

5-1-2023

May 1 Roundtable Update

Jeffrey M. Wice



NEW YORK CENSUS & REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

***Hoffmann v. Independent Redistricting Commission:* Appellate Division Schedules Congressional Case Hearing**

The Appellate Division, Third Department, sitting in Albany, has scheduled a hearing on the appeal seeking to order the state Independent Redistricting Commission to submit a new congressional map to the state legislature. The hearing will take place on Thursday, June 8th at 1:00 PM in Albany. Last year, Albany County State Supreme Court Judge Peter Lynch rejected the argument that the congressional map be revisited by the commission. This case may eventually be decided by the State Court of Appeals.

Mohr v. Erie County Legislature

On April 24th, in a challenge to Erie County's legislative lines, federal Western District Court Judge Lawrence J. Vilaro issued a decision granting Erie County's motion for summary judgment. The court found that Ralph Mohr, an Erie County election commissioner, lacks standing to pursue both his due process claim and his equal protection claim.

For Mohr's equal protection claim, he alleged that the county violated his right to equal protection by including metes-and-bounds errors that resulted in certain residents being placed in multiple districts, other residents being excluded from any district, some districts extending to include areas outside of the county, and a failure to draw eleven contiguous districts.

Mohr also asserted that his vote would be unconstitutionally diluted by the new district lines. The court held that Mohr lacks standing to pursue his equal protection claim because he has not provided enough support in his amended complaint to show the requisite injury caused by the new districts.

For his due process claim, Mohr contended that if he were to comply with the new lines as an election commissioner, he would face prosecution under state law. The court found that Mohr lacks standing to pursue his due process claim because he has failed to allege "that he faces a credible threat of prosecution for implementing (or refusing to implement)" the new lines.

Rockland County Legislature: *Parietti v. Rockland County*

In a decision released on April 25, the Appellate Division (2nd Dept.) affirmed the trial court's dismissal of Michael Parietti's challenge to the Rockland County Legislative lines.

First, the Appellate Division found that the trial court appropriately dismissed Parietti's motion for recusal because he failed to establish a basis for mandatory disqualification. The Appellate Division explained that Parietti did not demonstrate that the trial court had any familial relationship to any party in the proceeding nor did he provide any proof of bias or prejudice that would warrant recusal.

Next, the Appellate Division explained that contrary to Parietti's contention, the standing provision located in the state constitution does not govern this case because it only applies to State Legislative redistricting. Therefore, the Appellate Division found that under traditional standing principles, the trial court correctly held that Parietti lacked standing to pursue claims under the Voting Rights Act, Municipal Home Rule Law § 34(4), and any other authority relating to districts he did not reside in or claims concerning minority vote dilution.

Additionally, the Appellate Division held that Parietti failed to establish his standing regarding his claims as they relate to the district in which he resides, including his assertions that the new district map improperly advantaged the incumbent and lacked compactness. The Appellate Division explained that Parietti failed to allege sufficient facts in his petition to show the requisite personal harm needed to establish standing. Lastly, the Appellate Division found that Parietti's First Amendment argument was without merit.