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October 9 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****Congressional: Democratic IRC Commissioners Invite Public Input in Advance of Court of Appeals Decision**

On October 2, following the Court of Appeals order holding that the stay (against the Appellate Division decision) does not prohibit the IRC from taking any actions, New York Independent Redistricting Commission Chair Kenneth Jenkins, and Commissioners Collado, Cuevas-Molina, Flateau, and Frazier issued a statement inviting public input while awaiting a decision from the Court of Appeals on congressional districting by the Commission:

The public is invited to submit input by emailing submissions@nyirc.gov or by sending mail to Attention: Submissions, Independent Redistricting Commission, 250 Broadway, 22nd Floor, New York, NY 10007. All submissions will be made available to all Commissioners and staff.

Nassau County Legislature: *Coads et al v. Nassau County et al***County's Reply Memo in Support of their Motion to Dismiss the Complaint**

Main issue: Is the *Doctrine of Laches* grounds for dismissal?

Laches Defined: Laches refers to the principle that if plaintiffs wait too long to assert their rights (file a case), they may forfeit their ability to do so, especially if their delay causes prejudice to others.

On October 3, in Nassau County State Supreme Court, Defendants Nassau County and the Nassau County Legislature filed a memo responding to the plaintiffs' arguments against dismissal.

To recap, on September 20, the plaintiffs filed a memo arguing that (1) the doctrine of laches does not apply to continuing violations like unlawful redistricting maps and (2) even if the doctrine did apply, the county could not establish all of the elements.

In their October 3 memo, the county defendants reiterate their argument that

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the doctrine of laches bars this lawsuit as the plaintiffs waited close to five months to bring the challenge, and allowing the case to proceed would prejudice the public and the County by potentially compelling the county to conduct mid-decade redistricting in back-to-back election cycles and causing confusion to voters, candidates, and election officials.

In response to the plaintiffs' arguments, the county asserts that:

1. The continuing-wrong doctrine argument fails because it only applies to continuing unlawful acts, and the complaint alleges only a single claimed wrong: the Legislature's adoption of the challenged map.
2. The argument that the county was on notice due to threats to challenge the map *immediately* upon its adoption did not constitute sufficient notice of a five-month-delayed action. They also assert that lack of notice is not an essential element of a laches defense.
3. The argument that the case will likely hinge on expert testimony is unhelpful to the plaintiffs because all of the allegations in the complaint pre-date the Legislature's adoption of the map. And plaintiffs have not provided anything tying their delay to the need for developing expert evidence.
4. The argument that allowing the case to move forward would not prejudice the county and public is incorrect as courts have regularly held that voters would be confused and disenfranchised by mid-decade redistricting, candidates have likely acted in reliance on the current maps, and even if the plaintiffs' suit were meritorious, the county would not have had to incur expenses to hold a special election if the plaintiffs had not delayed in bringing the case.

In conclusion, the county asserts that the "Court should not entertain Plaintiffs' extraordinary request for back-to-back redistricting, with back-to-back elections on different maps, because Plaintiffs' unexplained delay warrants dismissal under the equitable doctrine of laches."

N.Y. Early Voting Law Challenged: *Stefanik v. Hochul*

On September 29, proposed Intervenor-Defendants Democratic Congressional Campaign Committee (DCCC), Senator Kirsten Gillibrand, Representatives Yvette Clarke, Grace Meng, Joseph Morelle, and Ritchie Torres, and New York voters Janice Strauss, Geoff Strauss, Rima Liscum, Barbara Walsh, Michael Colombo, and Yvette Vasquez (Proposed Intervenor) asked the court to allow them to intervene in the case as defendants. They argue that they have a direct and substantial interest in the litigation that is not adequately represented by the existing parties.

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On October 6, Governor Kathy Hochul and Attorney General Letitia James filed a memo opposing the plaintiffs' application for a preliminary injunction. They argue that:

- (1) plaintiffs fail to demonstrate a likelihood of success on the merits by clear and convincing evidence as Governor Hochul is entitled to legislative immunity and the New York Early Mail Voter Act (EMVA) is constitutional;
- (2) plaintiffs cannot establish irreparable harm; and
- (3) a balancing of equities does not tip in plaintiffs' favor and injunctive relief is not in the public interest.

