

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

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

Petitioners,

vs.

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

Respondents.

Index No.: 164002/2025

Hon. Jeffrey H. Pearlman

Mot. Seq. 005

**REPLY MEMORANDUM OF LAW IN
FURTHER SUPPORT OF RESPONDENTS' MOTION FOR RECUSAL**

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PRELIMINARY STATEMENT¹

Respondents respectfully submit this reply memorandum of law in further support of their motion for recusal.

Petitioners—the only parties opposing recusal—fail to credibly explain how Your Honor’s myriad relationships with *six of ten* respondents do not give rise to reasonable questions regarding impartiality. Their position willfully ignores the reality that Your Honor recently served as a top advisor and legal counsel to the very state leaders whose actions are being challenged in this case.

Compounding these concerns, the partisan connections here place the appearance of impartiality and perceptions of the Court’s integrity squarely at risk. Your Honor has deep political connections with high-ranking Democratic officials, including as counsel to former Lt. Governor and now Governor Kathy Hochul and to Senate Majority Leader Andrea Stewart-Cousins. In this case, Your Honor must decide whether to invalidate the long-standing configuration of CD-11 on Staten Island in favor of one that, through tortured logic and partisan machinations, imports Democratic precincts from lower Manhattan to artificially generate a toss-up district. Since the public undoubtedly will view the outcome of this litigation through the prism of Your Honor’s connections to the high-ranking Democratic officials, the best practice here is for this case to be decided by a judge without those connections.²

Finally, Petitioners’ claim that this motion is untimely is as desperate as it is disingenuous. Respondents filed this motion *less than* three weeks after Your Honor made the disclosures.

¹ All terms used but not defined herein shall have the meaning ascribed in Respondents Memorandum of Law in Support of Recusal (NYSCEF Doc. No. 74) (“Respondents’ Mem.”).

² To be clear, Respondents neither contend nor suggest that a judge’s political affiliation alone is a basis for recusal in any case, including an election case. Rather, it is the decades-long relationships with partisan politicians directly involved in this partisan redistricting litigation that will, fairly or unfairly, taint the Court’s decisions in this litigation and irrevocably impair the public’s confidence in the judiciary.

Respondents did so before any determinations have been made in this litigation, thereby protecting the outcome of the litigation from claims of partiality. Petitioners have identified no cognizable prejudice, nor can they since this proceeding enjoys a preference and its record has not been fully developed. Any incoming judge will step in Your Honor's shoes and decide the case in accordance with the expedited schedule.

Accordingly, as discussed below, Your Honor should recuse and direct that this case be immediately reassigned to another Justice of the Supreme Court.

ARGUMENT

I. Recusal is required based on the mere appearance of partiality.

Petitioners do not contest the governing premise of Respondents' motion: New York law *requires* recusal where a judge's "impartiality might reasonably be questioned" (22 NYCRR 100.3 [E] [1]). Instead, Petitioners incredibly attempt to minimize the cumulative weight, recency, and subject-matter of Your Honor's own, extensive disclosures.

As detailed in Respondents' moving papers, Your Honor disclosed substantial, multi-faceted relationships with *six of the ten* individual Respondents, including serving as a top aide and counsel to Governor Hochul and Senate Majority Leader Stewart-Cousins, professional relationships with other parties, and a "close social relationship" with Commissioner Berger, which Your Honor noted was of the "most concern."³ Petitioners' opposition neither disputes those facts nor offers an objective account of why their aggregation does not, at minimum, cross the "might reasonably be questioned" line.

It is obvious why these facts would lead an objective observer to reasonably question Your Honor's impartiality. Your Honor's recent, high-ranking service to two central parties (the

³ Ex. A (Transcript) at 8.

Governor and the Senate Majority Leader, who happen to have enacted the statute at issue here), additional professional and legal ties to multiple other respondents, and Your Honor’s acknowledged “close social relationship” with Commissioner Berger—including family trips and annual dinners—collectively present a concentration of connections that naturally prompts objective doubt about neutrality. That doubt is exacerbated here because these connections are present in a partisan redistricting case that will be decided on the law or through a nonjury trial where Your Honor is the sole arbiter of facts and law.⁴

The appearance inquiry necessarily asks what a reasonable member of the public would think, not how finely Petitioners’ counsel can isolate each relationship, as they attempt to do here. Viewed holistically and in context—a political redistricting dispute effectively supported by the precise partisans Your Honor previously represented in a political capacity⁵—these undisputed relationships more than suffice to make a reasonable person question Your Honor’s impartiality.

