate Division, First Judicial Department**

Renwick, J.P., Gesmer, Moulton, Kennedy, Mendez, JJ.

17266 In the Matter of PAUL NICHOLS et al.,  
Petitioners-Appellants,

Index No. 154213/22  
Case No. 2022-04649

-against-

GOVERNOR KATHY HOCHUL et al.,  
Respondents-Respondents.

---

Walden Macht & Haran LLP, New York (Peter A. Devlin of counsel), for Paul Nichols and Gary Greenberg, appellants.

Law Office of Aaron S. Foldenauer, New York (Aaron S. Foldenauer of counsel), for Gavin Wax, appellant.

Letitia James, Attorney General, New York (Andrea W. Trento of counsel), for Governor Kathy Hochul, respondent.

Phillips Lytle LLP, Buffalo (Craig R. Bucki of counsel) and Graubard Miller, New York (Elaine Reich of counsel), for Speaker of the Assembly Carl Heastie, respondent.

Cuti Hecker Wang LLP, New York (Alice G. Reiter of counsel), for Senate Majority Leader and President Pro Tempore of the Senate Andrea Stewart-Cousins, respondent.

Jenner and Block, LLP, New York (Jacob D. Alderdice of counsel), for Ken Jenkins, John Flateau, Yovan Samuel Collado, Ivelisse Cuevas-Molina and Elaine Frazier, respondents.

---

Order, Supreme Court, New York County (Laurence L. Love, J.), entered October 12, 2022, which, to the extent appealed from, ordered that the Independent Redistricting Commission (IRC) initiate the constitutional process for amending the New York State Assembly maps, conduct public hearings consistent with NY Const, art III, § 4(c), make plans, data and information available for the public to view at least 30

days prior to the first public meeting, submit to the legislature an Assembly redistricting plan or plans and implementing legislation by April 28, 2023, to be voted upon by the legislature in a single bill, ordered that if either house of the legislature failed to approve the implementing legislation, or if the Governor vetoed such legislation, that the IRC would, within 15 days and in no case later than June 16, 2023, prepare a second redistricting plan and implementing legislation, and ordered that if either the legislature failed to approve the second plan and implementing legislation, or if the Governor vetoed it, then the legislature would introduce such implementing legislation with any amendments deemed necessary, unanimously affirmed, without costs.

In a prior decision, this Court declared that the February 2022 New York State Assembly map was invalid due to procedural infirmities (*Matter of Nichols v Hochul*, 206 AD3d 463, 464 [1st Dept 2022], *lv dismissed* 38 NY3d 1053 [2022]). We remanded to Supreme Court for consideration of the proper means of redrawing the Assembly map in accordance with NY Const, art III, § 5-b (*id.*). Consistent with our prior order, Supreme Court then ordered that the Assembly map be redrawn through the IRC process set forth in NY Const, art III, and set deadlines for the IRC to prepare maps, as the deadlines contained in NY Const, art III, § 4(b) had passed. We endorse the procedures adopted by the court, find that they constitute appropriate remedial measures for a constitutional violation, and find that the remedy is consistent with the procedures set forth in the Constitution.

NY Const, art III, § 5-b requires that an IRC be established to determine district lines, including in cases such as this, where a court has ordered that districts be amended. The IRC procedures control the redistricting process, except to the extent that a court is *required* to forego them in order to adopt a plan as a remedy for a violation of

law (NY Const, art III, § 4[e]). The Constitution does not mandate any particular remedial action when a violation of law has occurred and authorizes broad judicial oversight of remedial action when the courts find that it is necessary (*see Matter of Harkenrider v Hochul*, 38 NY3d 494, 523 [2022]). Thus, in the absence of a viable legislative plan, a court may order the adoption of a redistricting plan with the assistance of a special master, as an appropriate remedial measure (*Harkenrider* at 522, 523). Yet the Constitution also favors a legislative resolution when available (*see* NY Const, art III, §§ 4[e], 5, 5-b[a]; *see also Wise v Lipscomb*, 437 US 535, 540 [1978]), and does not expressly limit the potential remedies a court may order to facilitate a viable legislative plan.

Here, a viable legislative plan is available, as contemplated by NY Const, art III, § 5-b. The court's order setting deadlines for, among other things, the IRC's submission of maps, in order to facilitate such a plan, was an appropriate remedial measure which is not prohibited by NY Const, art III, § 4(e). Contrary to petitioners' contention, the remedial measures chosen by the court in *Harkenrider* are not required here. In *Harkenrider*, the constitutional violation could not be cured by a process involving the legislature and the IRC, given the time constraints created by the electoral calendar (38 NY3d at 523). The Court of Appeals recognized that the Constitution explicitly gives courts oversight over remedial action in the wake of a determination of unconstitutionality, and it then endorsed the remedial measures chosen by Supreme Court, which included appointment of a special master (*id.*). There is much more time available in this case than there was in *Harkenrider* for the IRC and legislative procedures to proceed and conclude prior to the next election cycle, thereby allowing for a reasonable opportunity for the legislature to meet its constitutional requirements. We

therefore endorse the remedial measures chosen by Supreme Court.

We have considered petitioners' remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 24, 2023



Susanna Molina Rojas  
Clerk of the Court

RETRIEVED FROM DEMOCRACYDOCKET.COM