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May 16, 2022

VIA NYSCEF

Re: Nichols v NYSBOE, et al. Index Number 154213/2022
Opposition to Signing Proposed OTSC

The New York State Board of Elections opposes the issuance of the proposed Order to Show Cause (OTSC) in this matter (ECF# 2).

The petitioners come in well after the eleventh hour and now attempt to cause chaos in contests for which none of the petitioners are seeking office.

The proposed OTSC contains two TRO provisions that are both inappropriate and should be stricken.

CPLR 6313(a) precludes the ex parte issuance of a temporary restraining order against a public officer, board, or municipal corporation of the State to restrain the performance of statutory duties.

From the perspective of the unfolding June 28, 2022 primary election, the provision providing “[r]espondents are hereby enjoined from using the 2022 State Assembly map in administering the 2022 primary and general elections,” would prevent ballots containing Assembly primaries from being issued. As these ballots contain other offices or positions with primaries for a party, it would restrain those ballots from being issued as well.

Moreover, boards of elections are substantially along in preparations for the June primary and stopping those activities – ballot printing preparations, etc. – would materially threaten the unfolding of the June primary election.

As of Friday, upon information and belief, every Board of Elections has issued ballots to military voters.

To the extent the court does sign an OTSC in this matter, it is requested that the Court strike the TRO provisions.

Very truly yours,

s/

Aaron Suggs

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