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## October 30 Roundtable Update

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

#### LITIGATION

#### **Congressional: *Hoffmann v. Independent Redistricting Commission* (IRC)**

**Coming This Week- Congressional Case Litigation Tracker:** With the upcoming November 15<sup>th</sup> Court of Appeals hearing on the Hoffmann case, the Institute will be posting a litigation tracker, providing updates and links to relevant documents.

#### **Recent Updates:**

3 new briefs were filed on October 23 supporting the Democratic position, asking the Court of Appeals to affirm the Appellate Division's order compelling the IRC to submit a second congressional map to the legislature.

#### **Breakdown of the parties:**

##### *Democrats*

- **Petitioners**
  - Anthony S. Hoffmann and others are a group of Democratic voters who filed this challenge last year seeking to compel the IRC to submit to the legislature a second congressional map.
- **Jenkins Respondents**
  - IRC Chairperson Ken Jenkins along with IRC Commissioners Ivelisse Cuevas-Molina and Elaine Frazier are Democratic-appointed commissioners who support the Petitioners' position.

##### *Republicans*

- **Brady Respondents**
  - IRC Commissioners Ross Brady, John Conway III, Lisa Harris, Charles Nesbitt, and Willis H. Stephens are Republican-appointed commissioners who appealed the Appellate Division's order
- **Harkenrider Intervenors**
  - Tim Harkenrider et al are Republican voters who filed the original *Harkenrider v. Hochul* case last year resulting in the appointment of a special master who redrew the state senate and congressional district maps. They are intervenors, meaning they are not original parties to the case but have joined as they have an interest in the outcome. They support the Brady Respondents' position.

**Definitions:*****Mandamus***

This is an Article 78 proceeding (lawsuit used to challenge an action or inaction by an agency or official) seeking mandamus relief. *Mandamus* refers to a legal action that people can take to ask a court to order a government official or agency to do something that they are required to do by law. In this case, the Democratic parties asked the court to compel the IRC to submit a second set of maps to the legislature. The Democratic parties contend that the IRC is duty-bound to do so under the New York Constitution's Redistricting Amendments.

**BRIEF FOR PETITIONERS**

The petitioners' brief presents four central arguments supporting their position that the Appellate Division correctly held that they are entitled to the relief they seek (to compel the IRC to submit a second set of maps). The petitioners assert that the Court of Appeals "should affirm the Appellate Division's well-reasoned order, which correctly concluded that neither the Redistricting Amendments nor this Court's *Harkenrider* decision bars petitioners' requested relief, and that petitioners initiated their mandamus proceeding at the proper time and in the proper court."

**(1) The Appellate Division's ordered relief is consistent with the redistricting amendments.**

The petitioners argue that the constitutional text permits court-ordered modification of maps to remedy legal violations, which is what they seek and what the Appellate Division ordered. Additionally, they contend that the constitution does not prohibit mid-decade alterations to redistricting plans when needed to remedy legal violations. They further assert that the intervenors' argument regarding limitations on when a substantively illegal map can be modified under section 4(e) ["that modifications to maps are limited only to minor changes to district lines and that only maps that contain 'legal errors' can be modified mid-decade"] are "invented limitations." They maintain that the redistricting amendments do not impose either limitation, and instead allow judicial intervention to remedy *any* legal violation, "no matter what type, no matter how large, and no matter when a map is challenged." The petitioners also assert that the relief granted by the Appellate Division is consistent with the purpose of the Redistricting Amendments, which the Appellate Division characterized as "the means of providing a robust, fair and equitable procedure for determination of voting districts."

**(2) The *Harkenrider* decision does not foreclose the Appellate Division's ordered relief.**

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The petitioners assert that the Court's decision in *Harkenrider* did not remedy the IRC's failure to fulfill its constitutional duty to submit a second set of maps because it was not asked to. They argue that *Harkenrider* addressed different claims under different circumstances (notably, the legislature's unconstitutional reaction to the IRC's failure to submit a second set of maps) and therefore the relief granted by the Appellate Division is consistent with the *Harkenrider* decision. The petitioners further contend that *Harkenrider* did not conclude that a judicially adopted map is the exclusive remedy for procedural constitutional violations and the decision in *Nichols* supports the Appellate Division's order.

**(3) The petitioners commenced this action within the applicable statute of limitations period for an Article 78 petition.**

The petitioners contend that the timeframe to file began when the 2021 redistricting legislation was declared unconstitutional and this proceeding was filed within four months of that decision.

**(4) This proceeding is not an improper "collateral attack" as the petitioners did not participate as parties in the *Harkenrider* case and the issues in that case are not identical to the issues in this case.**

The petitioners conclude by asking the Court of Appeals to affirm the Appellate Division's order and "return the matter to its constitutional design."

**BRIEF FOR JENKINS RESPONDENTS**

The Jenkins respondents make similar arguments to the petitioners and add that (1) the state constitution mandates that redistricting occur through the IRC process; (2) the Appellate Division appropriately ordered the correct remedy for the violation of law; and (4) the appellants' and amici's policy arguments lack merit and their interpretation of the constitution would actually incentivize political gamesmanship in the future as commission members from the minority party would be incentivized to deny the commission a quorum and "run out the clock" for the possibility that the process would pass into the hands of a court-appointed special master in their preferred county. The Jenkins respondents conclude by stating that if the Court of Appeals affirms the Appellate Division's order, they ask the Court to set a deadline for the IRC to submit a second congressional plan to the legislature.

