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November 6 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****Timeline: NY Congressional Redistricting Litigation**

The New York State Court of Appeals will hear arguments in *Hoffmann et al. v. Independent Redistricting Commission* in Buffalo on November 15th. The final decision in this case will determine whether a new congressional map will be enacted before next year's election or the court-ordered map used in 2022 will remain in effect. We are presenting a timeline for this litigation going back to the original challenge filed in *Harkenrider et al v. Hochul*.

Harkenrider v. Hochul**Steuben County State Supreme Court (Trial Court)****February 3, 2022**

(same day that the Governor approved the legislature's redistricting map)

- Group of Republican voters filed lawsuit seeking to invalidate the newly enacted congressional and state senate districts (allegations relating to senate districts were added in the amended petition).
- They alleged that the redistricting process was constitutionally defective because the IRC failed to submit a second set of plans to the legislature as required under the 2014 constitutional redistricting amendments, therefore the legislature lacked the authority to draft and enact its own plan.
- They also alleged that the congressional and state senate maps were unconstitutionally gerrymandered in favor of Democrats.

March 31, 2022

- Following oral argument and testimony of several experts, the court declared the congressional, state senate, and state assembly maps void, reasoning that the legislature's enactment of the maps absent submission of a second redistricting plan by the IRC was unconstitutional.
- The court also found that the congressional map violated the constitutional prohibition on partisan gerrymandering.
- The court ordered the legislature to submit bipartisan maps to the court for review by April 11, 2022.
- The court held that if the legislature failed to submit maps that received sufficient bipartisan support by that date, the court would retain a neutral expert (special master) to prepare maps.
- The respondents immediately appealed this decision to the Appellate Division, Fourth Department

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April 18, 2022

- The trial court appointed Dr. Jonathan Cervas of Carnegie Mellon University as special master.

May 21, 2022

- The trial court adopted new congressional and state senate maps drawn by special master.

Appellate Division, Fourth Department**April 8, 2022**

- The appellate division granted a partial stay of the trial court decision pending appeal, allowing the state to proceed with preparations for the 2022 elections using the enacted plans, but also allowing the trial court to move forward with retaining a special master to prepare a draft congressional map while the appeal proceeds.

April 21, 2022

- The court affirmed the trial court's invalidation of the congressional plan as being an unconstitutional partisan gerrymander but reversed the trial court's finding that all three plans were procedurally defective.
- The court ordered the legislature to enact a new congressional plan by April 30, 2022.
- Both parties appealed this decision to the state's highest court.

Court of Appeals**April 26, 2022**

- Oral argument held

April 27, 2022

- The court held that both the congressional and state senate plans were unconstitutionally enacted in violation of the state's constitutional redistricting process.
- The court also found that the congressional map was unconstitutionally gerrymandered.
- The court sent the matter back down to the trial court to adopt new maps with the assistance of a special master.

Hoffmann v. IRC**Albany County State Supreme Court (Trial Court)****June 28, 2022**

- Group of Democratic voters filed lawsuit against the NY State Independent Redistricting Commission alleging that the IRC failed to complete its mandatory redistricting duties under the state constitution.

July 14, 2022

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- Their amended petition narrows the scope of their focus to only the congressional districts and asks the court to compel the IRC and its commissioners “to fulfill their constitutional duty under Article III, Sections 4 and 5 of the New York Constitution by submitting a second round of proposed congressional districting plans for consideration by the legislature, in order to ensure that a lawful plan is in place immediately following the 2022 elections and can be used for subsequent elections this decade.”

September 12, 2022

- The court dismissed the case, finding that there is no authority for the IRC to issue a second redistricting plan after February 28, 2022, in advance of the federal census in 2030.

October 17, 2022

- The petitioners appealed the dismissal to the Appellate Division, Third Department.

