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August 23 Roundtable Update

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NEW YORK CENSUS & REDISTRICTING ROUNDTABLE UPDATE

LITIGATION

Congressional: *Hoffmann v. Independent Redistricting Commission*

On August 14th, in the New York Court of Appeals, the Petitioners-Respondents (Democratic voters), filed a motion to vacate a “stay pending appeal” along with a memorandum in support of this motion. It is unclear at this point whether a stay is in effect preventing the Commission from doing its work.

For background, the Republican-appointed IRC commissioners, who brought this appeal (along with the *Harkenrider* petitioners who have intervened in this case), claim that an automatic stay is in place under CPLR 5519(a)(1) that prevents the IRC from doing any work until the Court decides this case. Conversely, the Democratic-appointed commissioners did not appeal and have indicated that they are prepared to follow the Appellate Division’s order and submit a second round of proposed congressional lines to the Legislature.

In the memorandum filed August 14th, the Petitioners-Respondents (Democratic voters) argue that, if a stay does apply, which they believe is not the case, the Court should lift it because:

1. the Appellants (Republican commissioners and *Harkenrider* Intervenors) are unlikely to succeed on the merits of this appeal because the Appellate Division correctly found that the action was timely and the Petitioners had a clear right to the relief sought; and
2. “the balance of hardships tips sharply against a stay: delay will jeopardize the IRC’s ability to complete its responsibilities in time for the 2024 primary elections, causing significant and irreparable harm to Petitioners, candidates, election administrators, and New York voters.” They argue that the Republican commissioners nor anyone else would be harmed if the IRC were required to go back to work during this appeal.

Therefore, the petitioners contend that it is in the public interest for the IRC to comply with the Appellate Division’s order immediately.

As an alternative request, the petitioners ask the court to make it clear that the stay is limited and allows “the IRC to meet and discuss the upcoming map-drawing process, draft maps, and take any other steps necessary to swiftly comply with the Appellate Division’s order” if the court affirms it.

They also argue that CPLR 5519(a)(1) does not actually apply to the Republican commissioners, meaning there should not even be an automatic stay in place, because that law is applicable to “the state or any political subdivision of the state or any officer or agency of the state or of any political subdivision of the state,” and the Republican commissioners are members of an independent commission and they are “members” of the commission, not “officers.”

New Nassau County Legislature Challenge: *League of Women Voters of Port Washington-Manhasset v. Nassau County Legislature*

On August 17th, in Nassau County State Supreme Court, the League of Women Voters of Port Washington-Manhasset (“the League”) filed a petition asking the court to compel the county legislature to comply with its duty under the Freedom of Information Law (FOIL) by disclosing records relating to analyses conducted by a consultant that the legislature used to justify its decision to adopt its new redistricting plan earlier this year.

The League argues that the county legislature adopted a redistricting plan that was drawn by a law firm retained by the legislature’s presiding officer “in the face of evidence that the plan may unlawfully dilute the voting power of people of color and advantage one political party.” They also assert that the county justified its adoption of this plan by citing factual and statistical analyses done by a political-scientist consultant, Sean Trende.

The League indicates that according to the legislature and its law firm, through public testimony and two memos released to the public, Trende’s analyses demonstrated that (1) the map did not need to include any districts that provide voters of color an opportunity to elect preferred candidates, and (2) the map did not exhibit partisan bias.

The League contends that despite numerous requests to review Trende’s analyses throughout the redistricting process, the legislature declined to make any of the information available to the public beyond “cherry-picked excerpts favoring the redistricting plan the Legislature sought to adopt.”

The League alleges that on March 27, 2023, they submitted a FOIL request seeking records and communications relating to the analyses, and the Legislature has, to a considerable extent, denied their request, having only provided the two memos that were already released to the public and arguing that all the other requested materials are privileged and exempt as intra-agency material.

The League contends that there is no basis for the legislature to withhold the records that it relied upon to justify its enactment of the redistricting plan. They also argue that the Legislature’s privilege and exemption claims are meritless and “would allow government bodies to insulate any redistricting decisions from public scrutiny merely by laundering it through a law firm.”

Nassau County Legislature: *Coads v. Nassau County*

In the already pending challenge to the Nassau County legislature's new map brought by Democratic voters, the Nassau County Board of Elections defendants have stipulated with the plaintiffs to file their response by August 31st.

The League is being represented by Perry Grossman of the New York Civil Liberties Union.