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## May 20 Roundtable Update

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### **N.Y. ELECTIONS, CENSUS & REDISTRICTING UPDATE**

#### **N.Y. VOTING RIGHTS ACT LITIGATION**

##### **Newburgh: *Oral Clarke et al v. Town of Newburgh***

On May 17, the state supreme court denied the town's motion to dismiss a challenge against the town's at-large town board based on its claim to have a safe harbor extension under the state's new John R. Lewis voting rights law. The court held that the town failed to establish the three requisite elements for a town resolution to qualify for the 90-day safe harbor halt on a potential plaintiff filing a lawsuit: (1) intent to enact and implement a remedy; (2) specific steps to facilitate approval and implementation of a remedy; and (3) a schedule for enacting and implementing a remedy. The court found that the town's resolution only called for an investigation of the town's at-large election system and not an intent to implement a remedy, the steps it would take, or a schedule for enacting and implementing such remedy.

##### **Nassau County Legislative Map Challenges**

On May 14, plaintiffs' attorney Perry Grossman filed a motion asking the state supreme court to advance the return date of non-party county expert Sean Trende's motion to quash a subpoena from May 29 to May 20 as "is two days before the due date for plaintiffs' expert reports" and "advancing the return date on Trende's motion to quash is necessary to permit plaintiffs to conduct fact discovery on Trende prior to the disclosure of their expert reports and to address defendants' attempts to obstruct discovery into their wrongful conduct through sweeping and unjustifiable claims of privilege."

On May 16, the court declined this request, noting that the issues raised in Trende's motion are similar to those raised in the other non-parties' motions and that "these issues are presently before the court for decision, and they are being addressed by a very busy court with other equally important cases to attend to."

#### **ELECTION LAW**

**Early Voting- *Stefanik v. Hochul*:** New York Representative Elise Stefanik and her co-plaintiffs have appealed their challenge to the state's early voting law to the New York Court of Appeals after a state appellate court dismissed the case. The lawsuit was filed on behalf of the Republican National Committee, New York Republican State Committee, and other Republican organizations, challenging the New York Early Mail Voter Act.

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The law allows voters to vote by mail during the early voting period. Prior to this law, voters were only allowed to vote absentee if they were (1) going to be absent from the county or New York City, or (2) if the voter was unable to vote in person due to a physical disability or illness. The Stefanik plaintiffs argue the law violates the New York Constitution because the law applies to voters outside of the two groups that the state Constitution allows to vote absentee. The plaintiffs requested the court to declare the law as unconstitutional and block its implementation.

A panel of appellate court justices unanimously voted that universal mail-in voting was “properly implemented through legislative enactment” and does not violate the New York Constitution. Stefanik appealed this decision to the New York Court of Appeals. Since this lawsuit was filed, the mail-in early voting system has continued its rollout. The option was available for the presidential primaries in April and the special election to replace George Santos after he was removed from Congress.

**CENSUS**

**New York Population Changes:** According to a new report released by the U.S. Census Bureau, New York residents have continued to migrate to other states. Between 2022 and 2023, New York State lost 216,778 residents. Between 2020 and 2023, New York lost an estimated total of 482,257 residents. The outmigration was most significant in New York City. Between 2022 and 2023, the Bureau estimates that roughly 78,000 residents have moved out of the city.

Other cities across New York also saw a decrease in residents. In Buffalo, Syracuse, and Rochester, the populations dropped by more than 1,000 residents in each city. In Yonkers and Utica, the population decreased by less than 1,000 residents. The only cities that saw population increases were Albany and New Rochelle, but only with approximately 1,000 residents each. Despite these decreases, the data shows that New York’s outmigration is slowing down. Approximately 81,000 fewer residents left the state in 2023 than in 2022: representing a 27% decrease.

The Census Bureau report shows that most individuals moving from states like New York, Illinois, and Massachusetts are moving into states including Arizona, Florida, and Texas. Experts correlate the outmigration to issues like lack of housing and access to employment, which Governor Kathy Hochul has echoed, citing a need for affordable housing.

The population decline has affected state revenue and tax collections. According to the Internal Revenue Service, New York lost approximately \$24.5 billion in state-adjusted gross income in 2021. State Senator. Jim

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Tedisco and Democratic state Rep. Angelo Santabarbara have filed legislation to institute a bipartisan state commission to study why residents are leaving New York.

**AROUND THE NATION**

**Federal Election Non-Citizen Voting:** U.S. House Speaker Mike Johnson (R-La.), Representative Chip Roy (R-Texas), and Senator Mike Lee (R-Utah) have introduced a bill that would require people to provide proof of their U.S. citizenship when registering to vote in federal elections. The bill is entitled the “Safeguard American Voter Eligibility” (SAVE) Act.

Legislators supporting the SAVE Act particularly criticized a D.C. law that allows noncitizens to vote in local elections. Senate Republicans have introduced a bill to overturn this D.C. legislation, and House Republicans have introduced a companion bill. Some officials have also argued that registered noncitizens should be removed from current voter rolls.

**Louisiana Supreme Court Redistricting Challenge:** Oral arguments in the 5th U.S. Circuit Court of Appeals have begun for *Chisom v. Louisiana*. In January, the Court voided a 3-judge panel’s October 2023 decision which upheld *Chisom*’s consent decree.

The original lawsuit was filed in 1986 by Black Louisiana voters and resulted in a consent decree in 1992. The agreement ensured the state’s Supreme Court elections did not violate Section 2 of the Voting Rights Act by requiring the state to (1) create a temporary eighth seat on the Louisiana Supreme Court, and (2) ensure that the justice occupying that seat was an equal member of the Court. The decree established a majority-Black district for state Supreme Court elections.

In 1997, the *Chisom* seat was dissolved after legislation established a majority-minority Supreme Court district, but the consent decree remained in effect. In 2021, Louisiana moved to dissolve the consent decree. In May 2022, the district court declined Louisiana’s request, stating that the decree was imperative to ensure Louisiana complied with Section 2 of the Voting Rights Act.

Louisiana appealed this decision to a 3-judge panel on the 5th Circuit, which affirmed the district court’s decision to keep the consent decree in effect. The 5th Circuit then voided the panel, now hearing the case en banc.

**Louisiana Congressional Maps:** The U.S. Supreme Court has granted requests to pause a lower court’s ruling that struck down and blocked Louisiana’s new congressional map from being used in future elections. The

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Court will allow Louisiana's current map to remain in place for the 2024 elections while the parties appeal the ruling.

The ruling stems from a lawsuit filed by 12 voters who identified as "non-African Americans," in response to Louisiana enacting a new congressional map in January. Last year, Louisiana was ordered to enact a new map with two majority-Black districts after the court found the original map violated Section 2 of the Voting Rights Act. This new lawsuit aimed to block the new map, alleging the map is a racial gerrymander by having two majority-Black districts. The 3-judge panel ruled in favor of the 12 voters, holding that the new map violated the 14th Amendment.

In response, Louisiana filed an emergency application to pause the ruling that blocked the map and established a timeline for when the state must implement a new map. Louisiana argued that if its Secretary of State does not have a map by May 15, the only map that could be "feasibly implemented" would be the map that was struck down in 2022.

By granting this request, the U.S. Supreme Court locked in the congressional map for the 2024 elections that includes two majority-Black districts instead of one. The case will now be heard next term.

**EVENTS**

**June 18:** New York Law School will host a conference on redistricting from 9:30 to Noon at the school. Panels will focus on the 2014 constitutional amendment, the post-2020 process and what happened, and next steps for a new constitutional amendment before the post-2030 process gets underway. More information will be provided in future updates.