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## September 19 Roundtable Update

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## **NEW YORK REDISTRICTING ROUNDTABLE UPDATE**

### ***Nichols v. Hochul*: Court Considers Adding Independent Redistricting Commission As A Party In Assembly Remapping**

In New York County Supreme Court last Friday, attorneys appeared before Judge Laurence Love to argue whether the Independent Redistricting Commission (IRC) should be added as respondents to this case. No parties opposed adding the IRC to the case, and all ten commissioners, through their attorneys, consented to being added as individuals.

The arguments turned to whether the IRC should be given a “second bite at the apple” or if it is “doomed to fail.” Counsel for commissioners Imamura, Frazier, Cuevas-Molina, Flateau, and Collado indicated that they do not object to reconvening the IRC. Counsel for the remaining commissioners (Brady, Conway, Harris, Nesbitt, and Stephens) stated that the only constitutional way to reconvene the IRC would be for the court to order it, and if the court does so, they would take on the role.

Petitioners argued that the IRC should not reconvene and that a court ordered remedy is required. They contended that giving the IRC another opportunity would incentivize future commissions to fail. They also referenced funding issues and the large expense this would create for taxpayers. Petitioners asked the Court to hear from all commissioners regarding whether they could reconvene and be successful in redrawing the Assembly lines. They referenced the congressional case recently dismissed in Albany where some commissioners asserted that they do not believe the IRC should reconvene. Petitioners also referenced an article where Commissioner Imamura stated that the IRC was “doomed to fail.” The Judge interjected to note that Imamura’s statement was in reference to the drawing of all three maps whereas here only the Assembly map is at issue. Petitioners concluded by asking the Court to make it clear that the Court ultimately owns the process and there should be no legislative involvement.

Respondents argued that the process should be consistent with what is outlined in Art. III, Sec. 4 of the N.Y. Constitution and that there is a role for the legislature to play. Judge Love clarified that if the IRC failed again, the process would go back to the Court to appoint a special master. Respondents agreed, citing *Harkenrider*, that if the IRC process breaks down, meaning it fails to submit a second map, and there is not enough time, then a special master would be appropriate. They then emphasized that only the Assembly lines are at issue, and the IRC now understands that if the process breaks down, it will likely go back to the Court and not to the legislature. They referenced comments made by Commissioner Imamura at an NYC Bar event on September 13 where he stated that he believes the IRC would be able to successfully draw Assembly lines without a breakdown in the process. Judge Love remarked that the Court would not give much weight to statements made in an article or at an event. Respondents then argued that the Albany case is very different because in that case the Court was considering whether to

order the IRC to resume the constitutional process. Whereas, in this case, respondents are asking for the IRC to begin the process anew with the benefit of time and ability for the Court to step in if the IRC fails. They asked the Court to hear the views of all ten commissioners regarding whether they believe the IRC should reconvene and whether they would be successful. Respondents concluded by referencing the amicus brief submitted by Common Cause which noted that the special master who drew the state Senate and Congressional lines had no firsthand familiarity with New York. Respondents argued that the IRC and the legislature understand New York.

Judge Love concluded by stating that he hopes that if the IRC gets another shot, they will do a good job.

On September 15, the petitioners also wrote to the court to inform it of the recent decision in *Hoffmann* where Judge Lynch denied a request that the IRC be afforded a second chance to draft new congressional maps for the next election cycle. The full letter is attached.

Judge Love indicated that he will be issuing a written order and decision in the near future on whether the IRC will be reconvened to redraw the Assembly plan or if other action will be taken by the court.

For a more detailed summary of the hearing, please see the attached.

## **New York City Commission to Release Revised Plan**

The New York City Districting Commission will hold a public meeting at 11:00 AM on Thursday, September 22, 2022, at 22 Reade Street (near Elk Street) in Manhattan.

The purpose of this meeting is for the NYC Districting Commission to review and vote on the proposed districting plan that will be submitted to the New York City Council. Because this is a public meeting and not a public hearing, the public will have the opportunity to observe the Commission's discussions, but not testify before it.

A video recording will be available on the Commission's website live and later on [Youtube](#).

## **Syracuse Common Council Approved Redistricting Plan**

On a 5-4 vote, the Syracuse Common Council approved a new redistricting plan developed by and submitted to it by the city's first ever citizen-led commission.

