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December 18 Roundtable Update

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**WE ARE NEW YORK'S LAW SCHOOL****N.Y. CENSUS & REDISTRICTING ROUNDTABLE UPDATE****LITIGATION****Congressional: *Hoffmann v. Independent Redistricting Commission (IRC)*: Court of Appeals Affirms Appellate Order, IRC Must Submit Second Proposed Map(s) to Legislature**

On Tuesday, December 12, the state Court of Appeals affirmed the Appellate Division's decision and ordered the IRC to "comply with its constitutional mandate by submitting to the legislature, on the earliest possible date, but in no event later than February 28, 2024, a second congressional redistricting plan."

The Court reasoned that "court-drawn judicial districts are generally disfavored because redistricting is predominantly legislative"—a sentiment shared by numerous U.S. Supreme Court opinions. Therefore, "it makes complete sense that the 2014 constitutional amendments were drafted to prohibit court-ordered redistricting 'except to the extent that a court is required to order the adoption of, or changes to, a redistricting plan as a remedy for a violation of law.'"

Furthermore, the Court found that because the constitution limits court-ordered districts to those required to remedy a violation of law, *Harkenrider* (the decision that led to the creation of the current court-ordered congressional lines) "cannot be read to hold that courts may create decade-long redistrictings." Thus, the existing "congressional districts are limited to the 2022 election."

The Court also found that that Petitioners' proceeding was timely and not barred by laches, and rejected the Appellants' and the dissent's argument that the state constitution prohibits mid-decade redistricting, noting that section 5-b (a) "expressly contemplates that a court may issue orders directing an IRC to redo IRC-created or legislatively created districts mid-decade."

The Court also rejected the dissenting judges and appellant's arguments that pursuing the IRC process "will never work" and will result in "gamesmanship, a never-ending cycle of litigation, and ensure that 'politics triumphs over free and fair elections.'" The Court explained that allowing the IRC's lack of compliance to stand would encourage gamesmanship, defeat the popular will,

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and incentivize the same conduct that deadlocked the IRC leading to the court-ordered map.

The IRC is expected to announce its plans in the near future. To learn more about the “next steps” and possible actions to expect, read City & State NY’s column by Professor Jeff Wice here: bit.ly/4aqpWx1

Two John R. Lewis Voting Rights Act of NY (NYVRA) Notice of Violation Letters Filed Last Week: Town of Cheektowaga & Nassau County

The NYVRA creates a process by which any voter or organization who was negatively impacted by a violation of the statute may provide written notice to a political subdivision (town, county, etc.) that their redistricting plan violates the statute. The political subdivision then has 50 days to fix its violations voluntarily, before the prospective plaintiff may proceed with a legal challenge.

Town of Cheektowaga

On December 12, Ken Young, a black resident and former candidate for town board, sent a letter to the Town of Cheektowaga alleging that the town violated the statute by its use of an at-large method of election where racially polarized voting exists. Young asks that the town board approve a ward system for voting and a 2-term limit law for town board members.

Young contends that if the town had used a ward system instead of an at-large method of election, he would have been elected as a representative of the North-West section of the town as he (1) “was the top vote getter in the election districts located in the area of the town in which most Black residents reside,” (2) received the least votes in non-Black neighborhoods, and (3) “the reduction of votes in non-Black neighborhoods was so great that [he] went from being the top vote-getter in Black neighborhoods to being the lowest vote-getter overall.”

Young asserts that the only way this violation can be remedied is by changing from an at-large system to a ward system, “and to expand the opportunity for minority candidates by adopting term limits.”

Nassau County Legislature

On December 14, the New York Civil Liberties Union, the American Civil Liberties Union, LatinoJustice PRLDEF, the Asian American Legal Defense and Education Fund, and Steptoe LLP sent a letter to the Nassau County Legislature providing notice that their redistricting plan violates the NYVRA by

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diluting the voting strength of Black, Latino, and Asian residents.

The prospective plaintiffs stress that the county created only 4 out of 19 districts where Black, Latino, and Asian residents constitute a majority of voters, despite the fact that residents of color make up over one-third of the county's eligible voters. They also contend that the county "cracked" and "packed" communities of color in Lakeview, Freeport, Inwood, South Valley Stream, Elmont, and New Hyde Park. Additionally, they note that the Asian population rose over 60% between 2010 and 2020, yet the map unnecessarily divides this community among several districts.

The prospective plaintiffs propose that a more representative map would consist of 6 districts where Black, Latino, and Asian residents make up a majority of the citizen voting-age population, in addition to a district that prevents the dilution of Asian voting strength.

Nassau County is also facing an action in state supreme court commenced by voters against the map for alleged violations of the state Municipal Home Rule Law.

Broome County Legislature To Consider A New Map

The Broome County Legislature plans to meet this afternoon (Monday, December 18 at 4:00 PM) to consider how to enact a new county legislative map in light of the recent Appellate Division decision that found the current map in violation of the state's Municipal Home Rule Law redistricting criteria. The county did not provide any details beyond the meeting notice.

AROUND THE NATION

The 8th Circuit U.S. Court of Appeals has left a lower court order in effect directing the **North Dakota** legislature to redraw its map following a Voting Rights Act Section 2 violation.

The 5th Circuit U.S. Court of Appeals has rejected **Louisiana's** request to have the court reconsider the right of private parties to bring actions to enforce Section 2 of the Voting Rights Act.

In **Kentucky**, the state Supreme Court upheld the state's legislative and congressional maps, holding that even though both maps were partisan gerrymanders, they did not violate the state constitution.