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VIA ECF

Clerk of the Court
Supreme Court of the State of New York
Appellate Division, First Department
27 Madison Avenue
New York, NY 10010

Re: *Nichols v. Hochul*, Case No. 2022-04649

To the Hon. Clerk of the Court:

We represent Petitioners-Appellants Paul Nichols and Gary Greenberg in the above special proceeding regarding the redistricting of State Assembly voting lines. This appeal is scheduled to be heard on January 17, 2023, and has been designated non-enumerated. The outcome of this appeal will determine the process for redrawing the State Assembly voting lines that will be used in Assembly elections beginning in 2024 and for the rest of the decade.

We write to respectfully request 15 minutes for oral argument on behalf of Appellants Nichols and Greenberg pursuant to 22 NYCRR § 1250.15(c)(2). Alternatively, this Court should redesignate this appeal enumerated and grant oral argument for that reason as well.

The Court should grant our request for oral argument under 22 NYCRR § 1250.15(c)(2) because this appeal raises a constitutional question of first impression that is critical to the State’s administration of the decennial redistricting process. The issue concerns the proper construction of the redistricting provisions of Article III of the New York Constitution; namely, whether the Legislature has authority under Article III to redraw the Assembly district map after this Court invalidated that map as unconstitutional earlier this year.

On June 10, 2022, this Court granted Appellants’ Petition challenging the new Assembly map enacted in February 2022. This Court invalidated the map as unconstitutional “based on its procedural infirmity as previously determined by the Court of Appeals” in *Harkenrider v. Hochul*, 38 N.Y.3d 494 (2022), and remanded to the Supreme Court. R. 1031. The Supreme Court was instructed to consider “the proper means for redrawing the state assembly map, in accordance with NY Const, art III, § 5-b,” to be used beginning with the 2024 elections. R. 1033.

Appellants now appeal the Supreme Court’s decision on remand regarding the proper remedy for the unconstitutional map. Appellants argue that the Supreme Court’s decision conflicts with the requirements of Article III, as it gives the Legislature an unauthorized second chance to redraw the Assembly map. Under Article III, Appellants argue, the remedy must be judicial. Oral argument will facilitate Appellant Nichols and Greenberg’s ability to adequately address the issues and arguments on appeal to aid this Court in its disposition of the matter.

Alternatively, this Court should redesignate this appeal enumerated. Enumerated appeals include “[a]ppeals from final orders and judgments of the Supreme Court.” 22 NYCRR § 600.15(a)(1). Here, the Supreme Court’s decision entirely disposes of Appellant’s Petition and enters a remedy that has no further judicial involvement, albeit retaining jurisdiction in the event there are new challenges to the redrawn Assembly map. R. 24. The Supreme Court’s order was thus a final order and judgment that “dispose[d] of all of the causes of action between the parties in the action or proceeding and le[ft] nothing for further judicial action apart from mere ministerial matters.” *Burke v. Crosson*, 85 N.Y.2d 10, 15 (1995). Consequently, this appeal should be redesignated enumerated with oral argument.

Thank you for your time and consideration.

Respectfully submitted,



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Nichols and Gary Greenberg*

cc: Counsel of record