

9-18-2023

## September 18 Roundtable Update

Jeffrey M. Wice



## **WE ARE NEW YORK'S LAW SCHOOL**

### **N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE**

#### **LITIGATION**

#### **Congressional: *Hoffmann et al v. Independent Redistricting Commission***

##### **Democratic Opposition to Cross-Motion for Stay Pending Appeal**

On September 5<sup>th</sup>, the Democratic petitioners filed a memo opposing the *Harkenrider* GOP Intervenors' request for a stay (or hold) pending the determination of this appeal. They maintain that the "appeal lacks merit, and the balance of harms tips sharply against a stay." They also argue that because they are "substantially likely" to win, the Court should not grant a stay.

They assert, contrary to the GOP Intervenors' claims, that the relief ordered by the Appellate Division does not violate the state constitution's redistricting amendments' "prohibition on mid-decade redistricting" or the Court's decision in *Harkenrider*, and that the case was filed within the four-month statute of limitations requirement.

##### **Amicus Brief of Lawyers Democracy Fund ("LDF") in Support of Intervenors**

The Lawyers Democracy Fund refers to itself as a non-profit "dedicated to promoting ethics, professionalism, and integrity in elections."

In its amicus brief, dated September 8<sup>th</sup>, it asks the Court to reverse the Appellate Division's decision. They maintain that ordering the IRC to reconvene, forcing another round of partisan legislative action, and triggering more litigation, would disrupt the 2024 election, strain election administration, and likely result in voter disenfranchisement in violation of state and federal constitutional protections.

They also argue that the current congressional map, which resulted in some of the most competitive races in 2022, serves the intentions of voters when they adopted the 2014 redistricting amendment. The group contends that throwing out this map would undermine the will and intention of the voters.

The brief asserts that while the Court in *Harkenrider* declined to follow the *Purcell Principle* (a federal anti-disruption principle that emphasizes the

**New York Census and Redistricting Institute**

importance of maintaining consistency in election procedures close to an election) because they were dealing with a “substantively” unconstitutional map, here, the current map is substantively constitutional. Therefore, they argue, there is no need to disrupt democratic elections and confuse or disenfranchise voters when the election is set to begin in less than five months.

**Amicus Brief of League of Women Voters of NY (“the League”) in Support of Intervenors**

The League is a “nonpartisan, not-for-profit organization dedicated to promoting informed and active participation of citizens in government.”

In its September 8<sup>th</sup> amicus brief, the League asks the Court to reverse the Appellate Division’s order and dismiss the petition.

The League argues that the *Harkenrider* decision, which ordered the judicial remedy that resulted in the existing congressional map, is controlling precedent in this case and “*stare decisis* commands that the petition be dismissed.” The League argues that *Harkenrider* was correctly decided as the judicial adoption of a new redistricting plan was the only constitutionally permissible remedy.

Additionally, the League presents several arguments for why the Court in *Harkenrider* intended the judicially adopted maps to be in effect for the rest of the decade. The League maintains that if the Court had intended the maps to only be valid for the 2022 elections, “it surely would have said so.”

The League reasons that:

“It is simply preposterous to indulge the notion that the Court consigned the electorate, the political parties, the members of Congress and the New York Senate elected at the 2022 election, as well as potential candidates for those offices after the 2022 election, to guess that new maps would be created after the election through a process the nature of which was never even hinted at in the *Harkenrider* opinion.”

The League also argues that the redistricting amendment prohibits mid-decade redistricting. The League asserts that the only exception to the constitution’s prohibition on mid-decade redistricting includes the “modification” of a plan that a court orders to fix a legal violation. The League argues that there is no exception for the “adoption” of a new plan, which is what the Petitioners are requesting.

## New York Census and Redistricting Institute

**Note-** the Court of Appeals will hear arguments in the Hoffman case on November 15<sup>th</sup> in Buffalo, NY at Old County Hall, 92 Franklin Street, Buffalo, New York.

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

On September 15<sup>th</sup>, the Appellate Division (3<sup>rd</sup> Dept.) granted the Plaintiffs' ( a group of Broome voters) motion for preferential scheduling.

To recap, the voters who brought this challenge (Tokos et al) had asked the court to hear the appeal sooner than the November term so that there would be sufficient time for a new map to be implemented before the county's 2024 election.

The Plaintiffs won their motion, and the court has scheduled the appeal for November.

### **Onondaga Redistricting Challenge: *Ryan et al v. McMahon et al***

On September 13<sup>th</sup>, Ronnie White, the new lawyer representing the Plaintiffs (Ryan et al) asked the court to extend the deadline for discovery in this county legislative challenge. He explained that upon taking over the case, he found out that no demands for documents or demands for the Defendants to answer specific questions had been sent on behalf of the Plaintiffs and those deadlines had passed.

On September 15<sup>th</sup>, in accordance with instruction from the judge, the lawyer for the county defendants submitted a letter to the judge with revised deadlines for discovery and other pre-trial procedures, including that the plaintiffs must let the court know the case is ready for trial on or before February 15, 2024.

### **Nassau County Legislature: *Coads et al v. Nassau County et al***

In a stipulation filed September 12<sup>th</sup>, both sides agreed to several deadline extensions:

- The plaintiffs have until September 20<sup>th</sup> to respond to the defendant's motion to dismiss.
- The defendants have until October 3<sup>rd</sup> to reply in support of their motion to dismiss.
- Proceedings related to the motion to dismiss are adjourned until October 4, 2023.

**New York Census and Redistricting Institute****CENSUS**

New York City Continues to grapple with how to accommodate more than 100-thousand migrants who have arrived since last year. Mayor Eric Adams has been calling for expedited work permits from the White House, but that's a complicated process. Now Governor Kathy Hochul and others are weighing the possibility of issuing New York—based work permits. The 5 Boro Institute's Grace Rauh and Bolton Saint John's Teresa Gonzalez have authored an op-ed appearing in AM New York where they call on Governor Hochul to issue state work permits for the newly arrived migrants. This invites a situation where New Yorkers should consider retooling for a new work force instead of attempting to ban them. As New York loses population, the influx of new New Yorkers can help stem population losses. You can read the oped here: <https://bit.ly/48kYjV7>

**EMPLOYMENT 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 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.