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December 12 Roundtable Update

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NEW YORK REDISTRICTING ROUNDTABLE UPDATE

Broome County Map Decision: *Tokos v. County of Broome*

On December 6th, Broome County Supreme Court issued a ruling declaring Broome County's newly adopted county legislative map void and directed the county to amend the map to conform with the state's Municipal Home Rule Law criteria. The Court found that the map violates the plain language of the state's 5% deviation rule because "the newly drawn districts have a greater than 5% disparity in population from their smallest and largest district." The Court states though that it "cannot say that the .35 variance of the 5% rule is not substantial compliance with the statute that would safeguard the underlying principle of one person, one vote." However, the Court further held that, by dividing the Town of Maine several times, the map violates state law requiring municipalities with populations less than 40% of the target total for individual districts in the county to not be divided. The Court was not convinced by the county's argument that the Town of Maine had been divided in the past; the law now prevents that from happening. An appeal may be filed.

State Assembly Redistricting: *Nichols v. Hochul*

In a brief filed December 7th, Senate Majority Leaders Andrea Stewart-Cousins and Speaker Carl Heastie argue that the Appellate Division should affirm the trial court's order that the Independent Redistricting Commission ("IRC") and the Legislature, not a judge, should redraw the Assembly map, as the state constitution requires. They assert that (1) New York's constitution requires the Assembly map to be redrawn through the mandatory constitutional process; (2) the decision in *Harkenrider* is consistent with the Trial Court's decision; (3) judicial takeover of redistricting is unnecessary in this case and should be a last resort; and (4) plaintiffs' additional arguments regarding gerrymandering, the *Hoffman* case, and the "futility" of restarting the IRC process do not support rejection of the Trial Court's order.

The legislative leaders contend that the state constitution requires the Assembly map to be redrawn through the mandatory constitutional process because Article III, § 4(e) states that "[t]he process for redistricting congressional and state legislative districts established by [Article III] shall govern redistricting in this state except to the extent that a court is *required* to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law" and Article III, § 5-b states that the IRC "shall be

established” at the beginning of each decade “and at any other time a court orders that congressional or state legislative districts be amended.” They also argue that unlike in *Harkenrider* where the court was “required” to order an alternative remedy due to time constraints, here, Assembly districts “must be redrawn through the IRC process.”

The legislative leaders further argue that restarting the IRC process will not incentivize future gerrymandering because, if a map is gerrymandered, it will be invalidated under Article III, § 4, just as the *Harkenrider* court ruled on the substantive claim for the congressional map. Finally, they argue that restarting the IRC process will not be futile because only the Assembly map is at issue, Republican and Democratic commissioners approved a single proposed map on December 1st, and “allowing the IRC and Legislature to try again will serve a critical democratic function.” They contend that “[t]his is a golden opportunity...to demonstrate whether...the IRC process can work. The People deserve the results of this experiment before deciding whether and how to reform the redistricting process for 2030.”

The response brief for Governor Hochul, also filed on December 7th, presents similar constitutional arguments, and adds, citing “the law of the case doctrine,” that the Appellate Division in the prior appeal ordered the trial court to follow § 5-b in determining a proper remedy for redrawing the map, and that that decision should not be disturbed in this appeal.

Finally, IRC Commissioners Ken Jenkins, John Flateau, Yovan Samuel Collado, Ivelisse Cuevas-Molina, and Elaine Frazier noted in a letter that they concur with the other respondents that the trial court’s order should be affirmed.

Moore v. Harper Heard by U.S. Supreme Court

Last Wednesday, the U.S. Supreme Court heard the oral arguments in *Moore v. Harper*, an appeal from North Carolina that could provide state legislatures with complete control over federal election laws, including congressional redistricting.

The justices appeared skeptical of the arguments for the independent state legislature theory (ISLT). It’s always risky to guess how the Court will decide, but we did hear from most of the justices about their suspicions over the theory. Few defended the ISLT.