New York’s authorities confirm this common-sense conclusion. The Court of Appeals has emphasized that our rules not only “purge actual bias” but also the mere “*possibility of bias*,” and that courts safeguard the appearance of impartiality to promote public confidence in the courts (*People v Novak*, 30 NY3d 222, 226 [2017] [emphasis added]).

Most recently, in *Wallach v Rothschild*, the Second Department reversed the denial of a recusal motion where, even absent a finding of abuse of discretion, much less the direct

⁴ Respondents’ Memorandum of Law in Opposition to the Petition and in Support of Motion to Dismiss (NYSCEF Doc. No. 122) at 12-26 (explaining why the Petition should be dismissed as a matter of law and without a trial).

⁵ Tellingly, counsel to Governor Hochul and Senate Majority Leader and President *Pro Tempore* of the New York State Senate, Andrea Stewart-Cousins, through their counsel, the Attorney General of the State of New York (all Democrats) have essentially abdicated their duty to defend the constitutionality of an enacted statute by “tak[ing] no position” on Petitioners’ constitutional challenge to New York’s congressional district map, Senate Bill S8653A, codified at New York State Law §§ 110-112 (NYSCEF Doc. No. 95).

relationships present here, the judge’s *law clerk* was married to a named partner at a firm appearing in the case. The court concluded that “it would have been ‘better practice’ for the trial judge to recuse herself ‘in a special effort to maintain the appearance of impartiality’” (*Wallach v Rothschild*, 241 AD3d 600, 601 [2d Dept 2025], quoting *Matter of Indep. Party State Comm. of State of New York v Berman*, 20 AD3d 423, 424 [2d Dept 2005] [“*Berman*”]).

Wallach illustrates the core principle that the mere “appearance” of potential bias requires recusal to preserve public confidence. Under the same rationale, the appearance created by Your Honor’s own recent, high-level service to Governor Hochul and Majority Leader Stewart-Cousins, multiple additional professional ties to other respondents, and an acknowledged “close social relationship” with Commissioner Berger confirms that the better practice is recusal and preservation of the appearance of impartiality and the public’s perception of the judiciary’s integrity. Petitioners’ opposition simply does not refute that recusal is the better practice.

The Second Department’s decision in *Berman* further underscores why recusal is warranted here. In that case, an Election Law article 16 dispute, the Appellate Division reversed and granted recusal—not because of any mandatory ground or explicit finding of abuse of discretion—but simply because the “better practice” of recusal required it where the judge’s *former* law clerk publicly lauded a representative of one faction at her judicial induction (*Berman*, 20 AD3d at 425). The court concluded those public remarks called the judge’s impartiality into question and that the trial court “improperly declined to recuse.”

The parallels here are even more compelling. This is also a politically charged and partisan election law proceeding, but instead of a concern arising from a *former* clerk’s public remarks, the concern arises from Your Honor’s *own* recent, deep and high-ranking political and legal ties to two principal respondents—the Governor and the Senate Majority Leader. Simply put, since *Berman*

required recusal to safeguard appearances on materially less direct connections, the appearance of partiality to an objective observer is far more evident here.

Moreover, the appearance of partiality analysis is reinforced by the fact that Governor Hochul and Senate Majority Leader Stewart-Cousins “take no position” in this litigation seeking to invalidate their own enactment and compel them to adopt Petitioners’ preferred map. As elected officials, the Governor and Majority Leader exercise discretion over legislative matters. They certainly did so in enacting the challenged maps and, presumably, did not enact the maps under a belief that they were unconstitutional. Nevertheless, before your Court, Your Honor’s former clients shockingly “take no position” as to the legitimacy of their exercise of legislative discretion.⁶ While this is inexplicable on its own, in the context of Your Honor’s prior relationships and representations of the Governor and Senate Majority Leader, their unwillingness to defend their own official acts signals to Your Honor that they do not oppose this Court striking those acts in service of their publicly professed partisan ends. Under these extraordinary circumstances, where Your Honor’s prior clients are unwilling to defend their own official acts, it blinks at reality to suggest that Your Honor’s impartiality would not be reasonably questioned.

