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September 13 Roundtable Update

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NEW YORK REDISTRICTING ROUNDTABLE UPDATE

Hoffmann et al v. The New York State Independent Redistricting Commission (IRC): Lawsuit to Compel IRC to Submit a Second Redistricting Plan Rejected

In Albany County State Supreme Court, after reviewing the Harkenrider Intervenors' memorandum in support of their motion to dismiss this case, Judge Peter Lynch released an Order to Show Cause on September 2nd ordering the parties to appear in person on September 12 at 1:30p.m. to explain why the Court should not grant the motion to dismiss.

Following this order, in an affidavit filed September 8, Respondent David Imamura, Chair of the New York State Independent Redistricting Commission ("IRC"), asserted that the IRC has filled three vacancies and is now fully constituted with all ten commissioners. John Flateau was reappointed following his previous resignation from the Commission; Lisa Harris was appointed to replace Vice-Chair Jack Martins; and Yovan Samuel Collado was appointed to replace Eugene Bengier.

With all ten commissioners in place, Imamura further maintained that the IRC has "no current staffing vacancies that would preclude [the Commission] from expeditiously undertaking the task of submitting a second round of proposed congressional districting plans" to the Legislature if ordered to do so by the Court.

Imamura also addressed a public statement that he, Respondents Frazier and Cuevas-Molina, Commissioner Flateau, and former Commissioner Bengier released on January 24, 2022. He explained that the IRC did not declare its decision to not fulfill its constitutional duties, but instead that Republicans had engaged in a "repeated pattern of...obstructing the Commission [from] doing its job."

Chair Imamura contended that he and Respondents Cuevas-Molina and Frazier, as they stated in a response filed the same day, do not oppose the relief set out in the first paragraph of Petitioners' prayer for relief in the Amended Petition – that the Commission be ordered to fulfill its constitutional duty under the New York Constitution by submitting a second round of congressional lines to the legislature.

Independent Redistricting Commissioners Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Stephens submitted a reply memo in support of their motion to dismiss and in opposition to the order to show cause. They argue that section 4(e) of the New York Constitution states that when a judicial remedy is employed, it results in a court-ordered redistricting plan and not to compel the IRC to act. They state that there is no language in the NYS Constitution that would compel the IRC to act in such a manner. They argue that the

petitioners' requested relief is unavailable within the Constitution because it seeks to compel an act that is not permitted by the express language of the Constitution.

Breaking Update- On September 12th, Judge Peter Lynch released a decision and order dismissing the petitioners' argument that aimed to compel the IRC to act. In the decision, Judge Lynch states that there is no authority for the IRC to issue a second redistricting plan after February 28, 2022 in advance of the federal census in 2030. The judgment of the court also states that there is no enforceable remedy available to the petitioners to limit the 2022 Congressional redistricting map to the 2022 election, nor to compel the IRC to act, thereby dismissing the petitioners' action.

***Nichols v. Hochul*: Court to Consider Adding Independent Redistricting Commission As A Party**

On Friday, September 16th, Judge Laurence Love will hold a hearing in New York County State Supreme Court to hear arguments whether the Independent Redistricting Commission can be added as a party to this lawsuit seeking to have the court redraw the state assembly map before the 2024 elections. In light of Judge Lynch's decision in the *Hoffman* case, Judge Love's hearing may also focus on the whether the IRC is capable of redrawing the assembly map.

Todd Breitbart on the Harkenrider Decision: What Happened and What's Next

Retired Senate redistricting staff member Todd Breitbart takes a look at the Harkenrider decision and what went wrong with redistricting this year in an opinion piece. Breitbart served as a witness for state respondents in the Steuben County proceedings. Please see attachment.

According to Breitbart, "If anything constructive is to be achieved in preparation for the next decennial redistricting, it is essential to correct the misunderstandings reflected in almost all the press coverage of what happened this year. Reporters, editorial writers, columnists, and the supposedly knowledgeable observers they quote, all take it as clearly established fact that the enacted congressional districts were an unconstitutional partisan gerrymander. The Democrats in the Legislature got caught, and all else that happened this year was a consequence of that.

