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April 3 Roundtable Update

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NEW YORK CENSUS & REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

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

Amicus Brief in Support of Petitioners-Appellants

On March 31, Amici Scottie Coads, Mark Favors, and Mark Weisman filed a brief in support of the Hoffmann Petitioners seeking to send congressional redistricting back to the Independent Redistricting Commission (IRC) for a new map. They contend that the court should reject the Respondents' argument that the judicially-imposed maps ordered in *Harkenrider* constitute the final remedy for the constitutional violations that must remain in place for 10 years. They argue that this position defies the constitutional right of the people of New York to have an IRC-based redistricting process and has no legal foundation for three reasons.

First, Amici assert that the Court of Appeals in *Harkenrider* expressly indicated a time limit on the judicial remedy when it stated that the remedy was required to ensure the prompt creation of constitutional maps "for use in the 2022 election." They also reference the Steuben County Supreme Court's order certifying the special master's plan and identifying the maps as "the 2022 Congressional and 2022 State Senate maps."

Second, Amici argue that this time limit was a constitutional requirement under the 2014 Amendments as the constitution, they assert, requires courts to narrowly tailor redistricting remedies to minimize impact on the controlling IRC process. Additionally, they dispute the Respondents' argument that the deadline has passed for the IRC to fulfill its constitutional duties. Instead, Amici cite the Supreme Court and First Department in *Nichols v. Hochul* which held that the modification of constitutional deadlines was required to remedy the Assembly map.

Third, Amici contend that the redistricting process must be returned to the IRC and the legislature for the remainder of the decade in order to preserve the balance of powers and fulfill the constitutional mandate of the 2014 Amendments. They argue that if the court does not allow the IRC to complete its constitutional obligations, future IRC commissioners would be incentivized to cause another breakdown in the process.

Guzman et al v. Westchester County Legislature et al: Challenges New County Map

On March 22, in Westchester County State Supreme Court, a group of plaintiffs filed a complaint challenging the recently adopted redistricting plan for the Westchester County Board of Legislators. The plaintiffs allege that the Democratic majority on the legislature engaged in a one-sided process that resulted in a plan that disfavors the minority caucus and violates state law. The plaintiffs allege that the plan violates the principle of “one person, one vote” and denies residents equal protection. Furthermore, the plaintiffs allege that the plan violates provisions of the state Municipal Home Rule Law requiring (1) maps to be drawn without favoring/disfavoring incumbents/parties; (2) districts to be as compact as practicable; and (3) maintenance of cores of existing districts, political subdivisions, and communities of interest. The plaintiffs allege that the map divides numerous towns, cities, and other Census Designated Places without valid redistricting justifications. Additionally, they allege that the map dilutes minority populations in Mount Vernon as a pretext to justify violations of other redistricting rules and principles. Lastly, the plaintiffs ask the court to appoint a Special Master to draw a proper plan.

Pereira v. Town of North Hempstead: Town’s Letter Supplementing Motion to Dismiss

Following a March 14 Order allowing the plaintiffs to amend their complaint challenging the new North Hempstead Town Board map, on the Town submitted a letter to supplement their motion to dismiss the case.

The Town reiterated its position that the court lacks jurisdiction to address the alleged political gerrymandering claims. The Town also argued that none of the plaintiffs have shown that they were directly injured or disadvantaged by the renumbering of Districts 4 and 5. Therefore, they argued that the plaintiffs do not have standing to assert the federal claims based on the renumbering.

In addition, the Town asserted that even if any of the plaintiffs had standing, the complaint should be dismissed as it fails to establish a valid claim under either the Equal Protection Clause or the Due Process Clause of the U.S. Constitution.

The Town argued that the plaintiffs failed to establish a vote dilution claim under the Equal Protection Clause because the population deviations are within the state’s new legal requirements.

Further, the Town asserted that the plaintiffs failed to establish a vote dilution claim based on racial gerrymandering of the Asian community because they don’t have standing to assert the alleged harm on the Asian community and they failed to show that the Asian community has had their voting power diluted.

Lastly, the Town disputed the plaintiffs' newly added Due Process Clause claim, arguing that there is no fundamental right to have a certain district number; none of the plaintiffs have been disenfranchised, even temporarily, as a result of the district renumbering; and the plaintiffs cannot satisfy the burden under rational basis review to dispute every conceivable basis that supports the Town's decision.

CENSUS

Census Bureau Director Robert Santos Visits New York Law School

On March 28th, Census Bureau Director Robert Santos visited New York Law School to meet with students and faculty as part of his "listening tour" on how the Bureau should change census taking before 2030. You can view a video of the Director's visit here: <https://bit.ly/3ZRL5dn>

Vintage NYS County Population Estimates Released

By Jan Vink & Leslie Reynolds
Cornell Program on Applied Demographics

Last week, the Census Bureau released estimates for the county total population and components of change, births, deaths, domestic migration and international migration. These estimates cover the period April 1, 2020 through July 1, 2022.

Attached are the numbers for the New York counties.

We got an early look at these numbers, combined them with estimates from the last decade to get longer time series and compiled a report with highlights. This report can be downloaded through: <https://pad.human.cornell.edu/papers/downloads/V2022CountyHighlights.pdf>

Our main highlights are:

- The population in New York State declined by 2.6% (524,079 people) since the 2020 Census. However, the decline slowed in the most recent year (-0.9% from 2021-2022).
- Only the Capital Region gained population since April 1st 2020; all other regions lost population during this period.
- The last year in an estimates vintage is most subject to change as it relies on some preliminary data; but, according to these estimates all regions lost population in the last estimate year.
- The 2021 domestic migration patterns were very different from the long-term patterns. Many more people left New York City between July 1, 2020 and July 2021 than in previous years, while other regions experienced higher estimates of net migration than in the previous decade. The 2022 net migration estimates are in line with the long-term trends which saw increasingly negative net migration.

- In the past decade before the pandemic, New York State experienced an increase in the number of deaths and a decrease in the number of births. The number of deaths estimated in 2020 and 2021 were elevated due to the Covid-19 pandemic, while the number of births dipped slightly. The estimates for 2022 align more with the long-term trend.
- Since Census Day (April 1st, 2020) Orange County gained the most population in count (+4,617), but Otsego County saw the highest growth percentage (+3.6%). Kings County [Brooklyn] saw the biggest numeric decline in population (-145,559) and the Bronx the highest percentage loss (-6.3%).
- From 2020 to 2022 Natural increase contributed the most relative population to Rockland (+1.8%), while Hamilton lost the most relative population (-2.2%) due to natural decrease.
- Positive net migration over the 2020-2022 period contributed the most to the population in Otsego (+4.7%). Negative net migration contributed the most relative population loss in Bronx (-6.8%), and Kings [Brooklyn] (-6.1%).
- The number of counties with more people moving in than moving out decreased from 29 in 2021 down to 11 in 2022. Three counties however (Chenango, New York and Washington) saw negative net migration in 2021, but positive net migration in 2022. The turn-around in New York [Manhattan] was very remarkable as it lost 94,588 persons due to migration in 2021, but gained 13,855 in 2022.

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/