

7-31-2023

July 31 Roundtable Update

Jeffrey M. Wice



NEW YORK CENSUS & REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

Congressional: GOP Files Notice of Appeal in *Hoffman v. Independent Redistricting Commission*

Unlike the ruling in the recent State Assembly case, *Nichols v. Hochul*, where the trial court sent the Independent Redistricting Commission (IRC) back to work with an updated set of deadlines mirroring the constitutional dates, the Appellate Division decision in the congressional redistricting case offers no such guidance.

New York's 2014 Redistricting Amendment set forth a new constitutional process where the Independent Redistricting Commission and the legislature proceed through the challenging responsibility of redistricting the state's senate, assembly, and congressional districts every ten years through Commission map submissions to the legislature and legislative approval.

The Plaintiffs in the congressional redistricting case, *Hoffmann v. Independent Redistricting Commission*, asked the court to order the IRC to fulfill part of its constitutional duty by sending a *second* submission to the legislature for consideration as required by the State Constitution's Article III, Section 4(b) in the event that the legislature fails to approve the first submission or the governor vetoes it and the legislature fails to override the veto. Last year, the legislature rejected the first set of maps.

Section 4(b) sets forth requirements for both submissions. The section begins with "the [IRC]...shall prepare a redistricting plan to establish senate, assembly, and congressional districts every ten years commencing in [2021], and shall submit to the legislature such plan and the implementing legislation therefor on or before January 1st or as soon as practicable thereafter but no later than January 15th in the year ending in two beginning in [2022]." This language provides the requirements for the first submission.

For the second submission, if one is needed due to the legislature failing to approve the first plan, Section 4(b) provides that the legislature must notify the IRC and "[w]ithin fifteen days of such notification and in no case later than February 28th, the [IRC] shall prepare and submit to the legislature a second redistricting plan..."

Because we are now starting at the second submission stage, and the fifteen days as well as February 28th following the legislature notifying the IRC have long passed, it is unclear what timeline the IRC must follow as it returns to work on the congressional lines.

What is clear, however, is that a map must be in place by early March 2024 for primary petitioning to get underway. If a new map is to be enacted if the Court of Appeals affirms the Appellate Division decision, a new map should be approved by the state legislature by early February 2024. If the Court of Appeals reverses the Appellate Division decision, the 2022 map drawn by the Special Master should remain in place.

Nassau County Legislature: Map Challenged in *Coads et al v. Nassau County et al*

On July 26, in Nassau County State Supreme Court, a group of Democratic voters and the Nassau County Democratic Committee filed a challenge to the 2023 county's new legislative map.

In their complaint, they allege that the map was “drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties” in violation of Section 34 of the state Municipal Home Rule Law (that includes specific prioritized redistricting criteria).

They argue that the map favors Republicans and disfavors Democrats by (1) “packing” Democratic voters into Districts 2 and 3 and dispersing or “cracking” other Democratic areas into Districts 10, 14, and 18 “so as to dilute their voting strength;” (2) pairing two Democratic incumbents and no Republican incumbents; and (3) moving the Democratic minority leader from a firmly Democratic district to a Republican-leaning district.

They ask the court to declare that the 2023 map violates MHRL Section 34 and prohibit the county from using the map in future elections. Furthermore, they ask the court to give the county “a reasonable opportunity to adopt a new redistricting plan that complies with” the law, and if the county fails to do so, they ask the court to implement a court-ordered plan and order a special election under that new map.

It is unlikely that this challenge will impact the 2023 county elections where candidates for the legislature have already qualified for the November ballot.