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August 14 Roundtable Update

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NEW YORK CENSUS & REDISTRICTING ROUNDTABLE UPDATE

Congressional: *Hoffmann v. Independent Redistricting Commission*

On August 8th, the New York Court of Appeals issued a letter to the parties with the briefing schedule for the appeal. The appeal will proceed in the normal course of briefing and argument and mentions that the petitioners' calendar preference request and the Intervenors' opposition was noted.

The Court also indicated that it is anticipated that the appeal will be calendared for argument during the November session (scheduled for November 14-16)

Briefing Schedule

- Appellants' briefs and amicus briefs supporting reversal due **September 18, 2023**
- Respondents' (Democratic voters) briefs and amicus briefs supporting affirmance due **October 23, 2023**
- Appellants may file reply briefs by **November 6, 2023**

Broome County: *Tokos et al v. County of Broome et al*: Challenge Before Appellate Division

On August 4th, in the Appellate Division, Third Department, the Broome County Defendants filed a reply brief arguing:

1. The Plaintiff's lack of standing is properly before this court.

The county argues that because lack of standing was raised as an affirmative defense in the Answer, the burden was on the plaintiffs to establish standing when they brought their motion for summary judgment. The county argues that based on the plaintiffs' papers, they do not have standing as their affidavits fail to allege specific injuries sufficient to establish standing. The County asserts that the court can review the affidavits and address this as a question of law.

2. The County was not required to use prisoner adjusted data.

The county argues that the Municipal Home Rule Law (MHRL) does not require the County to use prisoner adjusted data because §34(4) states that a charter county "shall be subject to federal and state constitutional requirements and shall comply with the following standards..." and none of the standards mandate the use of prisoner adjusted

data in redistricting of charter county legislative districts. Additionally, because the state legislature chose not to include the prisoner adjusted data requirement in §34(4), the County argues that the state legislature did not intend to require charter counties to use prisoner adjusted data. Therefore, the County contends that they were obligated to follow the county charter which requires the use of US Census Data.

3. Courts have deemed that balancing redistricting requirements is a function entrusted to legislative bodies.

The county contends that courts refrain from second guessing determinations made by legislatures when balancing the many redistricting standards and requirements. The county asserts that the test for determining whether a court should substitute the judgment of the legislative body with that of the court is whether the legislative body “unduly departed” from federal and state constitutional requirements and this standard should apply to an evaluation of MHRL §34(4). The county maintains that it balanced the redistricting factors from §34(4) and that it is the job of elected representatives to evaluate proposed maps and adopt the one that it believes best complies with the law. “The fact that the Plaintiffs prefer other maps for partisan or personal preferences is irrelevant.”

Regarding the balance of redistricting requirements, the county also argues:

- A. The plaintiffs are incorrect in their assertion that MHRL §34(4) was not designed to create more competitive districts as the state legislature explained that this was the intent and §34(4) states that districts shall not be drawn to discourage competition.
- B. If the state legislature intended to prohibit the splitting of towns and villages, they would not have included the language “to the extent practicable.”
- C. And if the state legislature had intended to make not splitting towns a greater priority than the other factors, they would have listed it as an individual factor instead of grouping it with other equal factors to be considered (maintenance of cores of existing districts, preexisting political subdivisions, and communities of interest).

4. The legislature is not required to seek an expert opinion when adopting a redistricting plan.

The county argues that it was free to weigh the redistricting factors without the opinion of an expert. They also contend that they were free to ignore the opinion of plaintiffs’ expert Professor Jonathan Krasno in balancing the requirements.

5. The Plaintiffs’ request for a special master is without merit.

The county contends that the plaintiffs have not shown that the county could not create a new map in time for the 2024 election cycle if required to do so.

In conclusion, the county asserts that the trial court's order should be reversed, and the complaint should be dismissed.

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

Allegations

The Petitioners in this case alleged that the county's new legislative map was drawn with districts that were partisan and racial gerrymandered. They argued that the county failed to maintain pre-existing political subdivisions and communities of interest by splitting Medina and Murray and dividing the most racially diverse area of the county into two districts. Additionally, they alleged that the county's combined geographic and at-large district scheme where voters vote for the individual running in a specific geographic district along with three at-large members, one from each region of the county (central, eastern, and western), fails to ensure proper representation. They argued that the at-large districts have population deviations that violate one-person, one vote and make it more difficult for minority communities to prevail in elections. Moreover, while at-large legislators represent the whole county, the petitioners alleged that the structure disenfranchises voters who reside in the southern and northern sections of the county as their interests are not directly represented by any of the three at-large districts.

Dismissal

Following a July 17th hearing and an oral decision issued the same day, Orleans County State Supreme Court Justice Frank Caruso issued a written order on August 8th granting the county's motion for summary judgment and denying the petitioners' amended petition in its entirety. The case is now concluded in the county's favor.