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Opinion: Light at the end of the tunnel for New York's redistricting - City & State New York

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Here's what to expect following the latest Court of Appeals decision on redistricting.

[Jeffrey Wice](#) December 15, 2023



Voting booths at P.S. 10 in Park Slope during the August 23, 2022 primary election. MICHAEL M. SANTIAGO/GETTY IMAGES

By

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Following the state Court of Appeals' decision to send congressional redistricting back to the state's Independent

Redistricting Commission and state Legislature, the chaotic and prolonged post-2020 line-drawing process may finally be coming to an end. However, there are still hurdles ahead, including more potential litigation.

On Tuesday, [the state's highest court reaffirmed](#) the state Legislature's authority to enact redistricting plans and acknowledged the limitations on courts drawing maps. The Independent Redistricting Commission now must submit a new congressional map by Feb. 28 so the state Legislature and governor can approve it for the 2024 through 2030 election cycles.

The map drawn by a court appointed special master in 2022 will soon be history (although it will remain in place for special congressional elections in 2024, including the race to replace George Santos in February). The Court of Appeals does not believe that courts should be in the map-drawing business, holding that court-drawn redistricting plans should be used "only to the extent it is required to remedy a violation of law."

What happens next? Where is this going?

It is now up to the Independent Redistricting Commission to convene and develop a map to send to the state legislature. According to the state constitution, the 10-member commission is required to send a map to the Legislature that

is supported by at least seven of its 10 members (including at least one member appointed by each of the four partisan state legislative leaders). If the commission fails to agree on a map, the commission can submit the map (or maps) that received the most votes in the commission to the Legislature.

Once the map(s) is sent to the Legislature, the Assembly and state Senate must consider the maps and vote them up or down without amendments. If the map receives a supermajority vote in both the Assembly and in the Senate, the governor must approve or veto it. If the map is approved, it will be used for congressional elections. If the map is rejected, the Legislature can then draw a map of its own "as it deems necessary" (according to the state constitution), subject to the governor's approval.

Last year, the process broke down, resulting in a court-appointed expert drawing the map used for the 2022 midterm elections. After the first congressional map was sent by the Independent Redistricting Commission to the Legislature, it was rejected. Although the constitution requires that a second map be sent to the Legislature, the commission failed to send a second map, and the Legislature took it upon itself to draw the map. Then the courts stepped in and said that the Legislature could not act before considering the required second map.

The submission of a second congressional map by February will eliminate this obstacle. Once the commission sends one or more maps to the state Legislature, the Assembly and Senate will be able to vote on whether to approve the maps without any amendments. If maps are rejected, the legislators can then take the lead and draw a new map to send to the governor.

Even if the Legislature rejects the commission's proposed map and draws its own map, it will not have carte blanche. While the constitution permits the Legislature to draw a map as it "deems necessary," another law enacted in 2012 limits the legislature from making more than a 2% change in the population in any of the districts in the commission's map. This presents the question of which law predominates – the state constitutional language or the statute (and whether the 2% change is limited to changes from a bipartisan Independent Redistricting Commission map supported by seven commission members and not to a map that had the most commission votes but not the necessary seven votes). This might be another question for the courts.

The next step in this process will be for the Independent Redistricting Commission to announce its plans and schedule. While additional public hearings are not required, the commission might want to solicit public input (something the Democratic commissioners are already seeking). In the

meantime, concerned New Yorkers should take the initiative and let the commissioners know what they think a new map should look like.

Ideally, a new map should be in place by early February to enable county election officials to prepare for primary elections on June 25. The Court of Appeals has given the Independent Redistricting Commission until Feb. 28 to send a new map to the Legislature (although it has encouraged the commission to act even earlier). The Legislature will then need at least a few days to act. Meanwhile, the state Board of Elections has indicated that petitioning for the primary election can get underway on Feb. 27. The conflicting dates add to the need for a speedy process.

Republicans will have to carefully determine their options. Will there be a bipartisan compromise map or will the Democrats try to enact a map through their legislative super-majorities?

Republicans have already threatened more litigation, but any new challenge must be based on new allegations of violating the law. While there is every reason to believe that the Legislature can enact a legally sound and defensible map, Republicans (or other voters) may find a way to challenge the map for a violation of any of the state constitution's criteria – which include limitations on partisan gerrymandering and protection for minority voters, amongst

others. Opponents of a new map may also seek injunctive relief from the courts to delay a new map from being used for next year's elections (which could leave the 2022 court-drawn map in place for at least one more election cycle). There are few options to challenge a map in federal court – and a successful challenge is even less likely under the most recent U.S. Supreme Court rulings.

Redistricting is no longer a once-a-decade process. Across the nation, states are now litigating challenges to maps enacted two years ago. New maps are also going to be used in Alabama, Georgia and North Carolina. Ongoing litigation may require changes to maps in South Carolina, Louisiana, Wisconsin and Florida. After New York's new map is in place, efforts will focus on how to avoid a repeat of the post-2020 chaos through further state constitutional reform efforts to make New York's process more efficient, transparent and responsive to voters. New Yorkers deserve a redistricting process that results in a fair process and truly representative districts.