

EXHIBIT 2

(Petitioners' Notice of Appeal and
Appellate Division Information Statement)

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

PAUL NICHOLS, GAVIN WAX, and GARY
GREENBERG

Petitioners,

Index No. 154213/2022

v.

NOTICE OF APPEAL

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.

PLEASE TAKE NOTICE that Petitioners Paul Nichols, Gavin Wax, and Gary Greenberg, pursuant to CPLR § 5601(b)(2), hereby appeal to the New York Court of Appeals from the Decision and Order of the Supreme Court of the State of New York, New York County (Love, J.), dated May 25, 2022, duly entered in the Clerk’s Office of the Supreme Court on the same date, *see* NYSCEF No. 91, and attached hereto as Exhibit A, finally determining and denying in its entirety the Petition, which Petition sought to invalidate the State Assembly map passed by the Legislature and signed by the Governor on February 3, 2022, *see* 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168, on the ground that the Legislature violated the exclusive method for redistricting provided in Article III, Section 4(b) of the New York Constitution. *See Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022).

Dated: New York, NY
May 25, 2022

Respectfully submitted,

WALDEN MACHT & HARAN LLP

By: Jim Walden

Jim Walden
Peter A. Devlin
250 Vesey Street, 27th Floor
New York, NY 10281
Tel: (212) 335-2030
jwalden@wmhllaw.com
pdevlin@wmhllaw.com

Attorneys for Petitioners Paul Nichols and Gary Greenberg

LAW OFFICE OF AARON S. FOLDENAUER

By: /s/ Aaron S. Foldenauer

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

TO: All Counsel on record via NYSCEF

LETITIA JAMES, NEW YORK ATTORNEY GENERAL
Attorneys for Respondent Governor Kathy Hochul
Seth Farber
Special Litigation Counsel
28 Liberty Street
New York, NY 10005
(212) 416 – 8029
seth.farber@ag.ny.gov

CUTI HECKER WANG LLP
Attorneys for Respondent Senate Majority Leader Andrea Stewart-Cousins
Eric J. Hecker
Alexander Goldenberg
Alice G. Reiter
305 Broadway, Suite 607

New York, New York 10007
(212) 620-2600
echecker@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

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance Date Notice of Appeal Filed	
Paul Nichols, Gavin Wax, and Gary Greenberg <p style="text-align: center;">- against -</p> 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		For Appellate Division	
Case Type	<input type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input checked="" type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	Filing Type	
<input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review		
Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.			
<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input checked="" type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Appeal	
Paper Appealed From (Check one only):	If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment
<input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court	County: New York
Dated: 05/25/2022	Entered: 5/25/2022
Judge (name in full): Laurence Love, J.S.C.	Index No.: 154213/2022
Stage: <input type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final	Trial: <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury
Prior Unperfected Appeal and Related Case Information	
Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If Yes, please set forth the Appellate Division Case Number assigned to each such appeal.	
Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:	
Original Proceeding	
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus	Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:	
Proceeding Transferred Pursuant to CPLR 7804(g)	
Court: Choose Court	County: Choose County
Judge (name in full):	Order of Transfer Date:
CPLR 5704 Review of Ex Parte Order:	
Court: Choose Court	County: Choose County
Judge (name in full):	Dated:
Description of Appeal, Proceeding or Application and Statement of Issues	
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Petitioners' appeal from the Decision and Order of the Supreme Court, New York County (Love, J.) denying Petitioners' Order to Show Cause for Preliminary Relief and denying the Petition in full. Petitioners sought preliminary relief to restrain Respondents from using the current Assembly district map in the 2022 election cycle, and Petitioners requested immediate appointment of a special master to evaluate and draft a new Assembly map. The Petition further seeks to invalidate the current Assembly map, enjoin all state and local primaries to August 23, 2022, or September 13, 2022, and reopen ballot-access designating and nominating petition periods.</p>	

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

(1) The Court of Appeals held in *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022), that the method used by the Legislature to enact Congressional, Senate, and Assembly district maps violated Article III of the New York Constitution. The Court, however, declined to invalidate the Assembly map "despite its procedural infirmity" because the petitioners in *Harkenrider* did not seek such relief. *Id.* at *11 n.15. Is the Assembly map, enacted in 2021–2022 N.Y. Reg. Sess. Leg. Bills A.9040-A and A.9168, invalid under Article III? The Supreme Court erred by holding that the *Harkenrider* decision did not rule on the constitutionality of the Assembly map. This is a pure question of law. Petitioners request the First Department invalidate the Assembly map.