A relatively mild example of this press coverage is to be found in an article that appeared on the Politico New York website this morning:

Democrats have been criticized for partially putting themselves in the unenviable position of having to defend seats that they hoped would be safe. An overzealous attempt to draw district lines could have yielded Democrats as many as 22 of the state's 26 districts. Democrats now hold 19 of 27 House seats in New York; the state is losing a seat next year due to population declines.

In April, the state's top court struck down Democrats' map for being too gerrymandered, leaving it to a Republican judge in a small upstate town to draw new maps that put more seats in play than anyone envisioned.

A more typical example is an article that appeared on the New York magazine's "Intelligencer" website on May 1 under the heading, "How to Gerrymander a Fiasco: New York Democrats have once again made the state a national laughingstock." The article explains:

Democratic leaders brazenly violated New York's laws governing redistricting, set out in detailed amendments to the state constitution that took effect in 2014. Despite a legal requirement to consider maps submitted by a bipartisan independent commission, the legislature moved ahead without waiting for the commission.

They also aggressively drew congressional districts in ways clearly designed to favor Democrats. . . .

All the shenanigans drew a firm rebuke from the state's highest court, instead.

Until it is generally understood that this account explains nothing, no improvement will be possible."

Nassau Voters Say They're Tired of Redistricting

The first hearing of the 2020 redistricting cycle was held last week. 100 people attended the meeting to discuss how the latest US Census numbers affected how residents would be represented at the county level. Concerns were raised about officials sharing enough data to paint a full picture of the segregation, separation, and inequality throughout Nassau County. The committee, known as the Temporary Districting Advisory Commission, is tasked to have its new district lines finalized by November 7. The remaining hearings are listed below. For the full article please visit [here](#).

NYC Bar Association: New York Redistricting: What Happened? What's Next?

Tuesday, September 13, 2022 | 6:00 p.m. - 8:00 p.m.

Program Fee:

Free for Members | \$15 for Non-Member Lawyers | Free for Non-Lawyers
Non-Lawyers please [Click Here](#) or call Customer Relations at 212-382-6663 to register.

Please Note: This event will be in-person with an available webcast of the panel presentation. Select your preference for in-person or virtual attendance before completing your registration below. Virtual attendees will receive a final confirmation containing the Zoom link and Access Code to join the event 2 hours prior to the start of the event.

Description:

Come hear leading election law experts talk about what needs to be done to improve the process of redistricting in New York. Top redistricting experts will discuss: What happened with the recent New York State redistricting process and why. Is the current process any better than methods used in the past? What do we need to do now to improve the process for next time? How is the New York City process different? Is it better at balancing constitutional priorities and what's ahead?

Moderator:

Brigid Bergin, Senior Political Correspondent, WNYC and Gothamist

Panelists:

Martin E. Connor, Law Office of Martin E. Connor; Former Minority Leader, NYS Senate

Lucia Gomez, Political Director, NYC Central Labor Council

John Flateau, Ph.D., Executive Director, New York City Districting Commission; Professor, Medgar Evers College, CUNY

David Imamura, Chair, New York State Independent Redistricting Commission; Associate Counsel, Abrams, Fensterman LLC

Susan Lerner, Executive Director, Common Cause New York

Steven Romalewski, Director, CUNY Mapping Service, Center for Urban Research, CUNY Graduate Center

Jerry Vattamala, Director, Democracy Program, Asian American Legal Defense and Education Fund

Jeffrey M. Wice, Adjunct Professor and Senior Fellow, New York Census and Redistricting Institute/New York Law School; Special Counsel, New York City Districting Commission

Upcoming Redistricting Hearings

Nassau County

The commission has scheduled the following public hearings to hear public comments about redistricting. All of the meetings begin at 6:00 PM.

Sept. 14 at Glen Cove City Hall, 9 Glen St., Glen Cove

Sept. 21 at Hempstead Town Hall, 1 Washington St., Hempstead

Sept. 28 at Long Beach City Hall, 1 West Chester St., Long Beach

Oct. 3 at Albany Avenue Community Center, 214 North Albany Ave., North Massapequa