

STATE OF NEW YORK  
SUPREME COURT : COUNTY OF NEW YORK

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

Respondents.

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**AFFIRMATION OF**  
**STEVEN B. SALCEDO**

Index No. 154213/2022

Assigned Justice:  
Hon. Laurence L. Love

Steven B. Salcedo affirms the following under penalties of perjury pursuant to

CPLR 2106(a):

1. I am admitted to practice law in the courts of New York State.

2. I am associated with Phillips Lytle LLP, attorneys for Respondent

Speaker of the Assembly Carl Heastie (the "Speaker"). As such, I am fully familiar with the facts stated in this affirmation, except for those stated upon information and belief, which I believe to be true.

3. I offer this affirmation in support of the Speaker's motion to dismiss the Petition under CPLR 404(a).

4. Attached as **Exhibit A** is a true copy of the Petition in this proceeding.

5. Attached as **Exhibit B** is a true copy of the original petition filed in *Harkenrider v. Hochul*, Steuben County Index No. E2022-0116CV, with Hon. Patrick F. McAllister presiding (the “*Harkenrider Lawsuit*”).
6. Attached as **Exhibit C** is a true copy of New York State’s political calendar, as it existed on February 3, 2022.
7. Attached as **Exhibit D** is a true copy of the amended petition filed in the *Harkenrider Lawsuit*.
8. Attached as **Exhibit E** is a true copy of Justice McAllister’s March 31, 2022 Order in the *Harkenrider Lawsuit*.
9. Attached as **Exhibit F** is a true copy of the affirmation of Misha Tseytlin, counsel for the petitioners in the *Harkenrider Lawsuit*, dated April 14, 2022. The affirmation opposed a motion to intervene filed with the Appellate Division, Fourth Department.
10. Attached as **Exhibit G** is a true copy of the Fourth Department’s Order denying that motion to intervene.
11. Attached as **Exhibit H** is a true copy of Justice McAllister’s April 18, 2022 order in the *Harkenrider Lawsuit*.
12. Attached as **Exhibit I** is a true copy of a letter from the New York State Board of Elections to Justice McAllister. The letter is dated April 28, 2022.
13. Attached as **Exhibit J** is a true copy of Justice McAllister’s April 28, 2022 Order in the *Harkenrider Lawsuit*.

14. Attached as **Exhibit K** is a true copy of Justice McAllister's May 21, 2022 Order in the *Harkenrider* Lawsuit. The order includes remedial Congressional and State Senate maps, along with the report of Special Master Jonathan Cervas.

15. Attached as **Exhibit L** is a true copy of the "Proposed Answer" submitted with Petitioner Gavin Wax's motion to intervene in the *Harkenrider* Lawsuit.

16. Attached as **Exhibit M** are true copies of certain Twitter messages posted by Mr. Wax related to New York's redistricting process and the *Harkenrider* Lawsuit.

17. Attached as **Exhibit N** is a true copy of the "Petition in Intervention" submitted with Petitioner Gary Greenberg's motion to intervene in the *Harkenrider* Lawsuit.

18. Upon information and belief, Mr. Greenberg failed to qualify as a New York State Senate candidate for the June 23, 2020 Democratic Party primary, due to insufficient ballot-access signatures. Attached as **Exhibit O** is a true copy of a related news article, and true copies of printouts from WebCivil Supreme. The news article indicates that the State Board of Elections removed Mr. Greenberg from the primary ballot, and the printouts indicate that Mr. Greenberg unsuccessfully challenged the Board's decision in Albany County Supreme Court.

19. Attached as **Exhibit P** are true copies of certain Twitter messages posted by Mr. Greenberg related to the Adult Survivors Act, a proposed New York State law.

20. Attached as **Exhibit Q** are true copies of certain Twitter messages posted by Mr. Greenberg related to New York's redistricting process and the *Harkenrider* Lawsuit.

21. Attached as **Exhibit R** is a true copy of Justice McAllister's May 11, 2022 Order in the *Harkenrider* Lawsuit.
22. Attached as **Exhibit S** is a true copy of an affidavit submitted by Thomas Connolly, Director of Operations for the New York State Board of Elections, in the *Harkenrider* Lawsuit. The affidavit was sworn to on March 21, 2022.
23. Attached as **Exhibit T** is a true copy of Justice McAllister's April 29, 2022 Order in the *Harkenrider* Lawsuit.
24. Attached as **Exhibit U** is a true copy of the New York State Board of Elections' Certification for the June 28, 2022 Primary Election.
25. Petitioner Paul Nichols states that he attempted to appear on the ballot for the Democratic Party's New York State gubernatorial primary election (Dkt. No. 9 ¶ 3). He further states that "the Board of Elections removed [him] from the [primary] ballot after determining that [his] designating petition contained invalid signatures" (*id.*). Attached as **Exhibit V** is a true copy of a verified petition filed by Mr. Nichols in Albany County Supreme Court, and a true copy of an Order of that court. The petition is dated May 2, 2022, and the Order is dated May 11, 2022. The Petition challenged the Board's decision to remove Mr. Nichols from the primary ballot; the Order dismissed the Petition.
26. Attached as **Exhibit W** is a true copy of an affidavit submitted by Todd D. Valentine, Co-Executive Director for the New York State Board of Elections, in the *Harkenrider* Lawsuit. The affidavit was sworn to on May 9, 2022. Also included in Exhibit W is a true copy of an affidavit submitted by Kristen Zebrowski Stavisky, Co-Executive Director for the New York State Board of Elections, in the *Harkenrider* Lawsuit. The affidavit was sworn to on May 9, 2022.

27. Attached as Exhibit X is a true copy of the Rules of the Democratic Party of the State of New York, which was filed in the *Harkenrider* Lawsuit on May 9, 2022.


28. Attached as Exhibit Y are true copies of screenshots of the website [www.gavinwax.com](http://www.gavinwax.com). The first screenshot contains a portion of the website as it existed on March 26, 2022. The second contains the same portion of the website as it existed on May 19, 2022. The latter describes Mr. Wax as a “political activist,” but the former does not.

29. Attached as Exhibit Z is a true copy of an affidavit submitted by New York State Assemblyman Andrew Goodell in the *Harkenrider* Lawsuit. The affidavit was sworn to on May 5, 2022.

30. Attached as Exhibit AA is a true copy of an affidavit submitted by Mr. Wax in the *Harkenrider* Lawsuit, sworn to on May 15, 2022.

31. For the reasons described in the accompanying memorandum of law, the Speaker asks this Court to dismiss the Petition under CPLR 404(a), and for such additional relief as this Court deems appropriate.

Dated: Buffalo, New York  
May 22, 2022

  
Steven B. Salcedo

**CERTIFICATE OF COMPLIANCE WITH 22 NYCRR § 202.8-b**

This affirmation complies with 22 NYCRR § 202.8-b because it contains 1,070 words, excluding the caption, table of contents, table of authorities, and signature block. The word count was generated by the word-processing system used to prepare this document.

Dated: Buffalo, New York  
May 22, 2022

PHILLIPS LYTTLE LLP

By: Steven B. Salcedo

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