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March 4 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****REDISTRICTING****New York's Congressional Redistricting Concludes**

After two years past normal deadlines, the state's congressional redistricting process has finally concluded without subsequent legal challenges. On February 28th, Governor Hochul signed Chapter 92 of the Laws of 2024 creating final congressional district boundaries to be used for the 2024-2030 election cycles. The Governor also signed Chapter 93 moving the start date for congressional petitioning to February 29th.

The map was approved by bipartisan supermajorities in the Assembly and Senate.

Each congressional district now includes either 776,971 or 776,972 people (with the exception of CD 14 containing 776,970 people). Federal law requires congressional districts to be exactly equal in population (while state legislative districts can vary by up to 10% and all local government districts by 5% from the size of the largest to smallest districts).

In enacting the new map, the legislature overrode a state statute limiting changes from the state redistricting commission's map by no more than 2% per district. A 2% limit on changing congressional districts would not have permitted the legislature to make the changes it deemed necessary to correct for communities of interest changes and to limit county splits.

Reviews of the map by the media and outside experts gauged the plan to be fair. According to Cook Political Report analyst David Wasserman, "I call this a mild gerrymander. Any map that makes deliberate choices to benefit a party is a gerrymander on some level, but this is not an aggressive or maximal gerrymander by any means."

Republican Party leaders indicated that there was no further interest in challenging the new map in court.

State redistricting efforts will now focus on how to avoid the mistakes, misjudgments, and misguided efforts of the last two years. It's clear to most that the constitutional amendment approved by voters in 2014 did not create an independent process as envisioned by the amendment's sponsors. Efforts are already underway to develop a new constitutional amendment to rework

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the redistricting process and ways to make it more independent. A new amendment would have to be approved by two separately elected state legislatures followed by statewide voter approval.

LITIGATION**Two Nassau County Legislative Map Challenges Joined for Purposes of Discovery: *Coads et al v. Nassau County & NY Communities for Change v. Nassau County***

There are two pending challenges to Nassau County's legislative districts. The first was filed in July 2023 and alleged partisan gerrymandering in violation of the rank-ordered redistricting criteria in Section 34 of the NY State Municipal Home Rule Law (MHRL). The second was filed early last month and alleged racial vote dilution in violation of the New York Voting Rights Act along with violations of the rank-ordered redistricting requirements in the MHRL regarding racial vote dilution and partisan gerrymandering.

On February 28, after multiple rounds of recusals and reassignments due to conflicts of interest and the potential for an appearance of impropriety, both actions were assigned to Westchester County State Supreme Court Judge, Honorable Paul Marx.

On March 1, Judge Marx issued an order joining the two cases for purposes of conducting discovery. Judge Marx explained that the actions involve common questions of law or fact and involve some of the same parties, therefore, conducting joint discovery will reduce litigation expenses and avoid redundancies.

NEW YORK ELECTION LAW

N.Y. JOINING ERIC?: A bill authorizing the state Board of Elections to join "multistate voter list maintenance organizations" is currently working its way through the Legislature. If passed, New York will join the nonprofit Electronic Registration Information Center (ERIC).

ERIC helps states maintain accurate databases of eligible voters by having states send voter registration and motor vehicle department data at least once every 60 days. ERIC then uses the data, as well as official death records from the Social Security Administration and change-of-address data from USPS, to report the up-to-date voter roll information back to each state. If the measure is signed into law, the Board of Elections will quickly disseminate guidance to counties.

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Redistricting Challenges: Bill A435B/S8638b(Chapter 91 of the Laws of 2024) requires any action challenging redistricting laws enacted by the Legislature to be commenced in only four specified courts in New York State: Albany, New York City, Erie, and Westchester counties. At least one of the petitioners must reside in the county where the action is brought.

Food & Beverages at the Polls: Trial begins on Monday, March 4th for a lawsuit filed on behalf of the Brooklyn Branch of the NAACP against various New York election officials. The lawsuit challenges New York's line-warming ban, which prohibits nonpartisan groups from providing food or drinks to individuals waiting in line to vote at polling places. The plaintiffs allege that this law violates the First and Fourteenth Amendments because the law criminalizes free speech, burdens voters' rights to participate in the political process, and it is unconstitutionally "overbroad and vague."

AROUND THE NATION

Kansas: *Coca v. City of Dodge City*, a federal trial challenging Dodge City's at-large commission election system, has begun. The plaintiffs argue that this method of election violates the Voting Rights Act of 1965 and the Equal Protection Clause of the Fourteenth Amendment because it dilutes Latino votes.

Expert analysis of elections from 2014 and 2022 found clear evidence that Hispanic-preferred candidates received significantly higher support in heavily Hispanic districts, but performed poorly in heavily white districts, which typically cost them the election. The plaintiffs are calling for immediate reform towards a district-based election system.

Minnesota: The Minnesota Voting Rights Act (MNVRA), aimed to prevent voter suppression and vote dilution, has been introduced by Minnesota Democrats in the state House and Senate. The MNVRA would prevent any action that results in, or is likely to result in, a disparity in voter participation or opportunities for voters to participate in the political process and nominate or elect candidates of their choice, especially in regards to protected classes.

Wisconsin: The Wisconsin Supreme Court denied a request from a group of voters seeking to reopen previous litigation over the state's congressional map. The request stems from a 2022 ruling that used the "least change principle," which is now defunct due to a December 2023 ruling in a separate case. Since December, Wisconsin has implemented new legislative districts. The group of voters alleged that Wisconsin's current congressional map violates the newly clarified redistricting criteria because the map "suffers from serious partisan unfairness" and violates the separation of powers principle.

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If granted, the request would have potentially provided an opportunity for the implementation of new districts that comply with the state's redistricting criteria before the 2024 elections. Wisconsin's current congressional districts will remain for the 2024 elections as a result. However, the court order does not preclude new litigation challenging Wisconsin's congressional districts for elections in future years.