



## Phillips Lytle LLP

Via NYSCEF

May 25, 2022

Hon. Laurence L. Love  
New York State Supreme Court Justice  
New York County Supreme Court  
80 Centre Street, Room 128  
New York, New York 10013

Re: *Matter of Nichols v. Hochul* (New York County Index No. 154213/2022)

Dear Justice Love:

As co-counsel with Graubard Miller to New York State Assembly Speaker Carl Heastie (the "Speaker") in the above-captioned proceeding, we respond to the letter filed electronically last evening on behalf of counsel for Petitioners (NYSCEF Dkt. No. 89).

We reiterate the petition should be dismissed for any of the reasons set forth among the papers supporting the Speaker's motion to dismiss (Dkt. Nos. 30-81), and/or other Respondents' papers moving to dismiss (Dkt. Nos. 84-85) or otherwise opposing the petition (Dkt. Nos. 82-83, 86-88). This Court already denied Petitioners' application for a temporary restraining order ("TRO") when it struck the TRO language set forth in the order to show cause Petitioners proposed (*see* Dkt. No. 25, at p. 3), and should not award any TRO to Petitioners now. Further, we reserve the Speaker's arguments in relation to any appeal that may ensue from the requested dismissal of the Petition, and will respond to such appeal at the appropriate time and in the appropriate forum.

The Speaker's notice of its motion to dismiss the petition was proper. In a special proceeding such as this one, "[m]otions ... made before the time at which the petition is noticed to be heard, shall be noticed to be heard at that time." CPLR 406. "[P]ursuant to CPLR 406, any motion in a special proceeding may be made on little or no notice as long as it is made returnable when the petition is scheduled to be heard." *50 E. 191st St. Assocs. v. Gomez*, 148 Misc. 2d 560, 561 (N.Y. City Civ. Ct. Bronx County 1990) (citing *Goldman v. McCord*, 120 Misc. 2d 754, 755 (N.Y. City Civ. Ct. N.Y. County 1983)). Because this Court's order to show cause (Dkt. No. 25) noticed the petition to be

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heard on Monday, May 23, 2022, at 10:00 a.m., with answering papers due by 9:00 a.m. that day, the Speaker's dismissal motion e-filed Sunday evening, May 22, 2022, and noticed to be heard on May 23 at 10:00 a.m. was timely.

Once again, Petitioners claim their "Petition does not seek to invalidate any ballot-access petitions" (Dkt. No. 89, at p. 1 n.1). The order to show cause and the Petition belie this inaccuracy. Absent a timely challenge pursuant to New York Election Law § 16-102 on or before April 21, 2022, the candidacy of every person who filed designating petitions to run for office in territory based upon New York State Assembly districts – *i.e.*, for State Assembly, for representatives to county party committees, for party District Leaders in New York City, for representatives to the New York State Democratic Committee, and for delegates and alternate delegates to State Supreme Court judicial nominating conventions – has been valid, particularly in view of the determination of the New York Court of Appeals not to invalidate the Assembly districts enacted in Chapter 14 of the New York Laws of 2022. *Matter of Harkenrider v. Hochul*, \_\_\_ N.Y.3d \_\_\_, 2022 WL 1236822, at \*11 n.15 (Apr. 27, 2022). Yet the order to show cause and the Petition demonstrate that, weeks after the April 21 deadline to commence a challenge, Petitioners seek an Order that would require those candidates to "obtain new designating petitions," and run for office in new districts other than the ones where they were originally designated (Dkt. No. 1, at p. 30; Dkt. No. 25, at p. 2). Petitioners also seek to "vacat[e] any certifications" of those candidates for the primary ballot, including certifications made by 57 county Boards of Elections and the New York City Board of Elections which are not parties to this proceeding (*id.*). Without question, therefore, Petitioners seek a remedy conditioned upon satisfying the requirements of Election Law § 16-102 and naming all those candidates and boards of elections as necessary parties to this proceeding, which Petitioners have not done. No such conditions pertained to the remedy in *Matter of Harkenrider v. Hochul* (Steuben County Index No. E2022-0116CV), because that proceeding was commenced months before the designation of any candidates to run in this year's elections, and any Congressional or State Senate candidate collected and filed designating petitions to run in districts that they knew had been challenged and were subject to change.



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Finally, should the Speaker's motion to dismiss be denied (which it should not), the Speaker respectfully requests the opportunity to answer the Petition upon such terms as may be just, pursuant to CPLR 404(a).

Respectfully,

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By 

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