

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORKPAUL 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, and THE  
NEW YORK STATE LEGISLATIVE TASK  
FORCE ON DEMOGRAPHIC RESEARCH  
AND REAPPORTIONMENT,

Respondents.

Index No. 154213/2022

**SUPPLEMENTAL  
AFFIRMATION OF  
PETER DEVLIN**

PETER A. DEVLIN, an attorney licensed to practice in the State of New York, affirms under penalty of perjury:

1. I am an Associate at the law firm of Walden Macht & Haran, LLP, 250 Vesey Street, 27th Floor, New York, New York 10281, counsel for Petitioners Paul Nichols and Gary Greenberg in this CPLR Art. 4 special proceeding.

2. I submit this Supplemental Affirmation in further support of the Petition and accompanying proposed Order to Show Cause and motion for a temporary restraining order filed on May 15, 2022, to inform the Court of late-breaking developments in related proceedings before the Steuben County Supreme Court in *Harkenrider v. Hochul*, Index No. E 2022-0116 CV.

3. Yesterday, Special Master Cervas released proposed Congressional and State Senate district maps. The Steuben County Court will hear public comment and adopt final maps on May 20<sup>th</sup>. In particular, the proposed Congressional map proves that new designating and

nominating petitioning periods for Statewide candidates must be opened if New York is to hold fair and lawful elections.

4. Attached hereto as Exhibit A and Exhibit B are true and correct copies of the Special Master's proposed Congressional and State Senate district maps, respectively.

5. The composition of Congressional districts is key to a candidate's campaign strategy and decision to run. Statewide candidates must gather signatures from 50% of Congressional districts to earn a spot on primary or general election ballots. *See* Petition, NYSCEF No. 1 ¶¶ 90–99; N.Y. Election Law §§ 6-136(1); 6-142(1).

6. If a candidate cannot find support from voters in at least half of Congressional districts, that candidate will not qualify for the ballot. Congressional districts thus directly impact whom voters can choose in Statewide elections and who will eventually represent the people of New York. *See* Petition ¶ 145 & n.9.

7. In March and early April, candidates—like Petitioner Nichols—circulated designating petitions in Congressional districts that the Court of Appeals has since held are unconstitutional. The Court of Appeals found that the Legislature bypassed mandatory constitutional safeguards against gerrymandering and drew a gerrymandered partisan map.<sup>1</sup>

8. Candidates—like Petitioner Nichols—who did not qualify for ballot access (or chose not to run) may be seeking a third-party line on the general ballot but lack sufficient time, or they may wish to circulate new designating petitions but lack an open petition period. *See* Nichols Aff., NYSCEF No. 2 ¶¶ 4–5, 8. Moreover, candidates on the current ballot for the June 28<sup>th</sup> Statewide primary may no longer have gathered the requisite signatures, *i.e.*, voter support, under state law to still qualify for the ballot.

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<sup>1</sup> *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822, at \*9 (N.Y. Apr. 27, 2022).

9. The new Congressional map diverges sharply from the Legislature's unconstitutional map. The new map has districts that are more compact, competitive, and, according to a senior fellow at the New York Law School Census and Redistricting Institute, "reflect more communities and counties kept in tact."<sup>2</sup> The new map thus rewrites the competitive dynamics of Statewide races—who will run and who will appear on the ballot.

10. The Steuben County Court has ordered that a 20-day designating petition period be opened for Congressional and State Senate races, beginning May 21<sup>st</sup> and ending June 10<sup>th</sup>, and the Steuben County Court has also ordered that a six-week independent nominating period be opened for those same races, beginning May 21<sup>st</sup> and ending July 5<sup>th</sup>.

11. Attached hereto as Exhibit C is a true and correct copy of the Steuben County Court's Order dated May 11, 2022.

12. Statewide races have also gone through upheaval because of the Legislature's unconstitutional acts and must also be accounted for in the remedy. *See* Nichols Aff. ¶¶ 5–6. But none has been provided.

13. The New York State Board of Elections ("BOE") will no doubt object to opening designating petition periods, claiming they lack sufficient time. But New York's boards of elections can be adept when they want to be.

14. Co-Executive Director Todd Valentine stated in *Harkenrider* that candidates have "adjusted" to "prior redistricting changes due to court orders" and to "executive orders [that] have altered the process at the eleventh hour to address exigent circumstances." Moreover, as Valentine stated, boards of elections are capable of "translating new district boundaries into their voter

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<sup>2</sup> Luke Parsnow & Kate Lisa, *Special Master Releases New Draft New York Congressional Maps*, *Spectrum News* (May 16, 2022), <https://spectrumlocalnews.com/nys/central-ny/politics/2022/05/16/special-master-releases-new-new-york-congressional-maps>.

registration systems . . . in less than a month's time" and "county boards have ably made [changes to poll sites] in the recent past in response to court orders . . . ." *See also* Petition ¶¶ 125–36.

15. Attached hereto as Exhibit D is a true and correct copy of the Affidavit of Todd D. Valentine dated March 22, 2022.

16. Petitioners have offered a straightforward solution that both redresses the constitutional injury and provides practical relief to the BOE: hold Statewide primaries on August 23<sup>rd</sup> or September 13<sup>th</sup> (and, for that matter, all state and local primaries, should relief be granted on the State Assembly map). *See* Petition ¶¶ 98, 130–31. With those dates, the BOE cannot complain that a new petitioning period would be impossible.

17. Respectfully, this Court should open new petitioning periods for Statewide races.

18. I have provided Respondents' counsel notice by electronic mail of this Supplemental Affirmation and the exhibits attached thereto in the same manner set forth in paragraph 6 of the Affirmation of Peter Devlin dated May 15, 2022.

Dated: New York, New York  
May 17, 2022

  
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Peter A. Devlin