Appellate Division, Third Department**June 8, 2023**

- Oral argument held

July 13, 2023

- The court ruled in favor of the petitioners (Democratic voters), finding that they “demonstrated a clear legal right to the relief sought,” and noting that the decision “honors the constitutional enactments as the means of providing a robust, fair and equitable procedure for the determination of voting districts in New York.”
- The court ordered the IRC to “commence its duties forthwith.”

July 25, 2023

- The GOP parties appealed this decision to the state’s highest court.

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October 2, 2023

- Following the Court of Appeals order holding that the stay (against the Appellate Division decision) does not prohibit the IRC from taking any actions, New York Independent Redistricting Commission Chair Kenneth Jenkins, and Commissioners Collado, Cuevas-Molina, Fleteau, and Frazier issued a statement inviting public input while awaiting a decision from the Court of Appeals on congressional districting by the Commission:
- The public is invited to submit input by emailing submissions@nyirc.gov or by sending mail to Attention: Submissions, Independent Redistricting Commission, 250 Broadway, 22nd Floor, New York, NY 10007. All submissions will be made available to all Commissioners and staff.

New York Census and Redistricting Institute**Court of Appeals****August 8, 2023**

- Court set briefing schedule:

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**

September 19, 2023

- **AUTOMATIC STAY:** In a technical win for Republicans and procedural win for the Democrats, the Court of Appeals announced that there is an automatic stay of the Appellate Division order that directed the IRC to "commence its duties forthwith" (i.e., to send a second map submission to the legislature) but clarified that the IRC is not prohibited from taking "any actions." The court's order "stayed" or paused the IRC from taking official action, "but the stay does not prohibit the IRC or Independent Redistricting Commissioner its members from taking any actions."

November 15, 2023

- The Court of Appeals will hear arguments in Buffalo, NY at 1:00 PM at Old County Hall, 92 Franklin Street, Buffalo, New York.

Congressional: Democratic IRC Commissioners Invite Public Input in Advance of Court of Appeals Decision

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CENSUS**Looking Inside New York City Neighborhoods**

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New York City officials do not provide “official” borders for city neighborhoods. The New York Times recently conducted a study to understand where New Yorkers believe neighborhood boundaries begin and end, and whether these borders were consistent with borders provided by Google Maps and companies such as Street Easy. The results of this study were consolidated into one map, which is possibly the most detailed map of the city’s neighborhoods ever compiled.

During the creation of the map, reporters consulted numerous experts on New York, including historians, professors, authors, directors of organizations such as Neighborhood X. The reporters also contacted all 59 city community boards and the offices of all 51 City Council members, who contributed to the project by spreading the survey throughout communities and providing information on the neighborhoods they represented. The neighborhood colors, names, and shapes were based on about 37,000 drawings and responses by New Yorkers. In areas that received less survey coverage, the reporters supplemented the data with older survey results from DNAinfo. The finalized map includes more than 350 distinct neighborhoods based on these responses.

To appear on the map, a reader-submitted neighborhood name needed to comprise at least one percent of the names submitted for a given block. For some neighborhoods, the reporters made a judgment call to group similar names into one percentage, such as FiDi and the Financial District. On the map, brighter solid colors symbolize an agreement on what the area is called. Blurrier colors demonstrate how much disagreement or uncertainty exists between readers.

The blurry or “fuzzy” blocks often signify areas that are in transition or dispute, where no consensus exists among New Yorkers or where gentrification is currently revising neighborhood boundaries. The sharp colors reflect features of the city: wide avenues, highways, or remnants of canals. When you cross this feature, you have clearly entered another neighborhood. An example of this feature is Broadway, where each side signals whether you are in Bedford-Stuyvesant or Bushwick.

New Yorkers also responded with frustration about many neighborhoods. They said the boundaries were “blurred,” “rebranded,” “chipped away at,” or “invented by real estate agents.” This data exhibited how city blocks can be used as pawns in “geographical warfare,” often on the offense or defense for space amid demographic changes, migration, and real estate advertising schemes. The article concludes that richer neighborhoods historically get bigger, while bigger and comparatively poorer neighborhoods tend to get carved into smaller, separate ones. Some of these new smaller neighborhoods get richer and get bigger again, while others just disappear.

