

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

PAUL NICHOLS, GAVIN WAX, and GARY GREENBERG,

Petitioners,

-against-

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, and THE NEW YORK STATE LEGISLATIVE TASK FORCE ON DEMOGRAPHIC RESEARCH AND REAPPORTIONMENT,

Respondents.

Index No. 154213/2022

ANSWER OF GOVERNOR HOCHUL

Respondent Governor Kathy Hochul (“Governor Hochul”) by her attorney, LETITIA JAMES, Attorney General of the State of New York, as and for her answer to the Petition herein, responds to the allegations in the Petition as follows:

1. To the extent that the allegations of paragraph 1 set forth Petitioners’ legal arguments and/or their characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

2. With respect to the allegations contained in paragraphs 2, 3 and 4, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners’ allegations are inconsistent therewith.

3. To the extent that the allegations of paragraphs 5, 6, 7 and 8 set forth Petitioners' legal arguments and/or their characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

4. Denies the allegations contained in paragraph 9.

5. To the extent that the allegations of paragraph 10 set forth Petitioners' legal arguments and/or their characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 11, 12 and 13.

7. Admits the allegations contained in paragraphs 14, 15, 16, 17 and 18.

8. With respect to the allegations contained in paragraphs 19, 20, 21 and 22, respectfully refers the Court to the applicable constitutional provision and statutes recited therein (Article III, Section 5 of the New York Constitution, Unconsolidated Laws §§ 4221 and 4225, and CPLR 503(a) and 3001), and denies to the extent that Petitioners' allegations are inconsistent therewith.

9. To the extent that the allegations of paragraphs 23, 24, 25, 26, 27, 28 and 29 set forth Petitioners' legal arguments and/or their characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

10. With respect to the allegations contained in paragraphs 30, 31, 32, 33 and 34, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best

evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

11. Denies the allegations contained in paragraph 35.

12. With respect to the allegations contained in paragraphs 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84 and 85, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, and/or the record of the State's redistricting process as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

13. To the extent that the allegations of paragraphs 86, 87, 88, 89 and 90 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

14. With respect to the allegations contained in paragraph 91, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

15. With respect to the allegations contained in paragraph 92, respectfully refers the Court to the applicable statute recited therein (N.Y. Election Law § 5-134) and denies to the extent that Petitioners' allegations are inconsistent therewith.

16. To the extent that the allegations of paragraphs 93, 94, 95, 96, 97, 98 and 99 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

17. With respect to the allegations contained in paragraph 100, respectfully refers the Court to the applicable statute recited therein (N.Y. Election Law § 6-138) and denies to the extent that Petitioners' allegations are inconsistent therewith.

18. To the extent that the allegations of paragraphs 101, 102, 103, 104 and 105 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

19. With respect to the allegations contained in paragraphs 106, 107, 108, 109, 110, 111, 112, 113 and 114, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

20. To the extent that the allegations of paragraphs 115 and 116 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

21. With respect to the allegations contained in paragraphs 117 and 118, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

22. To the extent that the allegations of paragraph 119, 120, 121, 122, 123 and 124 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

23. With respect to the allegations contained in paragraphs 125 and 126, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

24. To the extent that the allegations of paragraph 127, 128 and 129 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

25. Denies the allegations contained in paragraph 130.

26. To the extent that the allegations of paragraphs 131, 132, 133, 134 and 135 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

27. Denies the allegations contained in paragraphs 136, 137, 138, 139, 140, 141, 142, 143, 144, 145 and 146.

28. With respect to the allegations contained in paragraphs 147 and 148, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

29. To the extent that the allegations of paragraph 149 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

30. Repeats and realleges her responses to the allegations contained in paragraphs 1 through 149 as her response to paragraph 150.

31. With respect to the allegations contained in paragraph 151, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

32. With respect to the allegations contained in paragraphs 152, 153 and 154, respectfully refers the Court to the applicable constitutional provisions recited therein (New York Constitution, Article III, Sections 4(b) and 4(e)) as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

33. Denies the allegations contained in paragraphs 155 and 156.

34. With respect to the allegations contained in paragraphs 157, 158, 159 and 160, respectfully refers the Court to the record and decisions in the trial court and appellate courts in *Harkenrider v. Hochul*, Steuben County Sup. Ct., Index No. E2022-0116CV, as the best evidence of their contents, provisions and requirements, and denies to the extent that Petitioners' allegations are inconsistent therewith.

35. Denies the allegations contained in paragraphs 161.

36. Repeats and realleges her responses to the allegations contained in paragraphs 1 through 161 as her response to paragraph 162.

37. To the extent that the allegations of paragraph 163 set forth Petitioners' legal arguments and/or its characterization of this proceeding and the grounds therein, submits that no response is required; to the extent a response is required, denies.

38. Denies the allegations contained in paragraphs 164, 165, 166 and 167.

39. Denies any averment of the Petition not specifically responded to above.

40. With respect to the prayer for relief, denies that Petitioners are entitled to any relief in this proceeding.

**AS AND FOR HER DEFENSES TO THE PETITION
HEREIN, RESPONDENT GOVERNOR HOCHUL
ALLEGES:**

41. As further set forth in her accompanying Memorandum of Law in Support of her Answer and in Opposition to the Order to Show Cause, the Petition is barred by the doctrine of laches and thus fails to set forth grounds warranting the relief sought therein.

42. Governor Hochul properly performed the duties imposed upon her by law. The applicable decisions were made in accordance with lawful procedure; were affected by no error of law; were neither arbitrary nor capricious nor an abuse of discretion.

43. The petition on its face fails as a matter of law to set forth grounds warranting the relief sought therein. Petitioners are not entitled to such relief and the petition should be dismissed.

44. Petitioners' claims against Governor Hochul are barred by the doctrine of legislative immunity.

45. Some or all of Petitioners' claims against Governor Hochul are barred by the applicable statute of limitations.

46. The Petition is barred insofar as it raises non-justiciable questions.

47. Petitioners lack standing to assert some or all of their claims.
48. Some or all of Petitioners' claims are barred by the doctrine of mootness.
49. The Court lacks subject matter jurisdiction over Governor Hochul with respect to some or all of Petitioner's claims.
50. The Petition fails to name necessary parties.

WHEREFORE, the Respondents respectfully submit that the proceeding should be dismissed as a matter of law, and for such other and further relief as to this Court seems just and proper.

Dated: New York, New York
May 23, 2022

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Respondent Governor Hochul
By:

/s/ Seth J. Farber
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