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June 12 Roundtable Update

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NEW YORK REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

Congressional Challenge: *Hoffman v. Independent Redistricting Commission*

On June 8th in Albany, attorneys argued before the Appellate Division (3rd Department) over NY's congressional redistricting remapping challenge. Presiding Justice Elizabeth Garry believed that the court was placed in "the awkward position of inferring" what a 2022 Court of Appeals decision meant by its silence on how long the Special Master's Map should be used.

In *Hoffman*, attorneys for Democratic voters argued that the judge who originally rejected the legislative maps didn't intend to use the map beyond the 2022 elections.

Last year in *Harkenrider v. Hochul*, the Court of Appeals determined the state's congressional map was improperly enacted and that it violated a prohibition against partisan gerrymandering. It ordered Steuben County-based Judge McAllister to appoint a special master to redraw the congressional and senate maps.

In *Hoffman*, a group of New Yorkers is asking to reverse a lower court ruling and send congressional redistricting back to the Independent Redistricting Commission and the legislature for a new plan that would be used in elections spanning 2024 to 2030.

Summaries of Arguments:

Appellant - Aria C. Branch (Elias Law Group, LLP for Democratic voters Hoffman and others):

-Argued that the Steuben County order never resolved whether the court-drawn map would continue for the remainder of the decade (2022-2030). The lines in place for 2022 have been pointed to as a one of several reasons leading to the new Republican U.S. House majority.

-The only mention of duration in the Court of Appeals decision was in the dissent, by Associate Judge Shirley Troutman, which raised the possibility that the special master's map could be in place for 10 years. Troutman wrote that allowing a single trial court judge to order a remedy ultimately subjects the citizens of this state to an electoral map created by an unelected individual for the next 10 years which is simply not what the people voted for when they enacted the constitutional provision at issue.

-Branch said a reversal of the trial court decision in *Hoffman* "is not an attack on the validity of *Harkenrider*; it is a vindication of the redistricting amendments." Plaintiffs are not seeking to override or overturn last year's decision but are simply working to get the commission (IRC) to get back to work. She saw *Harkenrider* map used for 2022 as an emergency situation and did not fault what the court did for 2022. The 2022 court decision was imprecise as the judge might not have recognized the nuisance of not including language beyond 2022.

Respondent Intervenor - Misha Tseytlin (Troutman Pepper Hamilton Sanders LLP for original *Harkenrider* plaintiffs)

-Tseytlin argued that the word “modify” was not meant to be a wholesale change and that the plaintiffs should have filed an appeal of the Steuben County order within 30 days.

Respondent - Jessica Ring Amunson (Jenner & Block LLP for Independent Redistricting Commission Democratic members)

- Argued that the IRC’s inaction was a procedural violation and that “procedure is meant to protect the substance here”. She claimed that at the time, the commissioners were refusing to meet to make a plan. Amunson said the IRC “are the people who should be doing the job of putting these districts in place”.

Respondent - Timothy F. Hill, Perillo Hill LLP (New York State Independent Redistricting Commission, Republican members)

-Argued that both the trial court and the Appellate Division invited lawmakers to prepare corrective maps and was declined twice. He also claimed that they fell way outside the statute.

A decision from the Appellate Division is anticipated shortly (followed by a final appeal to the NY Court of Appeals).

Westchester County: *Guzman et al v. Westchester County Legislature et al*

On June 5, in Putnam County State Supreme Court, the court issued an order denying and dismissing GOP legislators’ (Margaret Cunzio and James Nolan) motions requesting legal representation at county expense and disqualification of the County Attorney from the case. The court held that Cunzio and Nolan are not entitled to representation at county expense because their position in the case was misaligned with the county’s. The court explained that Cunzio and Nolan were not seeking a “defense” in the case as they were not accused of wrongdoing and in fact agreed with the Petitioners.

