

11-14-2022

November 14 Roundtable Update

Marissa Zanfardino

Jeffrey M. Wice

Piper Benedict

Peter Friedrichs



NEW YORK REDISTRICTING ROUNDTABLE UPDATE

Assembly & Congressional Redistricting- Now in the Seventh Inning Stretch

Election Day is behind us but there is still a long way to go until the state redistricting process concludes. While the *Harkenrider* court's special master plan was used in last week's congressional and state senate elections and the assembly's enacted plan was limited for use in 2022 (and is now invalid), there is still more mapmaking in the months ahead.

New York County State Supreme Court Judge Laurence Love has ordered the state's redistricting commission (IRC) back to work to prepare an Assembly map for use in the 2024-2030 elections. While the IRC has not yet convened to discuss next steps, it is required to release a new map by December 2, 2022 followed by a series of public hearings across the state on the proposal. The IRC has until April 28, 2023 to submit a new Assembly map to the state legislature for consideration with the legislature able to accept or reject the plan. If the legislature approves the plan, it goes to the governor for approval and becomes law. If the plan is rejected, the IRC must go back and develop a second map, followed by the same approval process. If the second map is rejected, the legislature can then draw its own map. The failure of the IRC to submit a second assembly map in February proved fatal to the legislature's plan by the state courts and led to the current ongoing litigation. Judge Love will retain jurisdiction over the remapping until it is concluded.

What happens next and when?

The IRC must convene a meeting soon to discuss what it will do to meet the December 2nd deadline. With several new commission members recently brought onboard and the need to hire new staff, a lot needs to happen quickly.

There are questions. Will the IRC be able to agree on one map? Will it stalemate again and send more than one map or no map? Could the IRC simply use the enacted Assembly map as a starting point?

The dynamic in the legislature may also change. Since the legislature is under the control of one political party, at least two-thirds of the members of each chamber must approve the Assembly map. While the Democrats should maintain a supermajority in the Assembly, the Democratic supermajority in the Senate is still unclear.

Judge Love's decision laying out the new timeframe for the IRC is also being appealed to the Appellate Division (see below).

While the congressional map drawn by the special master has been set for use through the 2030 elections, a lawsuit that sought to have the IRC reconvene and redraw the congressional map was rejected by an Albany state supreme court judge. That decision is also being appealed to the Appellate Division.

Both appeals may end up before the state Court of Appeals, currently short a new Chief Judge. Many questions remain and the clock is still running. This weekly report will keep you updated.

Nichols v. Hochul Appeal Requests Court to Draw Assembly Plan

On November 7th in the Appellate Division (First Department), the Nichols petitioners filed a brief arguing that the court should reverse and remand to Judge Love an order where he would have to redraw the Assembly map for the 2024 elections with input from the IRC and/or a special master.

They argue that (1) under Article III of the N.Y. Constitution and the decision in *Harkenrider*, because the constitutional deadlines have lapsed, only the court may now adopt a new Assembly plan; (2) the trial court's order exceeds basic limits on judicial power by modifying constitutional deadlines and renders Article III's remedies meaningless by allowing the Legislature a second chance to adopt a new Assembly map; and (3) the trial court's order encourages future violations by effectively allowing the Legislature to re-adopt the invalid Assembly map with no consequences.

Nassau County Redistricting Moves Forward

At a November 10th meeting, Democratic and Republican redistricting commissioners met to release competing plans to remap the county's 19 legislative districts. Presentations were made by Democratic consultant Dr. Megan Gall and Republican consultant David Schaefer. Following the release of two very different maps, the commission will hold a public hearing on Wednesday, November 16th to take public comment followed by a meeting to vote on a plan on November 21st. The Nassau County Legislature has final approval over whether to approve a commission-submitted map or one of its own.

A summary highlighting the competing party perspectives is attached.

Suffolk County Legislature Adopts New Map

On November 9th, the Suffolk County Legislature approved a compromise bipartisan county legislative map developed by an advisory commission on a 18-0 vote. After months of deadlock, Democratic and Republican redistricting commission members put aside their differences and came together to agree on a politically balanced map that

provides both major parties with the opportunity to elect their preferred candidates to office.

Albany County Redistricting Commission Considers Options

Members of Albany County's Redistricting Commission (ACRC) and Majority Minority Subcommittee (MMD) are considering options following the county legislature's rejection of a plan that created 5 districts that are most likely to elect minority-preferred candidates and 2 additional districts that provide the possibility of electing minority-preferred candidates. The county legislature previously rejected the plan over concerns that the current 5 minority districts diluted minority voting strength. Both committees will be meeting in the coming week to agree on next steps.

Monroe County Executive Holds Public Hearing

On November 10th, Monroe County Executive Adam Bello convened a public hearing to hear testimony from the public on whether to accept or reject a county legislative plan submitted to him for approval by the county legislature. New York University Law School Professor Richard Pildes and New York Law School Professor Jeff Wice both testified, informing Mr. Bello that redistricting plans that "excessively pack" minority voters into districts may run afoul of the U.S. Constitution's 14th Amendment ban on racial gerrymandering.

The Census Bureau Wants Your Input on Census 2030

The deadline for submitting comment on the 2030 Census as part of the Federal Registrar process is tomorrow, November 15th. The US Census Bureau, for the first time, is soliciting public comment on ways to improve the decennial census. Please visit <https://www.census.gov/programs-surveys/decennial-census/decade/2030/2030-census-main.html> to find out more and submit your comments by the deadline.

Upcoming Redistricting Hearings

Wednesday, November 16 Mineola Legislative Chambers at 6 pm

Wednesday, November 16, Albany Majority Minority Subcommittee at 6 pm, Macedonia Baptist Church, Albany