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September 5 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****VOTING RIGHTS****Mt Pleasant (Westchester): First State Voting Rights Act Challenge**

In the first challenge since the New York State Voting Rights Act became effective, a group of Hispanic voters in Westchester County's Mount Pleasant have sent the township notification that the town's at large town council disenfranchised them over the lack of Hispanic representation on the town council.

Enacted into law in 2022, New York's "John R. Lewis Voting Rights Act" creates new legal protections against denying or abridging the right of minority New Yorkers to vote by creating civil liability for discriminatory voting practices in certain situations.

Attorneys in Abrams Fensterman's White Plains office (including former NYS Independent Redistricting Commission Chair David Imamura) are asking the town to change its voting system to better enable Hispanic voters better representation..

According to the letter, the town's current council election results demonstrate "significant and persistent patterns of racially polarized voting with regards to Hispanic voters."

Mount Pleasant has approximately 90 days to resolve this challenge. If the town agrees that there is an impermissible level of discrimination and does not work out a solution, the voters are enabled under the new state law to challenge the town in state court.

LITIGATION**Nassau County Legislature: *Coads v. Nassau County*****What You Need To Know:**

- This case is currently in the trial-level Nassau County State Supreme Court
- This challenge centers on alleged violations of the state's Municipal Home Rule Law, Article 4, §34, Subsec. 4 (a)-(f). This law includes a

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specific set of redistricting criteria that counties must follow when redrawing their electoral districts, with prioritized criteria.

- Democratic voters who filed this challenge argue that Nassau County's 2023 redistricting map violates this law, particularly the partisan gerrymandering ban "[d]istricts shall not be drawn to discourage competition or for the purpose of favoring or disfavoring incumbents or other particular candidates or political parties."
- They claim that the map impermissibly benefits Republicans and disadvantages Democrats by:
 - "Packing" Democratic voters into Districts 2 and 3 while spreading out or "cracking" other Democratic areas into Districts 10, 14, and 18 "so as to dilute their voting strength."
 - Pairing two Democratic incumbents and not pairing any Republican incumbents.
 - Relocating the Democratic minority leader from a firmly Democratic district to one that leans Republican.

Recent Action: 2 Answers + Motion to Dismiss

An *Answer* is a written response filed by the Defendants to address the claims made by the Plaintiffs in the complaint.

A *Motion to Dismiss* is a request asking the court to end the lawsuit or specific claims within the case based on certain legal arguments that the party believes establish that there are valid reasons to stop the case from proceeding any further.

Following the complaint, Republican Elections Commissioner Joseph J. Kearney and Democratic Commissioner James P. Scheuerman filed separate answers last week.

On August 31st, the County and the Legislature filed a motion to dismiss and a memo setting forth their arguments for dismissing the case.

The Details: Here is a summary of the BOE's answers along with the County's arguments for dismissal.

Nassau Board of Elections & GOP Commissioner Kearney

The Board of Elections and Commissioner Kearney denied the vast majority of the allegations contained in the complaint. However, they did admit to the basic structure and composition of the legislature. They provided seven affirmative defenses. An affirmative defense is an argument asserting that even if the claims in the complaint are true, there are legal justifications for the defendant's actions. Their affirmative defenses include:

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1. Plaintiffs fail to state a cause of action against them.
2. Plaintiffs' constitutional and statutory rights have not been violated by them.
3. Plaintiffs' claims are barred by the applicable limitations period, contractual limitations period, and/or jurisdictional prerequisites.
4. Plaintiffs' claims are barred by the equitable doctrines of laches, waiver, estoppel, and/or unclean hands.
5. All actions taken by them were in full accord with applicable law.
6. They enjoy full, partial, and/or qualified immunity from civil suit.
7. As employees of the Board of Elections, they acted in good faith and without malice and their actions did not violate clearly established constitutional rights of which a reasonable person would have known, therefore, they are immune from civil liability.

They ask the court to dismiss the complaint in its entirety.

Democratic Commissioner James P. Scheuerman

Scheuerman denied the majority of the allegations contained in the complaint. However, he did admit that voting in recent county elections has been closely divided along party lines as shown in Table 3 of the complaint. He also admitted to the basic structure and composition of the legislature.

Scheuerman provided two affirmative defenses:

1. He carried out his responsibilities as an employee of the Board of Elections in good faith and is immune from civil liability.
2. If the Plaintiffs did in fact sustain the damages they allege, the damages were not the result of any of his conduct.

Nassau County and Nassau County Legislature's memo in support of their motion to dismiss the complaint

The County and the Legislature base their argument for dismissal on the *doctrine of laches*. The doctrine of laches refers to the principle that if plaintiffs wait too long to assert their rights, they may forfeit their ability to do so, especially if their delay causes prejudice to others.

The County and the Legislature argue that the plaintiffs took nearly five months to file this challenge, seeking relief that would compel the Legislature to engage in mid-decade redistricting in consecutive election cycles. They argue that the delay is inexplicable and if the plaintiffs were to succeed in this case, it would severely prejudice the County and the public. They argue that mid-decade redistricting would confuse voters and candidates and would require significant expenditures by the county.

Therefore, the County and the Legislature argue that the court should dismiss the complaint under the doctrine of laches.

