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January 9 Roundtable Update

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NEW YORK REDISTRICTING ROUNDTABLE UPDATE

2023 promises to be a busy year for New York redistricting and census activity. A new State Assembly map must be produced before the 2024 elections. Several counties, cities, and towns face local redistricting challenges in courts. And the prospective loss of 2 congressional districts after the 2030 census now threatens once again.

New York Projected To Lose 2 Congressional Districts After 2030 Census

According to Election Data Services, Inc., the Census Bureau's December 2022 state population estimates would change congressional apportionment in 8 states if the reapportionment was based on new state population estimates. New York would lose 2 congressional districts. Arizona, Florida, Idaho and Texas would each gain an additional seat while California, Illinois, and Minnesota would each lose an additional seat.

After the final 2020 state decennial populations were released, New York lost just one seat. Now, however, New York would be projected to lose an additional seat after coming up short by 66,642 people according to the new state estimate. The Census Bureau releases state population estimated at the end of each year. The full report can be read here: <https://bit.ly/3X84VQE>

The prospective loss of more than one congressional district after the 2030 census should serve as a wakeup call for New York to have a robust and proactive census outreach campaign throughout the decade. We will let you know how you can participate in a statewide census effort in the coming weeks and months. This effort can't wait.

Litigation Roundup

State Assembly

In a brief filed December 16th, petitioners Paul Nichols and Gary Greenberg argue that the Appellate Division should reverse the Trial Court's order and instead order a remedy where the Trial Court, with input from the Independent Redistricting Commission ("IRC") and/or a special master, would adopt an Assembly map for the 2024 elections. Petitioners assert that the Appellate Division must reverse the Trial Court's decision because, they argue, (1) the decision in *Harkenrider* is controlling; (2) Respondents' reading of Article III of the state constitution is "fatally flawed;" and (3) Respondents' "law of the case" argument is waived and without merit.

Petitioners argue that Respondents are incorrect in their attempt to distinguish this case from *Harkenrider*. Petitioners contend that *Harkenrider* applies in this case and means that only a court can adopt a new redistricting plan to remedy the constitutional issue present in the Assembly map. They further argue that even if *Harkenrider* is not controlling in this case, the Appellate Division should still reverse because the Trial Court and Respondents' interpretation of Article III of the state constitution is incorrect. Petitioners argue that this interpretation, that the process for redrawing the unconstitutional map must "mirror" the ordinary Article III redistricting process "as closely as possible," is "fatally flawed" because it lacks textual support, changes deadlines expressly stated in the constitution, and is incompatible with the judicial remedy required by Article III. Finally, Petitioners assert that Respondents' "law of the case" argument is waived because Respondents failed to raise the argument before the trial court, and that the argument is meritless because the Appellate Division did not already decide this issue but instead remanded to the trial court to determine the proper remedy.

Petitioner Gavin Wax filed a brief the same day outlining his differing views on the appeal in light of recent developments from the IRC. Wax urges the Appellate Division to take into account the IRC's recent bipartisan agreement to release a single proposed Assembly map along with upcoming public hearings pursuant to Justice Love's order. Wax asserts that this process could result in an Assembly plan that comports with the constitution. Wax concludes that unlike most appeals where there are winners and losers, "this appeal concerns whether constitutional state assembly lines are ultimately afforded to all New Yorkers."

Broome County: *Tokos et al v. County of Broome et al*

On December 28, the county filed an appeal to Appellate Division Third Department from the decision to order a new county legislative redistricting plan.

Appellate Division Docket:

<https://iapps.courts.state.ny.us/nyscef/DocumentList?docketId=nCst4A6lqgXvbLd5YtEz zA==&display=all&courtType=Appellate%20Division%20-%203rd%20Dept&resultsPageNum=1>

Ulster County: *Kruglinksi et al v. Contreras et al*

The county redistricting commission developed new map for court consideration before January 3 court deadline

Rockland County: *Parietti v. Rockland County Executive et al*

Following recusals by two previous judges assigned to the case, in a petition filed on January 4th, Parietti argues that the current judge assigned to the case, Sherri Eisenpress, should also recuse herself because she and members of her staff live in Rockland County and could be affected by the outcome of the case. Parietti also argues

that she should recuse herself because of her involvement in the politics of Rockland County and connections to the Hasidic community and its leaders who could be affected by the outcome of the case. A court conference was scheduled for January 5th to address this issue.