II. Your Honor’s representation of Governor Hochul at the enactment of the NYVRA is disqualifying

Respondents’ motion also argues that recusal is required because Your Honor represented Governor Hochul at the time she signed the NYVRA into law. This is disqualifying on two grounds: *first*, it adds to the litany of reasons why Your Honor’s impartiality might reasonably be questioned by an objective observer; and, *second*, if Your Honor or another attorney in the

⁶ This position is particularly questionable given their counsel’s admission that the NYVRA—the central premise of Petitioners’ lawsuit—is “wholly inapplicable to apportionment challenges brought against Congressional . . . Districts” (Dkt. 95 at 2).

Governor's office advised the Governor on the constitutionality of the NYVRA at the time it was enacted, then, as Petitioners concede,⁷ recusal is mandatory (*see* Judiciary Law § 14; 22 NYCRR 100.3 [E] [1] [b]).

Petitioners' contention that these are mere "hypotheticals" ignores the statutory duties of the Governor's counsel. Under Executive Law § 4, it "*shall* be the duty" of the Governor's counsel "to advise the governor in regard to the *constitutionality, consistency and legal effect of bills* presented to the governor" (Executive Law § 4 [emphasis added]). Given this duty, it is far from speculative to assume that Governor Hochul's counsel advised her on the NYVRA's "constitutionality, consistency, and legal effect" (*id.*). In fact, the law "*presumes* that no official or person acting under an oath of office will do anything contrary to his official duty, or omit anything which his official duty requires to be done" (*People v Dominique*, 90 NY2d 880, 881 [1997] [emphasis added]).

Of course, under the unique circumstances of this recusal issue, only Your Honor, the Governor, and her other counsel know the extent to which the Governor was counseled on the NYVRA. Significantly, however, the Governor had an opportunity to dispute this fact and elected not to, taking no position on this motion.⁸

Petitioners' cramped construction of the term "matter" as encompassing only "a concrete legal dispute" cannot be squared with the text of Judiciary Law § 14 and the plain meaning of the term.⁹ The Legislature included "action, claim, matter, motion or proceeding" as distinct grounds, not synonyms. Petitioners' contention that the other terms limit the meaning of "matter" to a "real

⁷ Petitioners' Opposition to Respondents' Motion To Recuse (NYSCEF Doc. No. 94) ("Petitioners' Mem.") at 7.

⁸ Letter to the Court from the Office of the Attorney General, dated December 8, 2025 (NYSCEF Doc. No. 96).

⁹ Petitioner's Mem. at 8.

and present dispute” runs contrary to settled canons of construction.¹⁰ In construing a statute, the “starting point must be the text” and courts should “give to the language used its ordinary meaning” (*Harkenrider v Hochul*, 38 NY3d 494, 509 [2022] [internal citation and punctuation omitted]). “[A]ll parts of a statute are intended to be given effect and a statutory construction which renders one part meaningless should be avoided” (*Anonymous v Molik*, 32 NY3d 30, 37 [2018] [internal citation and punctuation omitted]). To construe “matter” as coextensive with “action, “motion or proceeding,” as Petitioners suggest, would impermissibly render the term as surplusage.

Petitioners’ reliance on *Certain Underwriters at Lloyd's, London v Forty Seventh Fifth Co. LLC* (75 Misc 3d 1232(A) [Sup Ct, NY County 2022]) is misplaced. There, the court applied “the rule of contract construction *ejusdem generis*” which provides that when specific and general words are combined in a series, the scope of the general terms is limited by the specific terms. In *Certain Underwriters*, the court held that a contract provision referring generally to “customers and/or persons” did not refer to “any persons or companies,” but rather, the specific categories of “customers” and “persons” identified in the provision (*id.* at *2 [emphasis in original]). By contrast here, Judiciary Law § 14 does not contain a general term followed or preceded by specific examples. None of “action, claim, matter, motion or proceeding” is a general term—each has its own specific meaning, without reference to the other.

Contrary to Petitioners’ argument,¹¹ this interpretation is supported by the NY Rules of Professional Conduct, which define “matter” broadly. A “matter” includes “any litigation, judicial or administrative proceeding, case, [or] claim,” but also any “request for a . . . determination, contract, . . . or any other representation involving a specific party or parties” (Rule 1.0 [1])

¹⁰ *Id.* at 8.

¹¹ Petitioners’ Mem. at 9.