Approval of the ISLT could reopen the door to redraw the state’s congressional map by the legislature, without the state court’s intervention. But we are most likely several months away from a Supreme Court decision. In the meantime, there is still no appellate action on the *Hoffman* case that seeks to have the state’s redistricting commission redraw congressional lines.

NYPIRG Compares Assembly Maps

Data analyzed by the New York Public Interest Research Group (NYPIRG) shows that the Commission was following the principle of “one person, one vote” As seen in the attached

report, the Commission plan's proposed districts contain populations that are much more similar in size than the current ones.

Albany Commission Sends Revised Map to County Legislature

On December 10th, the Albany County Redistricting Commission approved a new county legislative map to send to the county legislature for approval. An earlier map had been rejected by the county legislature over concerns that the commission's first map may have diluted minority voting strength.

Monroe County Legislative Mapping Goes to Federal Court

A group of Monroe County voters have filed a federal lawsuit with malapportionment, one-person-one-vote claims, over the failure of the County to enact new district lines. A map developed by the county legislature was vetoed by County Executive Adam Bello over his concerns that the map violated minority voting rights by packing too many voters in too few districts. The complaint in *Garner Goldstein et al v. Monroe County* is attached.

ACS 5-Year Census Survey Results Released

The new ACS 5-year estimates are now published, providing data down to the Block Group geography. **Important note:** This set of ACS data does NOT contain the new 118th congressional districts or the 2022 state legislative districts. It contains the old 116th and 2018 districts. The Census Bureau is working on a special tabulation of ACS Demographic Profiles for both the 118th congressional and 2022 state legislative districts that should be made available in the first part of next year. An exact date has not yet been set.

More information on the release, including links to relevant data, can be found [here](#).

IRC Hearing Schedule

Monday, January 9, 2023

5:00 PM

Buffalo Public Hearing

Location: Buffalo State College (SUNY)

Burchfield Penney Art Center 1300 Elmwood Avenue Buffalo, New York 14222

Tuesday, January 10, 2023

5:00 PM

Rochester Public Hearing

Location: Rochester EOC (SUNY UCAWD)

Multi-Purpose Room 161 Chestnut Street Rochester, New York 14604

Tuesday, January 24, 2023

5:00 PM

Syracuse Public Hearing

Location: *Syracuse University College of Law*

Melanie Gray Ceremonial Courtroom Dineen Hall, 950 Irving Avenue Syracuse, New York 13210

Wednesday, January 25, 2023

5:00 PM

Albany Public Hearing

Location: *University at Albany (SUNY)*

Page Hall - Downtown Campus 135 Western Avenue Albany, New York 12203

Monday, January 30, 2023

4:00 PM

White Plains Public Hearing

Location: *Haub School of Law at Pace University*

Gerber Glass Moot Courtroom 78 North Broadway White Plains, New York 10603

Tuesday, January 31, 2023

4:00 PM

Bronx County Public Hearing

Location: *TBD*

Tuesday, February 7, 2023

4:00 PM

New York County Public Hearing

Location: *Hunter College (CUNY)*

*Kaye Playhouse (entrance between 68th Street between Park and Lexington Avenues)
New York, New York 10065*

Wednesday, February 8, 2023

4:00 PM

Richmond County Public Hearing

Location: *TBD*

Wednesday, February 15, 2023

4:00 PM

Kings County Public Hearing

Location: *Medgar Evers College (CUNY)*

Room TBD Brooklyn, New York 11225

Thursday, February 16, 2023

4:00 PM

Queens County Public Hearing

Location: *Queens Borough Hall*

*Helen Marshall Cultural Center 120-55 Queens Boulevard Kew Gardens, New York
11424*

Upcoming Redistricting Hearings

December 13- The **City of Kingston** Common Council has scheduled a public hearing to discuss the map drafts at the Kingston Public Library at 6:00 pm. After community input on the initial draft maps, second map drafts will be available prior to a second public hearing, which will be held at City Hall on Thursday, January 12, 2023.