

3-27-2023

March 27 Roundtable Update

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NEW YORK REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

Clarkstown Partisan Gerrymandering Claim Rejected

In Rockland County, State Supreme Court Justice Amy Puerto has rejected a complaint alleging that the Town of Clarkston's redistricting map was a partisan gerrymander designed to pair two incumbents against each other. She determined that "the Town Board-approved map did not violate state law by being "drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates."

The enacted map paired Democrat Patrick Carroll and Republican Frank Borelli against each other. Both council members had opposed extending a term limits law that would have permitted the town supervisor to remain in office. The judge to the town board and maintained that it was not the court's duty to substitute the legislature's judgment with its own.

The decision can be read here: <https://bit.ly/3JQyRLO>

Hoffmann v. Independent Redistricting Commission (IRC): Congressional Redistricting

On March 22nd, in the Appellate Division (3rd Dept.), GOP IRC Commissioners Ross Brady, John Conway, Lisa Harris, Charles Nesbitt, and Willis Stephens filed a brief arguing that the trial court's dismissal of the case should be affirmed. First, the commissioners argue that the trial court properly dismissed the Article 78 proceeding. They assert that it would be unconstitutional for the IRC to submit another set of congressional maps because the *Harkenrider* court ordered a remedy (a special master redrew the lines) that completed the constitutional process for remedying procedural violations, and it cannot be revisited.

Essentially, the commissioners argue that the IRC's failure to submit a second set of congressional maps has already been remedied and that the plaintiffs' requested relief for the IRC to submit a second set of congressional maps is moot. Next, the commissioners dispute the plaintiffs' contention that the *Harkenrider* map is a temporary plan. The commissioners argue that, if the constitution intended for court-ordered remedies for procedural errors to result in interim plans, it would say so. Third, the commissioners contend that the *Nichols v. Hochul* decision is not relevant because that

case concerned the Assembly lines which, in contrast to the congressional lines, had not received a constitutional remedy for the procedural violations. Finally, the commissioners argue that the trial court should have also dismissed the case based on the four-month statute of limitations for Article 78 proceedings. The commissioners contend that the statute of limitations began to run on January 24, 2022, when the IRC announced it was deadlocked and would not submit a second round of maps.

On the same day, the *Harkenrider* Intervenor filed a brief also arguing that the trial court's dismissal should be affirmed. First, the Intervenor echo GOP commissioners' argument that procedural violations have already been remedied by *Harkenrider*, adding that the court-ordered plan must stay in place for the full decade unless a court finds another violation of law. Next, the Intervenor argue that the First Department in *Nichols* got it wrong and that under *Harkenrider*, the plaintiffs' requested relief is not available because the only permissible remedy for a constitutional procedural violation after the constitutional deadline is a court-drawn map. Third, the Intervenor echo GOP commissioners' assertion that the case should also be dismissed based on the statute of limitations. Finally, the Intervenor argue that the case should be dismissed under the "collateral attack doctrine" because the relief that the plaintiffs request would require altering the final decision in *Harkenrider* by declaring the court-drawn map merely a temporary plan, which is something the Albany County Supreme Court cannot do.

***Moore v. Harper*: Congressional Redistricting at U.S. Supreme Court**

On March 20, the U.S. Department of Justice and Common Cause filed opposing letters to the U.S. Supreme Court regarding whether the Court has jurisdiction to decide the case now that the Supreme Court of North Carolina has agreed to rehear the case following a shift on the court from Democratic majority to Republican. The DOJ acknowledged that there is no precedent that definitively governs this issue, and the Court may reasonably come to a different conclusion. However, the DOJ presented several arguments leading to a conclusion that continued exercise of jurisdiction is not justified as it is unclear whether the lower court's decision was final. Conversely, Common Cause argued that the Supreme Court should hold that it does have jurisdiction to decide the Independent State Legislature question presented in this case, regardless of the outcome of the North Carolina Supreme Court's rehearing of the case. Common Cause emphasized that the question is "fully briefed, thoroughly argued, and ripe for decision," and the Supreme Court is the only court that can conclusively answer the ISL question and provide guidance to the states.

REDISTRICTING

New York City Districting Commission Report

The NYC Districting Commission has released its final report. The report summarizes the demographic characteristics for each of the city's 51 districts, summaries of public outreach efforts, hearings, testimony, the law and process, and other features. A copy of the report can be read and downloaded here: <https://on.nyc.gov/3JLLqrL>

CENSUS

Cornell Publishes NYS Urban Atlas

Cornell University's Program on Applied Demographics has created an atlas of the 2020 Urban Areas that are wholly or partly in New York State. The atlas includes heat maps and data for counties and regions. The atlas can be downloaded here: <https://pad.human.cornell.edu/maps2020/maps/UrbanAreas2020.pdf> (file size: 18Mb)

EVENTS

CLE Webinar on NYS and NYC Redistricting

Tuesday, April 25, 2023; 5:30 PM – 7:15 PM

2 NY Credits: 2 PP; Transitional and Non-transitional; 2 NJ Credits 2 General

Program co-sponsors: New York Census and Redistricting Institute, and Center for New York City Law at New York Law School and New York County Lawyers Association's Justice Center

Program Chairs: Jeffrey M. Wice, Adjunct Professor and Senior Fellow, New York Census and Redistricting Institute/New York Law School; Special Counsel, New York City Districting Commission and Hon. Joan Madden (Ret.), JAMS Mediator and Arbitrator, NYCLA's Justice Center

Moderator: Jeffrey M. Wice, New York Census and Redistricting Institute/New York Law School

Faculty: Richard Briffault, Joseph P. Chamberlain Professor of Legislation, Columbia Law School; Dr. John Flateau, NYS Redistricting Commission Member, Hon. David Imamura, Past NYS Commission Chair, Fulvia Vargas-De Leon, Latino Justice

The New York State Constitution was amended in 2014 to change the process and rules governing the drawing of district lines for the NYS legislature and NY's congressional districts. The post 2020 census redistricting was the first test for the new plan – yet issues and problems with NYS' electoral system remain.

Register Here: <https://bit.ly/3TLK30K>

NYCLA Member/NYLS Alumni: \$25

Non-Member: \$45

Students/NYLS Faculty: FREE

Non-Attorney (No CLE): FREE

Redistricting Institute Resources

The New York Census and Redistricting Institute has archived many resources for the public to view on our Digital Commons Page.

Our Redistricting Resources page contains resources on the John R. Lewis Voting Rights Act. You can access the page

here: https://digitalcommons.nyls.edu/redistricting_resources/

Archived Roundtable Updates can be accessed

here: https://digitalcommons.nyls.edu/redistricting_roundtable_updates/