The commission, selected by lottery, met for several months and held many hearings and received tremendous amounts of input from the public. The map is particularly important for its creation of an effective minority district. You can read more about the plan here: <https://bit.ly/3RZ1TvQ>

## **Kingston Lawmakers Seek Review of Census Data for Redistricting Ahead of 2023 Elections**

Aldermen are considering hiring consultants to assist the city with analyzing census data and other requirements as part of a municipal redistricting process that could redraw the boundaries of Kingston's individual wards. "Unlike some other municipalities within New York state, our city

charter provides few criteria for the redistricting process,” Graves-Poller, the City Corporation Counsel, said in a letter to aldermen. “At the same time, recent redistricting litigation and voter protection legislation raise questions about the ward boundary drawing process absent from past redistricting efforts.” For the full article please visit [here](#).

### **Elsewhere: County Litigation Update**

**Onondaga County:** A challenge to the Onondaga County redistricting plan is underway. In *Ryan v. McMahon*, on September 8<sup>th</sup>, Onondaga County moved to dismiss the case arguing that the procedural and substantive challenges to the maps are without merit. The county argues that the procedural challenge should be dismissed due to a statute of limitations on what they believe should have been an Article 78 proceeding instead of a declaratory judgment action. Additionally, the county argues that issues raised in the first cause of action related to the “LDRC maps” are moot because the County Executive vetoed those maps and replaced them with the “adopted maps.” Next, the county contends that plaintiffs’ second and third causes of action should be dismissed because plaintiffs failed to name all of the county legislators. Furthermore, defendants assert that while the complaint should be dismissed for the reasons stated above, if the Court is to consider the merits, the proper remedy would be to return the task to the legislature instead of appointing a special master. Defendants attempt to differentiate this case from *Harkenrider*, where the Court appointed a special master, by pointing to the absence of any deadline imposed on the legislature.

Additionally, the county attorney argued that because the County operates under a charter, its redistricting “plans are adopted pursuant to its charter,” not the state Municipal Home Rule Law §10. However, he noted that provisions in MHRL § 34(4) are applicable.

**Broome County:** “Fair Maps for Broome County” filed a complaint on May 24<sup>th</sup> asking the State Supreme Court to invalidate the county’s redistricting plan adopted by the legislature on January 18<sup>th</sup>. The complaint alleges that the adopted map “was opposed by every member of the public speaking at the hearings, unsupported by any expert opinion, and violated the letter and spirit of [the redistricting standards provided by §§10 and 34 of] the Municipal Home Rule Law” (“MHRL”). Plaintiffs allege that the new map violates New York law by (1) exceeding the 5% population deviation rule by failing to use the prisoner-adjusted data set; (2) failing to configure districts “as nearly equal in population as is practicable;” and (3) splitting the Town of Maine into three districts.

Plaintiffs further allege that these features are “in the service of a gerrymandered map specifically favoring the legislature’s majority party, in violation of the directive that ‘districts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties.’”

The County moved for dismissal arguing, among other points, that (1) the county used proper data set and did not exceed limits imposed by the MHRL; (2) all districts are within the 5% deviation standard based on census data, constituting only “minor deviations,” and therefore not in violation of the “practicable” requirement; (3) splitting the Town of Maine was “necessary to maintain the competitive balance in Districts 6 and 7” and to maintain the community of interest between the Towns of Union and Maine; and (4) the map does not “discourage competition or favor or disfavor incumbents, other candidates or political parties.”

Plaintiffs repudiated these arguments in a memorandum filed August 30, 2022. First, plaintiffs contend that the MHRL's requirement for the use of prisoner-adjusted population data "appl[ies] generally to any local government" including "charter counties" like Broome. Next, plaintiffs reiterate that, based on the prisoner-adjusted data, the map exceeds the 5% population deviation standard. Plaintiffs further argue that the County was incorrect in its assertion that any deviation within the 5% standard is presumed to be legal. Further, plaintiffs contend that "merely encouraging competition is not something which the statute requires to be done" and therefore cannot be used as an excuse for splitting the Town of Maine. Furthermore, plaintiffs refute defendants' justifications for violating state law based on protecting communities of interest and cores of existing districts.

## **Upcoming Redistricting Hearings**

### **Nassau County**

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

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