N.Y. Absentee Voting Challenge: *Amedure et al v. State of New York et al*

On August 31, in Saratoga County State Supreme Court, the New York Republican Party and other conservative plaintiffs filed a challenge to a state absentee voting law. The law allows review of absentee ballots on a rolling basis, requires voters who request absentee ballots but decide to vote in person to vote using a provisional ballot, and prevents legal challenges to ballots that were already cast. The plaintiffs allege that the law violates the state constitution for nine reasons, including that the law limits voters' ability to change their mind if they request an absentee ballot but decide to vote in person; violates voters' right to a secret ballot; impairs poll watchers' ability to challenge ballots; and prevents election workers from following state law.

On September 18, the Defendants NYS Senate and Senate Majority Leader and President Pro Tempore Robert Ortz filed a memo opposing the petition and arguing for dismissal. They argue that the case is barred by laches and compare this action to one brought last September with same claims that was dismissed as untimely by the Appellate Division. The defendants argue that by the time this case is decided, County Boards will be in the middle of canvassing ballots under the disputed statute. They also assert that each of the causes of action are meritless, and they point to several overarching legal principles that support their arguments:

- (1) acts of the legislature are entitled to a strong presumption of constitutionality.
- (2) the legislature is always free to amend its own laws; and
- (3) fellow statutes are equal enactments under the law, a NY state statute cannot violate another statute.

CONGRESSIONAL LITIGATION**Alabama Has a New Congressional Map**

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On October 5, a federal court selected Alabama's new congressional map. The plan includes two districts, the 2nd and 7th Congressional Districts, where Black voters will have the opportunity to elect their candidates of choice. This map gives greater electoral power to the state's Black voters (as under the previous map there was only one majority-Black district). One majority-Black district was repeatedly deemed to be in violation of Section 2 of the Voting Rights Act by courts, as Black residents comprise over a quarter of Alabama's population and tend to vote as a bloc. The court's selection of a new map closes out roughly two years of litigation and delaying tactics to prevent or delay the implementation of a fair and legal congressional map.

The new map will be used for the upcoming 2024 election, although Alabama has vowed to fight the map for future cycles.

New Mexico Republicans Lose Congressional Map Challenge Contest

On October 6, a New Mexico state court judge ruled against a Republican challenge to the state's new congressional boundaries. The court found that although there was evidence that Democratic lawmakers intentionally tried to dilute the votes of the state Republican Party by moving conservative voters out of the 2nd Congressional district, the map did not reach the level of an "egregious gerrymander" needed in order to have the map thrown out. The court noted that the map would have to have been drawn to entrench Democrats in the district, making it so Democrats would always win, for the map to violate New Mexico law and reach the "egregious gerrymander" standard. New Mexico's 2nd District, the district that was the focus of this case, was redrawn to exclude part of the state's eastern border with Texas, a conservative-leaning area, to add a heavily Democratic part of Albuquerque.

The Republicans are planning to appeal the decision to the state's Supreme Court.

STATE LEGISLATIVE LITIGATION**Washington State Map Will Likely be Left to the Courts**

It has grown increasingly likely that the drawing of Washington State's new legislative lines will be done by the courts. U.S. District Court Judge Robert Lasnik ruled in *Soto Palmer v. Hobbs* on August 10 that the lines drawn by the state redistricting commission for the Yakima Valley diluted the Latino vote in violation of Section 2 of the Voting Rights Act. Following this decision, the court gave the state the opportunity to adopt revised maps that cured the Section 2 violation. These lines would be drawn and enacted pursuant to the process mandated by state law, which would involve reconvening the state's

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redistricting commission. The court ordered that if the parties fail to enact new lines by February 7, 2024, the drawing of the map would become the responsibility of the court.

The state's legislature, controlled by a Democratic majority, has declined to reconvene the bipartisan redistricting commission. On October 4, Judge Lasnik reiterated that if the legislature is able to adopt a revised map in a timely manner, then the court would not get involved. However, the court acknowledged that this situation is unlikely to be settled by the legislature. Thus, the court ordered that if the parties failed to come to an agreement, the parties would confer to discuss potential nominees to act as special master to assist the court when it draws the new lines and ordered the parties to file alternative remedial proposals and nominations. The court provided a timeline for the parties to jointly submit recommendations for a special master and remedial proposals, accelerating the timeline by making both due on December 1.