

May 24, 2022

VIA E-Filing and E-Mail (Drudolf@nycourts.gov)

The Honorable Laurence L. Love
Justice of the Supreme Court, New York County
80 Centre Street, Room 122
New York, NY 10013

Re: ***Nichols v. Hochul*, Index No. 154213/2022**

Dear Justice Love:

We represent Petitioners in the above action. We write to respectfully ask that the Court enter a final judgment determining the Petition should it deny Petitioners' emergency motion for a temporary restraining order ("TRO"). The Attorney General has answered the Petition on behalf of Governor Hochul, *see* NYSCEF No. [86](#), and all arguments were heard on May 23, 2022, which was the return date of the Petition and deadline for answering papers that the Court set in its order to show cause, *see* NYSCEF No. [25](#). Petitioners make this request because the Court and all parties recognize that the passage of time is critical to the relief sought in the Petition and a fair resolution of this action. In these circumstances, an expeditious appeals process is warranted. Under CPLR 5601(b)(2), Petitioners may appeal as of right directly to the Court of Appeals "from a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States." Should the Court deny the Petition, Petitioners will therefore seek a direct appeal to the Court of Appeals.


Petitioners additionally write to oppose the motion to dismiss filed on May 22, 2022, by Respondent Heastie (mot. seq. #002) and the motion to dismiss filed on May 23, 2022, by Respondent Stewart-Cousins (mot. seq. #003). Petitioners oppose the motions to dismiss on the same grounds argued in their reply letter to Respondents' opposition to Petitioners' requested TRO. *See* NYSCEF No. [23](#). Petitioners further oppose the motions to dismiss for the reasons Petitioners argued on the record at the show-cause hearing on May 23, 2022, at 10:00 am. To the extent the motions to dismiss make arguments that were not addressed in Petitioners' reply letter or during oral argument at the hearing, Petitioners reject those arguments as well.¹

¹ In the motions to dismiss, Respondents argue that the Petition should be dismissed because N.Y. Election Law § 16-116 requires that a special proceeding to invalidate ballot-access petitions must be initiated by a verified petition. *See* Heastie Mem. Of Law at 20–21, NYSCEF No. [81](#). This argument fails for the same reason Respondents' arguments regarding necessary parties, statute of limitations, and standing fail: the Petition does not seek to invalidate any ballot-access petitions. The Petition asserts a constitutional claim under Article III and a claim for declaratory judgment that the State Assembly map is unconstitutional. The

Respondents have no basis to oppose this request. They have already moved to dismiss the Petition, and argument was conducted on the record. Thus, all arguments to grant or deny the Petition have been heard. Any opposition by Respondents would further betray the delay-by-design tactics Respondents have leaned on throughout this and related litigation.

For these reasons, and without waiving opposition to Respondents' motions to dismiss, Petitioners respectfully ask that the Court decide the Petition and enter a final judgment in order to facilitate a speedy appeals process.

Respectfully submitted,



Jim Walden
Peter A. Devlin
Attorneys for Petitioners

cc: All Counsel (via NYCSEF and E-Mail)

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Petition requests as relief ancillary to the constitutional claim that the State Assembly map be invalidated, that state and local primary elections be moved to August 23 or September 13, and that a ballot-access petition period be reopened—without necessarily invalidating any of those petitions. This is the same relief that was sought and ultimately granted in Steuben County in *Harkenrider v. Hochul*, Index No. E2022-0116CV. Petitioners further oppose Respondents' motions to dismiss to the extent they fail to comply with New York's Civil Practice Law and Rules, including, but not limited to, CPLR 2214 and/or CPLR 406.