AROUND THE NATION

Louisiana Congressional: *Robinson v. Ardoin*

On August 29, A U.S. District Court judge denied Louisiana's motion to cancel a hearing on the remedy for the state's likely violation of Section 2 of the Voting Rights Act. The state moved to have the hearing cancelled and wanted to bring the matter to trial, arguing that the lack of a trial was unfair, that there is insufficient time for the parties to prepare for the hearing, and that the Court lacked jurisdiction to hold the hearing.

Louisiana's congressional map was blocked in June of 2022 for likely violating Section 2 of the federal Voting Rights Act. After the map was blocked, Louisiana officials appealed to The U.S. Supreme Court requesting relief. The Court issued a ruling via its shadow docket reinstating the map for the 2022 midterm election and paused the case. It later allowed litigation to continue and blocked Louisiana's congressional map following its decision to uphold Section 2 of the VRA in the Alabama case *Allen v. Milligan*. The remedy for the state's likely Section 2 violation will be determined during the hearing, scheduled for October 3 through October 5, as will the congressional map to be used for the upcoming 2024 election cycle.

Ohio Congressional: *Huffman v. Neiman*

Ohio State Attorney General Dave Yost sent a letter to the Ohio Redistricting Commission on August 28 stating that, under his interpretation of Ohio's Constitution, only the governor has the power to reconvene the commission. This comes after the two chairs of the commission, State Representative Jeff LaRe and Ohio Senate Minority Leader Nickie Antonio, announced that the panel would meet on September 13 to start the process of drawing a new state legislative map. According to Antonio, LaRe and she were following past practice by calling for the commission to reconvene. The commission hopes to have a district plan in place by December 20, which is the deadline for candidates to file for the March 19, 2024, primary election.

Last year, the Supreme Court of Ohio struck down the state's congressional map for being gerrymandered to benefit Republican candidates. The court held that the map violated the Ohio Constitution and ordered the legislature to redraw the map within 30 days. Following the decision, the legislature failed to pass a new map, at which point the Ohio Redistricting Commission took over the redrawing process, with their revised map being enacted in March of 2022. This map was only marginally different from the map it replaced, with it still being heavily skewed in favor of Republicans. New lawsuits were filed, and the Ohio Supreme Court ultimately struck down the revised map in July of 2022 due to it being a partisan gerrymander.

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Four Ohio Republican lawmakers filed a petition for a writ of certiorari asking the U.S. Supreme Court to reverse the Ohio Supreme Court's July of 2022 decision to strike down the congressional map. The U.S. Supreme Court ultimately vacated the decision, ordering the Ohio Supreme Court to rehear the case. It will be interesting to see how this situation plays out, as the Ohio Supreme Court has recently grown more conservative. Chief Justice Maureen O'Connor, who casted the deciding vote in each of the prior decisions, has retired and has been replaced with a more conservative Chief Justice, Sharon Kennedy. In addition, Republican Joe Deters filled the spot on the bench left open through Chief Justice O'Connor's retirement.

Florida Congressional: *Black Voters Matters Capacity Building Institute v. Cord Byrd*

On September 2, Florida Second Circuit Judge J. Lee Marsh struck down North Florida's congressional districts, finding that the map illegally reduced Black voter's electoral power. The state argued that mandatory protections for Black voters violated the Equal Protection Clause, alleging that such protections involve racial gerrymandering. In a joint filing in August, the state acknowledged that none of the enacted districts in North Florida allow Black voters to elect the candidate of their choice. This is in stark contrast to the 2016, 2018, and 2020 election cycles, where Black voters were able to elect a candidate of their choice in North Florida, Democrat Al Lawson. The state must file a notice of appeal by September 4. Both parties intend to request the Florida Supreme Court hear the case directly, skipping the usual step of going through a lower appellate court. They will also propose a schedule to allow the Court to decide by December 31.

Judge Marsh has instructed Florida's legislature to draw a new map for Northern Florida that is in compliance with Florida's constitution. If the legislature fails to draw a new map, both parties have agreed to accept a map similar to the one initially proposed by the legislature. This map preserved Representative Lawson's district but was vetoed by Governor DeSantis. The outcome of this case can have national implications, as if the Florida Supreme Court sides with the state, it would be advancing the argument that it is inherently wrong to take race into account when mapping out congressional districts, even if it is done with the intent to preserve the political voice of minority groups.

JOB OPPORTUNITIES**New York State Attorney General Voting Rights Section**

The New York State Attorney General (OAG) is seeking to hire attorneys with experience or interest in voting rights to serve in the New York City office in

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the Voting Rights Section (VRS), a recently-established Section within the OAG's Civil Rights Bureau. Attorneys will work on, among other matters, implementation and enforcement of the newly-enacted New York Voting Rights Act, one of the strongest state voting rights laws in the country.

Qualifications for this position include the following:

- Applicants with a minimum of three (3) years of post-graduate legal experience with a focus on civil litigation experience, including engaging in discovery and motion practice are preferred, however, the Bureau will consider well-qualified applicants who have fewer years of experience;
- Excellent legal analysis, legal writing and editing, and oral advocacy skills;
- Strong organizational, interpersonal communication, problem solving, and teamwork skills; and
- Experience investigating, litigating, and/or engaging in policy advocacy regarding voting rights-related issues is strongly preferred.

Applicants must reside in (or intend to soon become a resident of) New York State and be admitted to practice law in New York State. In addition, the Public Officers Law requires that attorneys in the Office be citizens of the United States. A two (2) year commitment upon being hired is a condition of employment.

The deadline to apply is September 29, 2023. For more information, see the attachment.