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September 9 Elections, Census & Redistricting Update

Jeffrey M. Wice

New York Law School, jeffrey.wice@nyls.edu

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. ELECTIONS, CENSUS & REDISTRICTING UPDATE****N.Y. VOTING RIGHTS ACT LITIGATION****Orange County: *Clarke et al. v. Town of Newburgh***

In January, three Black and three Hispanic residents of Newburgh filed this lawsuit, claiming the town's at-large election system for Town Board elections has prevented Black and Hispanic residents from electing candidates of their choice, thus violating the N.Y. Voting Rights Act.

On September 3, the Court released the pretrial requirements for the bench trial in *Clarke et al. v. Town of Newburgh*, which is set to begin on November 1, 2024. The Court required that each side provide to both the Court and opposing counsel all materials by October 17, specifically in the formats listed. The Court also issued a warning to plan ahead, as many of the requirements require conferring with other parties. The following items must be submitted: (1) a trial notebook; (2) copies of depositions; and (3) motions in limine.

On September 6, a stipulation and order for the production and exchange of confidential information was filed. This order was in regard to the entry of a protective order pursuant to CPLR 3103(a), which "limits the review, copying, dissemination, and filing of confidential and/or proprietary documents and information to be produced" during the course of discovery by any party, non-party, or their respective counsel to the extent that is set forth in this stipulation and order. The terms were agreed upon by all parties.

Nassau County Legislature: *Coads et al. v. Nassau County & NY Communities for Change v. Nassau County*

These two actions, *Coads et al. v. Nassau County* and *NY Communities for Change v. Nassau County*, arose from challenges to the 2023 redistricting map for the Nassau County Legislature, which went into effect on February 28.

The Court has reviewed the papers submitted in support of a motion from the NYCC plaintiffs for the admission of Delmarie Alicea pro hac vice. The Court intends to grant the motion. Counsel for the plaintiffs must submit a proposed order granting the motion by September 13.

Westchester County: *Serratto et al. v. Town of Mount Pleasant*

This lawsuit was filed in January by the Mount Pleasant Hispanic community. The suit asserts that the Town's use of an at-large method of election, where all voters elect the Town Supervisor and all four Town Board members, led to racially polarized voting and prevented Hispanic voters from electing the candidate of their choice.

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On August 30, counsel for the defendants (the Town of Mount Pleasant) filed a letter of correspondence with the Court and requested a conference regarding its Order on Trial Readiness dated August 28, 2024. That order confirmed and adopted a report from the Court Attorney Referee (“Referee”) that the defendants claim is incorrect because it states that all discovery has been completed or waived.

The defendants state that discovery is ongoing and that there are still multiple open discovery issues. For this reason and others, the defendants state they were not aware that the Referee “intended to certify this action as trial ready.” As a result, the defendants requested a conference to discuss these issues with the Court and the plaintiffs’ counsel.

On September 3, the plaintiffs filed a letter of correspondence with the Court in response to the defendants. The plaintiffs state that the discovery items referenced by the Town in their letter are “very limited” with six items total, including one discovery item that the plaintiffs had already received and one deposition that the parties are still conferring on whether to conduct.

The plaintiffs state that all remaining discovery involves non-parties, and that non-party discovery can proceed even after filing the Note of Issue. Despite parties still conferring about a deposition and having some open discovery items, the plaintiffs state that none of the above “merit any delay in scheduling either a settlement conference or a trial.”

On September 6, counsel for the plaintiffs (representing Mount Pleasant voters) filed the Note of Issue for a trial without a jury.

Erie County: *Young v. Town of Cheektowaga*

In March, a prior Town Board candidate named Kenneth Young filed a lawsuit against the Town of Cheektowaga, alleging racially polarized voting and violations of the New York Voting Rights Act (NYVRA) in the Cheektowaga Town Board elections. Young claims that minorities cannot elect candidates of their choice under the town’s current at-large voting method and should adopt a ward voting system.

On September 3, counsel for the Town of Cheektowaga filed an amended notice of cross-motion for summary judgment (including exhibits A-J) and an amended counterstatement of material facts. The Town also filed an amended memorandum of law: (1) in opposition to Young’s motion for summary judgment, and (2) in support of their cross-motion for summary judgment.

According to the Town’s memorandum, the Town argues that the plaintiff’s (Young’s) motion for summary judgment should be denied in its entirety, the complaint should be dismissed in its entirety, the Town’s cross-motion for summary judgment should be granted, and “the NYVRA should be struck down as unconstitutional.” In the event that the Town’s cross-motion is denied, the Town states that the plaintiff’s motion for summary judgment should be denied as “wholly premature,” and the Court should order discovery to proceed normally along with any other relief that the Court deems “just and proper.”