To see the maps and report, go to:

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<https://www.nytimes.com/interactive/2023/upshot/extremely-detailed-nyc-neighborhood-map.html>

<https://www.nytimes.com/interactive/2023/10/29/upshot/new-york-neighborhood-guide.html>

AROUND THE NATION**North Carolina Democrats Plan To Challenge New Congressional Map**

North Carolina Democrats intend to challenge the Congressional lines recently enacted by the state's legislature. Governor Roy Cooper stated that the lines will be challenged, calling them "gerrymandering on steroids." Anderson Clayton, the chair of the North Carolina Democratic Party, stated "If they're going to make me go fight them on the VRA, I absolutely plan on it." Democrats and interest groups in the state are discussing who should bring the lawsuit and whether they should sue under the Voting Rights Act or bring a racial gerrymandering claim under the Equal Protection Clause of the Fourteenth Amendment.

The newly enacted lines are set to shift several districts from Democratic to Republican control. The map used for the 2022 midterm election, a court-drawn map put in place following the North Carolina Supreme Court's ruling that the previously enacted map was an illegal gerrymander under the state's constitution, led to each party winning seven seats in Congress. The map projects to shift several districts in Republicans' favor, with the map creating ten solidly Republican districts, three Democratic districts, and one competitive district. Jeff Jackson, a first-term congressman, announced that he will not be running for a second term in Congress after his district was changed from a "toss-up" to "likely-Republican" under the new map. Democrat Kathy Manning is projected to lose her seat, and Democrat Donald G. Davis is also in danger of losing his seat, as the new lines dilute the Black electorate in his predominantly Black district, reducing his previous four-point projected advantage in the district to barely a one-point advantage.

Republicans argue that the lines were drawn to ensure that they would be upheld in court, and anticipate the map being in place for the 2024 midterms. Democrats acknowledge that they may not have a "slam dunk" case but view their efforts in combating the currently enacted map as only part of the parties' long-term strategy in securing more seats in the state's legislature and on the state's Supreme Court.

Michigan's Legislative Map Trial Gets Underway

A federal trial began in *Agee v. Benson* on November 2 in a case brought by Black voters challenging Michigan's state House and state Senate maps. The

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voters brought claims under Section 2 of the Voting Rights Act and for violations of the Equal Protection Clause of the Fourteenth Amendment. The voters allege that Michigan's Independent Citizen's Redistricting Commission violated Section 2 by depriving Black voters of an adequate number of districts in the Detroit area where they can elect the candidate of their choice. In establishing their Equal Protection claim, the plaintiffs allege that the Commission stacked Black voters into districts that have traditionally had majority-White voting age populations and did so with a racially discriminatory purpose, arguing that traditional redistricting principles and natural population shifts were unjustifiably ignored to artificially manipulate the Black voting age population of the districts.

The Commission argues that the new legislative maps score significantly better in terms of partisan fairness when compared to the state's previous set of maps. The Commission also argues that it did not deny Black voters the opportunity to elect their candidate of choice when it turned majority-Black districts into cross-over districts, which are districts where members of the White majority vote for the minority's preferred candidate. The plaintiffs refute the Commission's argument that the establishment of cross-over districts justifies the elimination of Black-majority districts, leaving this issue to be considered at trial.

In August a federal three-judge panel allowed the plaintiffs' claims against most of the challenged districts to proceed to trial but did rule partially in favor of the Commission, dismissing claims against certain House and Senate districts. At trial, the members of the same three-judge panel will determine whether several House and Senate districts violate Section 2 and will also decide whether race was unconstitutionally used as the predominant factor in the drawing of a number of House and Senate districts. The trial is expected to conclude on November 8.