[emphasis added]). Petitioners' attempt to shrink the definition's catch-all clause as not including a "legal opinion" to a client is surprising. It would contravene the clear rule that an attorney may not provide legal advice to a client and then represent a party adverse to the client on a related matter (*see* [Rule 1.9 \[a\]](#) ["A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client"]). According to Petitioners, however, "matter" must be construed in a manner that would permit such an adverse representation, because the prior "legal opinion" would not constitute a "matter." Petitioners' contorted interpretation violates both the letter and spirit of the Judiciary Law and the Rules of Professional Conduct.

Petitioners also mistakenly suggest that this means "no judge could ever preside over a case involving a statute or rule they once challenged as a litigant."¹² That is not the situation presented here. The rules do not disqualify a judge because, at some point in prior life, the judge held views about—or even litigated over—the legality of a statute. They disqualify only where the judge "has been attorney or counsel"¹³ in a "matter" ([Judiciary Law § 14](#); *see also* [22 NYCRR 100.3 \[E\] \[1\] \[b\]](#)). That language targets a judge's prior client-specific legal representation on the very subject now before the court, not the mere fact of having litigated about the same statute in a different case, for a different client, at a different time. The key distinction is that Your Honor's

¹² [Petitioners' Mem. at 10](#).

¹³ Significantly, "counsel" is defined as "[a]n attorney retained merely to give advice on a particular matter, as distinguished from one (such as trial counsel) actively participating in a case" ([COUNSEL](#), [Black's Law Dictionary \[12th ed. 2024\]](#)). The statute's use of "counsel" in addition to "attorney" further reflects its intent to encompass matters in which an attorney provides a "legal opinion" (*see* [Petitioners' Mem. at 9](#)).

prior representation was not of a litigant challenging a statute or rule, but counseling a client who signed a statute into law.

In sum, Petitioners' construction of "matter" is textually incorrect and practically unworkable. The Judiciary Law, the Rules of Judicial Conduct, and the Rules of Professional Conduct all recognize that lawyers serve clients in matters outside of "a concrete legal dispute,"¹⁴ and those representations can require judicial recusal when the same subject later returns to court. Because New York law mandates that governors' counsel advise on the constitutionality and legal effect of bills presented for approval, it is reasonable—and indeed expected—that counsel advised Governor Hochul regarding the NYVRA during enactment. If Your Honor provided that advice, or worked with a counsel who did, recusal is required (Judiciary Law § 14; 22 NYCRR 100.3 [E] [1] [b]).

III. Respondents timely filed this motion

Petitioners complain about a purported delay in filing this motion but neither 22 NYCRR 100.3 nor Judiciary Law § 17 impose any time limitation on seeking recusal. For that reason, Petitioners were unable to cite any authority holding that a recusal motion may be denied as untimely when made less than three weeks after a judge's disclosures.

More importantly, Respondents expeditiously filed this motion before the Court made *any* determinations, let alone substantive determinations, in this litigation (*but see Glatzer v Bear, Stearns & Co., Inc.*, 95 AD3d 707, 707 [1st Dept 2012] ["[W]here, as here, a party inexplicably withholds an allegation of bias *until after the court adversely rules against it*, denial of the recusal motion is generally warranted"] [emphasis added]).

¹⁴ *Petitioner's Mem.* at 8.

In doing so, Respondents have preserved the integrity of this proceeding and ensured that the Court's determinations, whether made by Your Honor or a newly assigned judge, are untainted by questions of partiality.

Petitioners' claim of supposed prejudice fares no better. If Your Honor recuses now, the incoming judge will be in the same judicial position as Your Honor—presiding over a litigation with a preference and for which there will not be a fully-briefed record until December 23, 2025. Therefore, there should be no delay attributable to the transition of the proceeding to a new judge.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court grant their motion for recusal, direct that this case be assigned to another Justice of the Supreme Court, and grant such other and further relief as this Court deems just and equitable.

Dated: December 10, 2025
Albany, New York

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies pursuant to Section 202.8-b of the Uniform Rules for the Supreme Court and the County Court that, with the exception of the caption, table of contents, table of authorities, and signature block, the foregoing memorandum contains 2,965 words, based on the calculation made by the word-processing system used to prepare this document.

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

Dated: December 10, 2025
Albany, New York

/s/ Nicholas J. Faso

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