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August 26 Elections, Census & Redistricting Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. ELECTIONS, CENSUS & REDISTRICTING UPDATE****REDISTRICTING****Orange County Legislature to Hold Public Hearing Tomorrow**

The Orange County Legislature will hear from the public tomorrow at a public hearing for comment on a draft county legislative map to be used beginning in the 2025 county legislative elections. The hearing will take place in the county legislature's chambers at 255 Main Street in Goshen, NY starting at 5:00 PM. The hearing can be viewed here: <https://www.youtube.com/c/OrangeCountyNewYork>

ELECTION LAW**New York Court of Appeals Upholds Mail-In Voting Law**

In a 6-1 ruling, the New York Court of Appeals upheld a state law that allows all registered voters to cast their ballots via mail-in voting. The decision affirmed lower court rulings that found the law—titled the “Early Mail Voter Act” and that went into effect last January—did not violate the New York Constitution.

Republican challengers, led by U.S. Representative Elise Stefanik, argued that New York's constitution requires individuals to vote in person. Chief Judge Rowan Wilson stated in the majority opinion that while the question was “difficult,” the court evaluated versions of New York's constitution as early as 1777 and concluded that the current constitution “contains no language that explicitly requires in-person voting.”

In the 2018 presidential election and earlier, New York voters were only allowed to mail in their votes (via absentee ballot) when there were special circumstances that prevented them from voting in person, such as serving in the military or incarceration. However, this changed in the spring of 2020 when then-Governor Andrew Cuomo signed an executive order permitting voters to cast mail-in ballots without a special reason, specifically to prevent the spread of COVID-19. As a result, 1.5 million New Yorkers voted via mail-in voting.

Prior to the passage of the Early Mail Voter Act, Democratic lawmakers proposed an amendment to the New York Constitution in 2021. New York voters rejected this proposal (that also included other unrelated election law issues such as redistricting).

Mail-in voting is different from absentee voting. The New York Constitution limits absentee voting to when you are sick, have a disability, or are out of town. However, early mail voting has the same effect. Mail-in voting allows your ballot to be mailed to you. Once completed, it can either be mailed back to the Board of Elections (BOE), carried into an early voting location during the early voting period, or carried into a

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regular polling place on Election Day. If you mail your ballot back to the BOE, your ballot must be postmarked no later than November 5, or Election Day.

ELECTIONS**Robert F. Kennedy Jr. Questioned Over Fraudulent Campaign Signatures**

Recently, a New York judge barred Robert F. Kennedy Jr. from appearing on November's ballot, finding that the presidential candidate falsely claimed to live in New York State. This decision was appealed by Kennedy. Now, Kennedy's campaign faces a second lawsuit, this time by two voters in Mineola State Supreme Court.

The voters, backed by the Democrats, allege that the campaign employed a firm whose subcontractors "used deceptive tactics to gather signatures to qualify him for the ballot." The voters have asked the court to order the New York State Board of Elections to keep the presidential candidate's name off the November ballot.

On Thursday, Kennedy admitted in a court appearance that his campaign submitted thousands of fraudulent signatures that were collected by a subcontractor—despite being aware that some of the canvassers had used deceptive methods. The lawsuit contains multiple claims of fraud, but the most common tactic was to fold the top of petition sheets down. By doing so, signers could not see the names of Kennedy or his vice presidential candidate, Nicole Shanahan, and could be told they were signing a petition for other reasons or in support of other candidates.

Through the subcontractor, the Kennedy campaign collected and submitted 150,000 signatures. New York only requires independent candidates to gather petitions with 45,000 voter signatures. The campaign sued the subcontractor, stating the campaign still had to pay despite receiving signatures that were unusable.

However, Kennedy admitted in court that his campaign did not throw out all the subcontractor's signatures. Instead, the campaign found approximately 8,000 signatures that had visible creases and placed them in two bankers' boxes labeled as "fraud box."

The Kennedy campaign then created an affidavit, which intended to "cure" the rest of the subcontractor's petitions. This affidavit had canvassers affirm in writing that no fraud had been committed during the collection of signatures. Then, the campaign submitted more than 12,000 signatures to show that some signatures had been collected without deceptive practices.