(2) Section 5 of Article III of the New York Constitution provides that any law establishing districts found to violate Article III "shall be invalid in whole or in part." Section 5 further provides that an apportionment "shall be subject to review" by the supreme court. Can a supreme court avoid ruling on the validity of such a law by imposing a requirement that a challenge be "timely" or applying the equitable doctrine of laches, when the Constitution mandates review and invalidation? The Supreme Court erred by holding that the Petition is untimely and barred by laches. Petitioners request that the First Department hold that the Petition is timely and not barred by laches.

(3) Within four and six days of the Court of Appeals' April 27, 2022, decision in *Harkenrider*, Petitioners' Greenberg and Wax, moved to intervene in the Supreme Court, Steuben County, seeking the relief sought in the instant Petition. Within four days of the denial of intervention, Petitioners commenced the instant special proceeding in the Supreme Court, New York County. Had Petitioners commenced their action when the Assembly map was enacted on February 3, 2022, no relief would have been granted any earlier than April 27, 2022. Is the Petition untimely or otherwise barred by the equitable doctrine of laches? The Supreme Court erred by holding that the Petition is untimely and barred by laches. Petitioners request that the First Department hold that the Petition is timely and not barred by laches.

Petitioners further request that the First Department order all appropriate relief to the Legislature's unconstitutional action, including granting the relief requested in the Petition.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	Paul Nichols	Petitioner	Appellant
2	Gavin Wax	Petitioner	Appellant
3	Gary Greenberg	Petitioner	Appellant
4	Governor Kathy Hochul	Respondent	Respondent
5	Senate Majority Leader Andrea Stewart-Cousins	Respondent	Respondent
6	Speaker of the Assembly Carl Heastie	Respondent	Respondent
7	New York State Board of Elections	Respondent	Respondent
8	New York State Legislative Task Force on Demographic Research and Reapportionment	Respondent	Respondent
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Jim Walden and Peter Devlin/Walden Macht & Haran LLP

Address: 250 Vesey Street, 27th Floor

City: New York

State: NY

Zip: 10281

Telephone No: 212-335-2030

E-mail Address: jwalden@wmhllp.com and pdevlin@wmhllp.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1 and 3

Attorney/Firm Name: Aaron S. Foldenauer/Law off of Aaron S. Foldenauer

Address: 30 Wall Street, 8th Floor

City: New York

State: NY

Zip: 10005

Telephone No: 212-961-6505

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 2

Attorney/Firm Name: Seth Farber/Letitia James, New York Attorney General

Address: 28 Liberty Street

City: New York

State: NY

Zip: 10005

Telephone No: 212-416-8029

E-mail Address: seth.farber@ag.ny.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 4

Attorney/Firm Name: Eric J. Hecker, Alexander Goldenberg, and Alice G. Reiter/Cuti Hecker Wang LLP

Address: 305 Broadway, Suite 607

City: New York

State: NY

Zip: 10007

Telephone No: 212-620-2600

E-mail Address: ehecker@chwillp.com, agoldenberg@chwillp.com, and areiter@chwillp.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 5

Attorney/Firm Name: C. Daniel Chill, Joseph H. Lessem, and Elaine M. Reich/Graubard Miller

Address: 405 Lexington Avenue, 11th Floor

City: New York

State: NY

Zip: 10174

Telephone No: 212-818-8800

E-mail Address: dchill@graubard.com, jlessem@graubard.com, and ereich@graubard.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6

Attorney/Firm Name: Craig R. Bucki, Steven B. Salcedo, Rebecca A. Valentine/Phillips Lytle LLP

Address: One Canalside 125 Main Street

City: Buffalo

State: NY

Zip: 14203

Telephone No: 716-847-8400

E-mail Address: cbucki@phillipslytle.com, ssalcedo@phillipslytle.com, and rvalentine@phillipslytle.com

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Kevin G. Murphy Brian Lee Quail and Aaron K. Suggs/New York State Board of Elections

Address: 40 N. Pearl Street, Suite 5

City: Albany State: NY Zip: 12207 Telephone No: 518-474-2063

E-mail Address: kevin.murphy@elections.ny.gov, brian.quail@elections.ny.gov, and aaron.suggs@elections.ny.gov

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 7

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):7

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):7

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):7

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):7

Attorney/Firm Name:

Address:

City: State: Zip: Telephone No:

E-mail Address:

Attorney Type: Retained Assigned Government Pro Se Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above):7