Further, the court found that authorizing payment of attorney’s fees “would amount to an unconstitutional use of public funds to pay for...private interests.” Additionally, the court denied their motion to disqualify the County Attorney because according to county law, when the interests of the legislators or county are inconsistent with the interests of any county official, the county attorney must represent the interests of the board and the county. County law requires that if Cunzio and Nolan choose to employ counsel, they do so “at their own expense.”

Orleans County: *Lewis et al v. Orleans County Legislature et al*

On June 5, in Orleans County State Supreme Court, Petitioners filed an affirmation along with a memo in opposition to respondents’ motion for summary judgment, “wherein Respondents attempt to suggest the County’s legislative districts are constitutional and not partisan or racially gerrymandered.” Petitioners argue that the county has not met their burden for summary judgment, and even if they had, there are sufficient questions of fact to warrant limited discovery before either party would be entitled to summary judgment.

First, Petitioners argue that they have standing, as Orleans County voters, residing in different districts, to challenge the overall structure of the districts (i.e., mixture of at-large and single member districts). Additionally, they assert that Petitioner Marciano has standing, as a resident of Medina, to challenge the alleged partisan and racial gerrymandering in her area.

Next, for their Voting Rights Act claims, Petitioners argue that the first precondition, that the minority group is sufficiently large and geographically compact to constitute a majority in a single member district,

does not require only a single minority group but can be composed of multiple populations. They assert that because white, non-Hispanic and non-Latino, people make up about 86% of the county, there are about 5,418 people who would count as a minority population – enough to qualify for its own district if the county were divided into 7 geographical districts, as Petitioners argue should be the case. Furthermore, Petitioners argue that the minority population is geographically compact as more than 36% of the non-white ethnic community resides in Medina.

Second, based on election data, Petitioners argue that minority groups in the county are politically cohesive.

Third, based on election data, they argue that the white population votes sufficiently as a bloc to usually defeat the minority's preferred candidate.

Petitioners also argue that with the residency requirement, the at large districts are unconstitutional, noting that a lot has changed since the 1982 decision that found that this legislative district scheme was permissible. They further contend that the county has failed to put forth any argument for why the requirement is necessary. Additionally, Petitioners argue that by requiring residency from one of the three areas (East, West, Central), minority populations “cannot reasonably put forth efforts to champion candidates” in each of the areas as their ethnic group is so diluted by white populations, and minority parties cannot effectively champion candidates from those areas as their party is “so diluted by the majority party of that area.

Finally, Petitioners contend that it is appropriate and permissible for the court to consider the appointment a special master to review and propose a new plan.

LEGISLATION

List of 2023 State Election Law Bills

The NY State Board of Elections has prepared a chart listing all election-related bills considered by the State Legislature during the 2023 session. This list includes bills passed by both chambers and one-house bills. A copy is attached.

ELECTION ADMINISTRATION

Online Voter Registration Now Available

From the NYS Board of Elections (reproduced with permission):

The New York State Board of Elections has launched Online Voter Registration. New Yorkers can use the Online Voter Registration system to register to vote or update their vote registration information.

Updated information could include providing your County Board of Elections with your new name, new address, or changing your party enrollment. Completed applications are sent to the appropriate County Board of Elections for approval and processing.

To register you will need to use a NY.Gov ID. If you have previously used NY.Gov with another agency, you may use the same login to access the Online Voter Registration portal. If you have not used NY.Gov you will need to create an account.

[Register Online Here](#)

Election Calendar Information

The Local Primary Election will be held June 27, 2023. Early voting will be available from June 17, 2023 through June 25, 2023.

Find your early voting and election day poll site at voterlookup.elections.ny.gov

Reminder! Only voters registered in a party holding a primary are eligible to vote in that party's primary. To find out what parties are holding primaries in your area visit your County Board of Election's website.

June Primary Information

Absentee ballot requests must be received by June 12, 2023

Voter registration applications must be received by June 17, 2023

Absentee ballots must be returned by June 27, 2023. Ballots postmarked on June 27 must be received by the Board of Elections no later than July 4.

Request an absentee ballot at absenteeballot.elections.ny.gov

[Request An Absentee Ballot Here](https://absenteeballot.elections.ny.gov)