ELECTIONS

Appellate Division Rules Against Robert F. Kennedy, Jr.

The Appellate Division, Third Department has affirmed a trial court's decision which found that former presidential candidate Robert F. Kennedy, Jr. used a false address on campaign filings, violating New York Election Law.

In the lawsuit, the plaintiffs claimed RJK Jr.'s state nominating petition falsely listed a New York residence, while he has lived in Los Angeles since 2014. Kennedy testified that he rented a room in his friend's home in Katonah but admitted that he had only slept in that room once due to "constant campaign travel."

His friend, Barbara Moss, also testified that she had agreed to rent the room to Kennedy, but a lease had never been written or signed. According to the Albany Times Union, Kennedy did not pay Moss any rent until "one day after the New York Post published an article that questioned his residency" in the amount of \$6,000, which Kennedy claimed to be an "oversight."

According to the Third Department's decision, "Petitioners have demonstrated by clear and convincing evidence that the Katonah address listed in the nominating petition was not Kennedy's residence under the Election Law." The decision was unanimous for all four judges.

Kennedy can now either petition the New York Court of Appeals to hear the case, or let the current decision stand. A state appellate court also upheld a ruling that removed Kennedy from the New York ballot by invalidating the petition signatures collected for his campaign.

Recently, Kennedy suspended his presidential campaign and endorsed Donald Trump. The former presidential candidate has not given a reason as to why he has continued to pursue a line on the New York ballot since.

How to Register to Vote In New York

In order to vote in New York, you must be a citizen of the United States; be 18 years old (16 or 17 year olds may pre-register, but cannot vote until they are 18); be a resident of New York State and the county, city, or village for at least 30 days before the election; not be in prison for a [felony conviction](#); not be adjudged mentally incompetent by a court; and not claim the right to vote elsewhere.

The deadline to register for the November 5th General Election is **October 26, 2024**. If you are unsure of your registration status, [click here](#).

If you are not already registered to vote, there are different ways you may do so:

1. Register Online

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In order to register online, you need to use a NY Government ID (“NY.Gov ID”). If you have previously used [NY.Gov ID](#), you will use the same login. If not, you will have to [create an account](#).

Alternatively, you can also use the [Board of Elections’ Online Voter Registration portal](#). Completed applications are then sent to your County’s Board of Elections for Approval and Processing.

2. Register In-Person

When registering in person, you fill out the New York Voter Registration Form ([English/Spanish](#)) either by hand or typed. If typed, you must print the form and signed and dated by hand; electronic signatures are not accepted. Once complete, you can complete the forms, you can hand them in at your [county board of elections](#), any New York State [Agency-Based voter registration center](#), or at the Department of Motor Vehicles.

3. Register by Mail

When registering by mail, you fill out the New York Voter Registration Form ([English/Spanish](#)) either by hand or typed. If typed, you must print the form and signed and dated by hand; electronic signatures are not accepted. Alternatively, you can request a registration form by mail by either entering your name into the [Voter Registration Form Request mailing list](#), calling the 1-800-FOR-VOTE (1-800-367-8683) hotline. Once your form is completed, mail the form to your [county board of elections](#).

Once you are registered to vote, you may [vote early](#) by mail or in person, or in person on the day of the general election. If you choose to vote by mail, the deadline to [apply for an absentee ballot in New York](#), is October 26 and ballots must be postmarked by November 5.

After you register, you can use the voter registration portal or the voter registration form to change a name, address or party enrollment. Name or address changes must be received at least 15 days before an election. Party enrollment changes must be received by the board of elections no later than February 14th of that year.

For more information about voter registration in all states, visit [vote.gov](#).

AG James Releases Guide on Fake AI-Content about the Elections

New York Attorney General Letitia James recently released a guide on [“Protecting New Yorkers from AI-Generated Election Misinformation.”](#) to help New Yorkers “identify and report misinformation generated by artificial intelligence (AI) about the upcoming November elections.” According to the AG’s office, “artificial intelligence tools can be used to create fake or misleading videos, images, or audio that impersonate people or candidates and spread misinformation to try to impact voters. Fake content created by artificial intelligence can be used to cause confusion and, when spread rapidly and widely through social media platforms, can have a profound

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impact on voters' actions." The guide includes suggestions on how to determine fake content and report it.

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