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September 11 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****Congressional: Hoffman v. IRC Hold May Be Decided**

The State Court of Appeals meets this week and may take up the question whether there is a stay (or hold) on the Appellate Division ruling directing the state Independent Redistricting Commission to draw a new congressional map to submit to the state legislature. GOP parties maintain that a stay is in effect while Democratic parties disagree and believe the Commission has no bar to acting. The Court of Appeals will hold a hearing on the case merits on Wednesday, November 15th in Albany.

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

Last month, in the Appellate Division (3rd Dept.), the Plaintiffs (*Tokos et al*) asked the court to grant a preference in hearing the appeal. Briefly, the residents who brought this challenge asked the court to hear the appeal sooner than it is currently scheduled (November term for oral argument) so that there is sufficient time for a new map to be implemented before the county's 2024 election. In an affidavit filed on August 24th, the plaintiffs argue that if oral argument occurs in November, and a decision affirming the lower court's order is issued in December, there will not be enough time to prepare and implement a new map and then for candidates to be recruited and petitions to be disseminated in time for the next election in 2024. They also argue that in 2021 (when the redistricting process began in November) there was less than 30 days between the enactment of new lines and the first day for filing petitions for the 2022 election cycle.

On August 30th, the county attorney filed an affidavit opposing the plaintiffs' request and argued that the plaintiffs have not established good cause for granting a discretionary preference as they have not shown how the county would be unable to adopt a new map for the 2024 election cycle if required to do so. He asserted that if they were required to, the redistricting committee and the County Legislature could schedule the necessary meetings to enact a new map in time for the election, and that the census data and other information needed to implement a new plan already exists and could be supplemented, if necessary, within this time period. He also argued that the plaintiffs have not alleged that candidates could not be found in 2022 when a similar timeline existed.

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

On September 7th, the petitioners who had their case dismissed by the trial court filed a notice of appeal with the Appellate Division (Fourth Department) seeking to reverse the Orleans County State Supreme Court's dismissal of their case alleging that the county's new legislative map contains partisan and racially gerrymandered districts, and that the county's combined geographic and at-large district scheme fails to ensure proper representation and makes it more difficult for minority communities to prevail in elections.

AROUND THE NATION

Alabama: *Allen v. Milligan* (congressional)

Federal judges ruled on September 5 that they will draft a new congressional map for Alabama after lawmakers failed to create a second congressional district where Black voters at least come close to comprising a majority. The court directed special master Richard Allen to submit three proposed new maps by September 25. Judge Richard Allen gave the parties to the litigation until today to submit proposed maps, and others until Wednesday, September 13, to submit proposed maps. Alabama is appealing the ruling to the U.S. Supreme Court and is asking the Supreme Court to put the order on hold while it appeals.

Last year, the U.S. Supreme Court held that Alabama having only one majority-Black district in a state that is 27% Black likely violated the Voting Rights Act, making it so the Republican-controlled Alabama legislature had to draw a new map. The legislature passed a new map in July that maintained a single majority-Black district and boosted the percentage of Black voters in another district from 30% to almost 40%. This failure to draw a second majority-Black district led the three-judge panel to question the state's solicitor general about the state's refusal to create a second majority-Black district. Alabama argued that the map complies with the Voting Rights Act and the Supreme Court's decision in the case and argued that the creation of a second majority-Black district would mean violating traditional redistricting principles. Alabama is also appealing the ruling in this case to the 11th Circuit Court of Appeals.

Georgia: *Pendergrass v. Raffensperger* (congressional)

A trial regarding whether Georgia's congressional map violates Section 2 of the Voting Rights Act started on September 5. The lawsuit was filed in December of 2021 on behalf of Georgia voters. In the complaint, the

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plaintiffs argued that the state legislature should have created an additional majority-Black district in the Atlanta metropolitan area because Black Georgians in the area vote cohesively as a bloc and are numerous and compact enough to form an additional majority-Black district. Roughly two weeks after the lawsuit was filed, the plaintiffs asked the court to block the map for the 2022 election.

In February of 2022, a federal judge denied the plaintiffs' request to temporarily block the map, keeping the map in place for the 2022 election. The judge relied on the *Purcell* principle (where courts should not change voting or election rules too close to an election to avoid confusion for voters or election officials). Around the same time that the plaintiffs asked for the map to be temporarily blocked, the state filed a motion to dismiss the case, but this motion was denied. Following the 2022 midterms, both the plaintiffs and the state made motions for summary judgment, asking the court to rule in their favor. In July of this year, District Court Judge Steve C. Jones denied both parties' motions and sent the case to trial.

Kentucky: Graham v. Adams (state legislative)

The Supreme Court of Kentucky will hear oral arguments on September 19 regarding a partisan gerrymandering case. Republicans are asking the court to uphold a lower court ruling that the Kentucky Constitution does not forbid partisan gerrymandering. The plaintiffs are asking the court to find that the state's constitution does not permit partisan gerrymanders and to reverse the Circuit Court's ruling.

The plaintiffs argue that the Republican-controlled legislature manipulated districts to create 75 safe Republican districts and nine competitive districts out of the 100 state House districts. In their complaint, the plaintiffs asked the court to declare the maps unconstitutional under Kentucky's constitution and asked the court to order the state to either enact old maps that conformed with Kentucky's constitution or to enact new maps that conformed with the state's constitution. On November 10, 2022, a trial court judge held that Kentucky's state House and congressional maps do not violate the state's constitution and noted that the state's constitution does not explicitly prohibit partisan gerrymandering. On November 28, 2022, the plaintiffs appealed this decision, and on March 29, 2023, the Kentucky Supreme Court took over the appeal after the plaintiffs filed a motion asking it to do so.

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

New York Census and Redistricting Institute

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 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.