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‘Speaker Hakeem Jeffries?’

By Jerry H. Goldfeder

The victorious plaintiffs in *Hoffmann v. New York State Independent Redistricting Commission*, the New York redistricting case decided by the Court of Appeals on Dec. 12, are counting on new lines to help Democratic congressional candidates in next year’s election to make Rep. Hakeem Jeffries (D-NY) Speaker of the House of Representatives. The calendar might interfere.

The court ordered the Independent Redistricting Commission to draw new districts to replace those created last year by a Pittsburgh-based special master appointed by a Steuben County Supreme Court Justice. This came about because the Court of Appeals (led by now-retired Chief Judge Janet DiFiore) had ruled that previously-drawn districts were unconstitutional (*Harkenrider v. Hochul, 38 N.Y.3d 494 (2022)*). The master’s lines allowed Republicans to capture several seats, which, in turn, gave the GOP a slim House majority.

Even before those “unexpected” Republican victories in New York, the *Hoffmann* case was brought, arguing that the master’s lines were only a temporary fix. The Albany Supreme Court dismissed *Hoffmann,* but the Appellate Division, Third Department, reversed, and now the Court of Appeals (with newly appointed Chief Judge Rowan Wilson, who had vigorously dissented in *Harkenrider*) affirmed, holding that the IRC must draw new lines for 2024 and beyond.

Let’s back up a bit to parse out the process, and explore why the hope for a Speaker Jeffries faces a bumpy procedural road (I will leave it to others to analyze the political odds).

Following the lead of many other states, New York amended its constitution in 2014 to put the decennial redistricting process in the hands of a bipartisan commission. The first step of the process requires the IRC to submit a map to the legislature, which may adopt it or reject it; if rejected, IRC submits a second map. If the legislature rejects the second map, it then draws the lines.

In 2022, the IRC sent over one map that was rejected, but then lacked a quorum to submit a second one, which led to the legislature drawing the new districts. These new lines were then challenged on two grounds—in the absence of a second submission by the IRC, the legislature lacked authority to do so; and, in any event, the new map was an unconstitutional gerrymander.

Ultimately, the Court of Appeals agreed and struck the lines, ordering a special master to draw the lines for the 2022 election.

In short order, the *Hoffmann* case was brought. Plaintiffs argued that the judicially imposed congressional lines used in 2022 were only interim, and the IRC was constitutionally required to submit to the legislature a second set of lines for the following election. And that is what the Court of Appeals has ordered.

Their reasoning boils down to this: the state constitution requires the redistricting commission or the legislature to draw new lines, and that any judicial map-making was only remedial. As such, the IRC was required to complete its work. In the words of the court: the new constitutional procedure was to "avoid…judicial intervention in the redistricting process except to the minimum necessary (see *Harkenrider,* 38 NY3d at 513)."

Indeed, the court continued, "New York courts no longer have the blanket authority to create decade-long redistricting plans…[and] the constitution now limits court-drawn redistricting to the minimum required to remedy a violation of law." Thus, the judicial remedy ordered by the Court of Appeals in *Harkenrider* was limited. The IRC and the state legislature must get back to work.

Accordingly, the Court of Appeals just ordered the IRC to submit new lines "on the earliest possible date, but in no event later than Feb. 28, 2024."

An important drawback to this otherwise clear-eyed decision is its timing. The trial and appellate courts in *Hoffmann* rendered their respective decisions expeditiously, but a matter of such legal significance ought to have been litigated more aggressively. Most election-related cases are fast-tracked, but this one was not. As a result, having commenced their action 18 months ago, the *Hoffmann* plaintiffs find themselves on the cusp of the next election.

Although the general election is next November, the all-important political party primaries are scheduled for June. And candidates who wish to run in their party's primary are required to file designating petitions—a process that starts Feb. 27. So, the clock is ticking as the IRC and legislature comply with the Court of Appeals' order.

The first hurdle will be for a quorum of seven IRC members to convene. Two years ago, it was the absence of a quorum that prevented the IRC from fulfilling its constitutional duty to submit a second plan; one hopes that imbroglio does not recur. Once the commission meets, seven votes are needed to adopt a plan to send to the legislature—which means that Democrats and Republicans must agree. That is the second hurdle.

The legislature must then either adopt the new map or create its own. Ideally, the parties will agree on new lines soon, but experience teaches that deals as consequential as redistricting get resolved only at the eleventh hour. In that the court has given the IRC until Feb. 28—the day *after* petitioning starts—one should not be sanguine about the speed with which such conversations might ensue. And, of course, new lines might be challenged in court, potentially delaying the primary or forcing the use of current districts.

Any or all of these contingencies could undermine the *Hoffmann* ruling, frustrating the constitutional process of redistricting—and perhaps impacting the outcomes in New York's congressional races. One cannot predict how these events will unfold—so Rep. Jeffries and all voters will be watching with great interest.

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