On January 5th, in a letter to the Judge, Parietti contended that the state constitution requires the court to expedite review of the action because Article III, Section 5 states that "an apportionment by the legislature, or other body, shall be subject to review by the supreme court, at the suit of any citizen, under such reasonable regulations as the legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same. *The court shall render its decision within sixty days after a petition is filed.*" Parietti argues that this language requires the court to dispose of this case and render a decision by February 7th.

In response, on January 6th, Defendants submitted a letter to the judge arguing that the constitutional language applies only to proceedings challenging redistricting by the State Legislature and does not apply to county redistricting.

City of Buffalo: *Our City Action Buffalo, Inc. et al v. Common Council of the City of Buffalo et al*

- Decision 12.10.22 – dismissing the action
- 1.5.23 - Petitioners appeal to Appellate Division Fourth Department
- No appellate division docket yet

Legislation

Senator Zellnor Myrie has filed S.657, a bill to create a new statewide election results database and a **NY Voting Elections Database and Institute** to maintain and administer a central repository of election and voting data to be made available to the public. This bill was originally part of the John R. Lewis Voting Rights Act enacted last year but was dropped late in the 2022 session.

Updated IRC Hearing Schedule

TODAY- Buffalo - Monday, January 9 at 5:00pm

Buffalo State College (SUNY)
Burchfield Penney Art Center
1300 Elmwood Avenue
Buffalo, New York 14222

TOMORROW-Rochester - Tuesday, January 10, 5:00pm

Rochester EOC (SUNY UCAWD)

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

Syracuse - Tuesday, January 24 5:00pm

Syracuse University College of Law
Melanie Gray Ceremonial Courtroom
Dineen Hall, 950 Irving Avenue
Syracuse, New York 13210

Albany - Wednesday, January 25 5:00pm

University at Albany (SUNY)
Page Hall – Downtown Campus
135 Western Avenue
Albany, New York 12203

White Plains * - Monday, January 30 4:00pm**

Haub School of Law at Pace University
Gerber Glass Moot Courtroom
78 North Broadway
White Plains, New York 10603

Bronx County * - Tuesday, January 31 4:00pm**

(UPDATED LOCATION)
Hostos Community College
Savoy Multi-Purpose Room - D Building/Savoy Manor Building
120 E. 149th Street 2nd Floor
Bronx, New York 10451

New York County * Tuesday, February 7 4:00pm**

Hunter College (CUNY)
Kaye Playhouse
695 Park Avenue
(entrance on 68th Street between Park and Lexington Avenues)
New York, New York 10065

Richmond County - Wednesday, February 8 4:00pm

(UPDATED LOCATION)
Staten Island Borough Hall
Conference Room 125
10 Richmond Terrace
Staten Island, New York 10301

Kings County * - Wednesday, February 15 4:00pm**

(UPDATED LOCATION)
Medgar Evers College (CUNY)
Founders Auditorium
1650 Bedford Avenue
Brooklyn, New York 11225

Queens County* - Thursday, February 16 4:00pm**

(LOCATION CHANGE)
York College (CUNY)
Faculty Dining Room
94-20 Guy R. Brewer Boulevard
Jamaica, New York 11451

Nassau County - Tuesday, February 28 5:00pm

Nassau Community College (SUNY)
College Center Building, Rm 252/253
1 Education Drive
Garden City, New York 11530

Suffolk County - Wednesday, March 1 5:00pm

(UPDATED LOCATION)
Suffolk County Community College
Michael J. Grant Campus
Van Nostrand Theatre
Crooked Hill Road
Brentwood, New York 11717