**AMICUS BRIEF: Governor Kathy Hochul & Attorney General Letitia James in Support of Petitioners and Affirmance of Appellate Division Order**

Governor Kathy Hochul and Attorney General Letitia James present similar arguments to both the petitioners and the Jenkins respondents and add that the Court of Appeals "may construe the petition liberally to constitute a challenge to the court-drawn congressional map." They contend that while the

petitioners put forth a compelling case that they are entitled to a mandamus order compelling the IRC to reconvene to deliver a second submission to the legislature, if the Court has any doubts regarding the form of the case or the relief sought, it may interpret the petition as “a timely challenge to the current congressional map pursuant to article III, §5.” They argue that if there is an issue with the statute of limitations for an Article 78 proceeding, the Court can convert the case into one brought under article III, §5 which allows any citizen to bring a suit challenging a redistricting plan at any time “during which such apportionment is in force.”

## AROUND THE NATION

### **Georgia: Federal Court Orders New Congressional & Legislative Maps**

On October 26, U.S. District Court Judge Steve Jones struck down Georgia's state legislative and congressional maps after finding that the maps were drawn in a racially discriminatory manner in violation of Section 2 of the Voting Rights Act. Judge Jones's ruling follows an eight-day trial in September where the plaintiffs argued that the state's congressional and legislative maps diluted the voting strength of Black voters in violation of Section 2. Jones ordered Georgia's Republican majority General Assembly and Republican governor to act before December 8, stating that the court would redraw the maps itself if they failed to do so. To remedy the Section 2 violation, Georgia must adopt the following districts by December 8: an additional majority-Black congressional district in west-Metro Atlanta, two additional majority-Black Senate districts in south-metro Atlanta, two additional majority-Black House districts in south-Metro Atlanta, one additional majority-Black House district in west-metro Atlanta, and two additional majority-Black House districts in and around Macon-Bibb.

In addition to striking down Georgia's congressional and legislative maps and ordering the drawing of new maps that comply with Section 2, the court also rejected some of the state's most radical arguments. The court rejected the state's argument that plaintiffs cannot bring a private right of action under Section 2 and rejected the state's argument that Section 2 is unconstitutional, noting that the Supreme Court recently rejected the same argument in *Allen v. Milligan*.

### **North Carolina: Legislature Enacts a “Gerrymandered” Congressional Map**

On October 25, the North Carolina state legislature passed a new and admittedly gerrymandered congressional map. The state House, controlled by a Republican supermajority, voted for the new lines a day after the

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Republican-controlled state Senate approved them. The new congressional map created ten solidly Republican districts, three solidly Democratic districts, and one competitive district.

Last year, the North Carolina Supreme Court ruled that a previous gerrymandered map was illegal, leading to a court-drawn remedial map put in place for the 2022 midterms. The remedial map had seven Republican districts, six Democratic districts, and one competitive district, which led to each party winning seven House seats during the 2022 midterm elections. After the North Carolina Supreme Court struck down the state's congressional map, a Republican won a seat on the court, shifting the court from a Democratic to a Republican majority. Following this shift, the court promptly reversed the 2022 ruling, opening the door for state Republicans to again enact heavily gerrymandered maps. Lawyers who challenged the previous maps are determining whether there are any viable legal or constitutional challenges to the newly enacted congressional map.

The new lines likely ensure Republican dominance in a state that, while leaning Republican, is closely divided, as evidenced by former President Trump winning the state by only one percentage point in 2020. North Carolina has the lowest percentage of registered voters in the nation, a consequence of uncompetitive districts. As one North Carolina voter stated, "People don't feel like they're represented to the point where they don't even want to vote anymore."

**CENSUS****New Yorkers "On the Move" Out-of-State**

U.S. Census Bureau data and the American Community Survey's one-year estimates of "state to state" migration flows tracked migration patterns during the 2021–2022-year period. Since the pandemic, New York's population has been in steady decline. As of April 1, 2020, the resident population was 20,201,230, and in 2022, the resident population was 19,677,151, representing a loss of 524,079 residents in these two years.

People have relocated from New York to other states including Florida and New Jersey in the post-pandemic period. Experts have speculated several reasons for this trend. New York residents could be relocating in search of less expensive places to live, or in search of more affordable housing.

The Current Population Survey Annual Social and Economic Supplement (CPS ASEC) also revealed several reasons for interstate and intrastate migration during the 2021–2022-year period. A change in marital status was a common reason for moving. This could have been due to people resuming their plans post-pandemic, including weddings and divorces that had to be

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postponed. An estimated 12 percent fewer marriages and divorces took place in 2020 than researchers expected.

While a common reason listed for moving was a desire to move into a larger home, the percentage of movers who reported an upgrade in their living space declined, indicating a reversal of the housing boom of 2020. However, as people spent more time at home, home remodeling and improvement projects reportedly surged, and people became eager to move into nicer housing units. The share of movers seeking upgraded housing grew slightly in 2021 and then decreased to the baseline percentage in 2020. However, movers seeking neighborhood improvements increased in 2021 and, despite a decrease in 2022, stayed higher than in 2020.

Within this one year, there has been significant movement to Florida. While New Yorkers have been relocating to Florida for decades, the increase in number of people moving to the state may be explained by retirees seeking a larger community of people like themselves. Moreover, since 2020, Florida's resident population has steadily grown. As of April 1, 2020, Florida had a resident population of 21,538,226 and in 2022, Florida had a resident population of 22,244,823, representing an increase of 706,597 residents in these two years.

Further post-pandemic, there has been a significant shift to remote work that allows people to work from home. People who previously commuted to New York City for work do not have to live in the city to make a city salary and can live comfortably for less in the suburbs because of the flexibility that remote work offers to an individual and a family.

As these trends take force in society, we will continue to see how their influence shape migration patterns in the future.