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June 10 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. ELECTIONS, CENSUS & REDISTRICTING UPDATE****EVENTS****June 18 Conference- N.Y. Redistricting: What Happened and What's Next?**

New York Law School will host a conference on redistricting from 9:30 to Noon at the school (located at 185 W. Broadway in Manhattan's Tribeca neighborhood). 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. 2022 Court Special Master Jonathan Cervas will keynote the event. For more information and a link to register for the event, see:

<https://www.nyls.edu/events/new-york-redistricting-what-happened-and-whats-next/>

New York Redistricting and Need for Reform Before 2030

Jeff Wice and Piper Benedict published a new article in CityLand on the state's redistricting process and what needs to change before the 2030 process gets underway. Excerpts:

"New York State's redistricting process following the 2020 Census failed to live up to the reforms envisioned by voters who endorsed the 2014 constitutional changes. Instead, the redistricting process proved unworkable, missed constitutional deadlines, and resulted in judicially imposed districts. The time to fix the state's redistricting process starts now, before the 2030 redistricting cycle gets underway.....

"The now four-year record of confusion and litigation makes clear that the process created by the 2014 amendment was deeply flawed and is in urgent need of substantive reforms. The next redistricting cycle will follow the 2030 Census and is now just a short seven years away. Without reform, New York will likely end up with the same sort of chaotic and unsatisfactory redistricting process it experienced following the 2020 census.....

"New York State must reform its redistricting process before the 2030 cycle gets underway. Constitutional reforms are needed in three overall areas: a new redistricting process; tighter redistricting rules and criteria to be followed by the Commission; and standards to be followed by state courts in reviewing redistricting plans.....

"To amend the state constitution, an identical amendment must be approved by two successively elected state legislatures before being submitted to the state's voters for approval. Since a new amendment should be in place before 2029, the legislatures elected no later than in 2024 and 2026 must develop and approve an amendment so it can be approved by voters in the November 2028 election or sooner. Discussion is already underway to enact a new redistricting process and new

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proposals should be considered by the Legislature by next year. It's important that the redistricting reform effort gets well underway before the 2025 state legislative session starts. After two years of chaos and uncertainty over the post-2020 maps, New York can ill-afford a repeat performance after 2030."

Read the entire article here: <https://www.citylandnyc.org/new-york-redistricting-what-happened-and-where-are-we-going/>

N.Y. VOTING RIGHTS ACT LITIGATION**Nassau County Legislature: *Coads et al v. Nassau County & NY Communities for Change v. Nassau County***

On June 4, counsel for non-party and county defense attorney Mischa Tseytlin in *NY Communities for Change* filed a reply memorandum in support of the motion to quash his subpoena and for a protective order against his deposition. Counsel for Tseytlin argues that the plaintiffs do not have a "good faith basis" to seek discovery from the defendant's counsel. Counsel also argues that the subpoena improperly seeks testimony that is protected by the attorney-client privilege and work product doctrine, of which the plaintiffs have failed to show otherwise. Further, counsel argues that the plaintiffs fail to provide a legitimate basis to disregard the doctrine of legislative privilege in this case.

On June 6, former County Legislator Richard Nicoletto's motion to quash his subpoena and for a protective order was granted in *Coads et al*. The Court held that Nicoletto is entitled to the full common law legislative privilege, which protects him from compelled deposition testimony regarding the "legitimate legislative acts" he performed during the redistricting process. He may only be deposed regarding the information that was already publicly disclosed through Troutman law firm memorandum and counsel's testimony at the legislative hearing.

On June 6, the Court declined to quash the subpoena based upon attorney-client privilege or the work product doctrine in advance of Nicoletto's deposition. The Court ordered that any assertion of either privilege must be asserted during Nicoletto's limited deposition, and only if the questions intrude on such privileged areas. The parties may seek rulings from the Court on the objections made during the deposition.

On June 6, the Court ordered former county redistricting commission chair Francis Moroney's subpoena to be quashed and for a protective order to be granted. The Court decided that Moroney is an agent of the legislature and, under New York law, is entitled to protection from questioning about his legislative acts performed in connection with creating redistricting maps for the Legislature's "consideration and possible enactment." As a result, the Court ordered that Moroney shall not be subject to deposition.

ELECTIONS**Pro-Biden PAC Challenges Robert F. Kennedy, Jr. Petitions**

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As reported in the New York Times and Albany Times Union (quoted below), the Biden-friendly Clear Choice PAC “which is aimed at stopping third-party candidates, filed the challenge with the New York State Board of Elections on Thursday alleging at least 102,000 of the more than 146,000 signatures that Kennedy’s campaign turned in are invalid.

The challenges, if substantiated, would put Kennedy under the 45,000-signature minimum required to get on the New York ballot for the presidential election.”

AROUND THE NATION

Arkansas: The U.S. Supreme Court has told a lower court to reexamine a case involving claims that congressional districts in Arkansas were drawn to minimize the influence of Black voters. The plaintiffs alleged that the map drawn in 2021 split a single community of 140,000 Black voters from one congressional district into three different districts, diluting Black votes.

The Court also discarded a federal 3-judge panel’s ruling that left Arkansas’ congressional district map in place. The lower court decided that the plaintiffs had failed to “create a plausible inference” that race was the predominant consideration when the new map was drawn. A separate challenge of the same map is slated to go to trial next year.

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