In court, the plaintiffs showed at least one creased page that was submitted as evidence to the state instead of placed in the "fraud box." Kennedy admitted that the subcontractor's canvassers sometimes also verbally misrepresented what or who the signatures were for, meaning that there were more ways the signatures could be fraudulent than just creased pages.

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On Friday, Kennedy announced that he would be suspending his presidential campaign. He then endorsed Donald Trump.

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

Two lawsuits with coordinated discovery challenging the Nassau County Legislature's 2023 redistricting map, which went into effect on February 28, are expected to go to trial together this fall. The decision could impact the Nassau County legislative districts for the 2025 elections.

On August 16, correspondence was filed with the court. The NYCC plaintiffs and defendants wrote jointly regarding the new requests for admissions ("RFAs") that the NYCC plaintiffs intend to propound and the parties' disputes over RFAs already propounded. On August 22, the court filed a notice in response to this letter that identified which requests for admission the parties must respond to.

In the notice, the court stated that some of the requests for admission were denied because they "go beyond the proper use of requests for admission, are the subject of Judicial Notice or pre-trial stipulation, seek interpretation of documents, or are more properly the subject of questions as examination before trial."

On August 23, a stipulation concerning the disclosure of the identity of a consultant (whose name was redacted by the defendants in their document production from March 15, 2024), has now been agreed upon and the identity will be released to the plaintiffs. However, the plaintiffs may not reference or rely on the disclosure of the consultant's identity "in support of their position," whether raised in connection with a motion or otherwise.

Correction to 8/19 Update: These two cases are coordinated for discovery purposes, but have not been consolidated.

AROUND THE NATION

ARIZONA: The U.S. Supreme Court has delivered a 5-4 decision that only partly grants the requests of the Republican National Committee (RNC) in regard to a 2022 Arizona voting law. The RNC had asked the Court to pause the lower court's ruling on the same law, of which the Court granted—for now.

This decision allows Arizona to enforce a section of state election law that "requires election officials to reject state voter registration forms that are submitted without an applicant's proof of U.S. citizenship" while an appeal proceeds. However, the Court also rejected some portions of the RNC's request.

Arizona has a "complicated, two-track system" for registering voters: a state registration and a federal registration. Each registration is accepted, but with varying requirements. This system is the result of a "decades-long dispute" regarding proof

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of citizenship. Arizona state law requires individuals to have documentary proof of citizenship when registering to vote in state and local elections.

Prior to this Supreme Court ruling, any eligible voter who submitted Arizona's voter registration form without providing proof of citizenship would only be registered to vote in federal elections. The only exception to this rule was if election officials were able to access an individual's record of citizenship proof that they had previously provided to Arizona's Motor Vehicle Division. Arizona's Secretary of State reported that 42,301 voters in Arizona were only registered to vote in federal elections as of July 1, 2024. Whether these registered voters will be allowed to vote in future presidential elections after November 2024 without showing proof of citizenship is to be determined by future court proceedings.

The Supreme Court did not give a detailed reasoning, as is common in emergency applications. Oral arguments before the U.S. 9th Circuit Court of Appeals are scheduled to begin on September 10.

Thank you to NPR for the [detailed report](#).

TENNESSEE: A federal court has dismissed a lawsuit in Tennessee where a challenged a state statute that required voters to be "bona fide members" of a political party in order to vote in Tennessee's open primary elections or otherwise a threat of criminal prosecution.

A group of voters and the League of Women Voters of Tennessee brought the case, alleging that the law is "unconstitutionally vague," intimidates and suppresses voters from casting a ballot, and does not explain how an individual can become a "bona fide" member of a political party. Additionally, Tennessee voters do not register as a member of a specific political party under the state's open primary system.

In last Monday's ruling, the court held that the plaintiffs lacked standing to sue. The court also held that even if the plaintiffs had standing to sue in this case, the defendants (which included the Tennessee Secretary of State and the Tennessee Attorney General) have "sovereign immunity," which shields government officials from lawsuits without their consent.

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