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November 27 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****Congressional: *Hoffmann v. Independent Redistricting Commission (IRC)***

For complete background information on the case, see the Institute's litigation tracker here: <https://redistrictingonline.org/stateredistrictingalmanac/state-redistricting-info-new-york/>

Nassau County: League of Women Voters Settles Challenge Against County Legislature

In a settlement agreement, the Nassau County Legislature has agreed to provide the League of Women Voters of Port Washington-Manhasset with redistricting data files and documents that were originally denied to the plaintiffs. The materials are being provided to the League's attorneys at the New York Civil Liberties Union. A copy of the agreement is attached. Readers who wish to see the entire record of documents should contact Jeffrey.wice@nyls.edu.

AROUND THE NATION**8th Circuit: Private Plaintiffs Cannot Sue Under Section 2 of the Voting Rights Act**

In a 2-1 ruling last week, a three-judge panel of the 8th Circuit Court of Appeals held that private litigants cannot bring lawsuits under Section 2 of the Voting Rights Act, but rather only the U.S. Attorney General can bring such claims. This decision has the potential to have major ramifications on the fight against unfair maps and other voting laws since the majority of successful Section 2 claims are brought by private litigants.

The court's opinion stems from a redistricting lawsuit filed on behalf of the Arkansas State Conference NAACP and Arkansas Public Policy Panel challenging Arkansas' state House map. The plaintiffs alleged that the map diluted Black voting strength in violation of Section 2 and argued that five additional majority-Black House districts should be drawn to correspond to the state's Black population. The case was dismissed after the district court judge found that there was no private right of action under Section 2, despite the fact that the defendants did not raise this argument. The plaintiffs appealed to

the 8th Circuit, and the U.S. Department of Justice intervened to defend the plaintiff's position that a private right of action existed. The 8th Circuit affirmed the district court's findings.

The 8th Circuit's decision goes against precedent in other circuits. For example, the 5th Circuit held just last week that Section 2 created a private right of action. In addition, the Supreme Court, in the 2023 *Allen v. Milligan* decision, agreed with private plaintiffs in a Section 2 case. By holding that Section 2 does not allow for a private right of action, the 8th Circuit ruling threatens remaining protections under the Voting Rights Act. A U.S. Supreme Court appeal is expected.

Trial Court Orders New State Senate Map for Tennessee, but Upholds State House Map

On November 22, a 2-1 panel of a Tennessee trial court ordered the state's legislature to redraw the state's Senate map but upheld the state's House map. This decision stems from a lawsuit filed on behalf of Democratic voters challenging Tennessee's new state House and Senate maps drawn after the release of 2020 census data. The plaintiffs argued that Republicans in the Tennessee Legislature unnecessarily split counties to create state House districts and numbered state Senate districts non-consecutively in violation of the state's constitution. The plaintiffs also argued that Republicans created the districts to maximize the Republican advantage in the state legislature and argued that the districts should be blocked and replaced with legal maps.

The court upheld the state House districts but struck down the state's Senate map after finding that it is unconstitutional due to being not consecutively numbered. The court gave the Tennessee legislature until January 31, 2024, to adopt a Senate plan that complies with the Tennessee Constitution.

North Dakota to Appeal Decision Striking Down State's Legislative Map

North Dakota's Secretary of State Michael Howe announced that he plans to appeal the district court's decision that protected two Native American tribes' voting rights. Last week, U.S. District Chief Judge Welte ruled that the tribes' voting rights were diluted by the state's 2021 legislative redistricting map. The case was brought by private plaintiffs challenging the plan under Section 2. When announcing that the state plans to appeal, Secretary of State Howe cited the 8th Circuit's 2-1 ruling earlier this week that held that private plaintiffs do not have a private right of action under Section 2 of the Voting Rights Act. North Dakota falls within the 8th Circuit; thus, Secretary of State Howe may have a strong argument on appeal.

Louisiana Requests Rehearing En Banc Following 8th Circuit's Decision

Louisiana is seeking rehearing en banc following the 8th Circuit Court of Appeal's decision that plaintiffs do not have a private right of action under Section 2 of the Voting Rights Act. Last year, the 5th Circuit ruled that Louisiana's congressional redistricting plan violates Section 2. The case has been through several rounds of appeals, but it has yet to be decided how the state's Section 2 violation will be remedied.

Louisiana argues that the 8th Circuit's decision created a circuit split regarding whether Section 2 creates a private right of action and argues that the 5th Circuit should rehear the case en banc to determine whether Section 2 creates a private right of action. Due to the 8th Circuit's decision only being made earlier this week, Louisiana asked for a sixty-day extension to file a petition for rehearing en banc, as the state argues that it needs more time to write its brief.