State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Wednesday, November 15, 2023, in Buffalo

No. 90 Matter of Hoffmann v New York State Independent Redistricting Commission

The primary question in this appeal is whether the congressional district map drawn on order of this Court in Harkenrider v Hochul (38 NY3d 494 [2022]) is the final map that must be used until the next redistricting cycle begins after the 2030 federal census, or if it is an interim map for use only in the 2022 elections and the state's Independent Redistricting Commission (IRC) can be compelled to submit a second set of redistricting plans to the legislature for use in future congressional elections. The IRC, established by a State Constitutional amendment in 2014, has ten members equally divided between the major political parties. It deadlocked twice in 2022, first submitting two competing congressional maps to the Legislature, which rejected them, and then failing to submit a second redistricting plan as required by the Constitution. The Legislature then drew and adopted its own map, which was immediately challenged in Harkenrider. This Court ultimately declared the map void, finding that "the legislature and the IRC deviated from the constitutionally mandated [redistricting] procedure." It further ruled there was evidence to support the conclusion of the lower courts that the congressional map was an unconstitutional gerrymander. Concluding that "judicial oversight is required to facilitate the expeditious creation of constitutionally conforming maps for use in the 2022 election and to safeguard the constitutionally protected right of New Yorkers to a fair election," this Court directed the trial court to adopt new district lines with the help of a neutral expert. The resulting map was used in last year's congressional elections.

In June 2022, Anthony Hoffmann and nine other registered voters commenced this proceeding for a writ of mandamus to compel the IRC to submit a second set of congressional redistricting plans to the legislature to be used for the rest of this decade. IRC Chair Ken Jenkins and two other commissioners answered in support of the petition to compel submission of a second map. The IRC remained divided, with Commissioner Ross Brady and four other members moving to dismiss the petition. The original Harkenrider petitioners intervened and moved to dismiss the suit and retain the 2022 map. Governor Kathy Hochul and Attorney General Letitia James filed an amicus brief in support of the petition for a new map.

Supreme Court dismissed the petition, saying it was timely, but "the requested relief to restrict the 2022 maps to the 2022 election violates the constitutional mandate [in article III, § 4(e)] that an approved map be in effect until" a new map is drawn after the next census.

The Appellate Division, Third Department reversed and granted the petition in a 3-2 decision, saying the IRC had a constitutional duty to submit a second map after its first map was rejected and Harkenrider did not remedy that failure. Compelling the IRC to submit a new map to the legislature "honors the constitutional enactments as the means of providing a robust, fair and equitable procedure for the determination of voting districts in New York...," it said. "[I]n granting this petition, we return the matter to its constitutional design."

The dissenters argued the petition was untimely and, in any event, "the Constitution requires that ... court-ordered maps remain in place until after the next census." They said there was no statement in Harkenrider that the court-drawn map was only for use in the 2022 election, and its "judicial remedy cured the IRC's failure to act by lawfully establishing a redistricting plan for the ordinary duration, leaving no uncured violation of law and thus foreclosing mandamus."

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For respondents Jenkins et al: Jessica Ring Amunson, Washington DC (202) 639-6000
For amici curiae Hochul et al: Assistant Solicitor General Andrea W. Trento (212) 416-8656

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To be argued Wednesday, November 15, 2023, in Buffalo

No. 91 Matter of Appellate Advocates v New York State Department of Corrections and Community Supervision

Appellate Advocates, a nonprofit public defender organization, submitted a Freedom of Information Law (FOIL) request to the Department of Corrections and Community Supervision (DOCCS) in March 2018 seeking "any and all records, documents, and files" related to training of its Board of Parole commissioners. Appellate Advocates said it was seeking insight into "the decision-making process and reviewability of [the Board's] parole determinations." DOCCS ultimately withheld 11 documents, asserting they were exempt from disclosure under the attorney-client privilege and the exemption for intra-agency materials.

Supreme Court, after reviewing the documents in camera, ruled all 11 were privileged because "the materials are clearly the unique product of an attorney's professional skills and were confidentially disseminated to the Board of Parole Commissioners for the purpose of rendering legal advice." It also held they were exempt as intra-agency materials because they "contain counsel's recommendations and were disseminated confidentially in furtherance of the decision making process prior to final determinations."

The Appellate Division, Third Department affirmed on a 3-2 vote, saying the documents were exempt from disclosure under the attorney-client privilege because they "were made '"for the purpose of facilitating the rendition of legal advice or services, in the course of a professional relationship...."'" It said some documents "contain legal advice to the Board regarding the state of law and how the Board should conduct interviews in accord with such law;" some "provide counsel's summary, view and impression of recent case law;" and others "discuss various legal standards and regulations" and were provided so the Board "could understand ... how it can comply with them."

In a partial dissent, one justice said four of the documents were privileged, but the other seven "contain sections that are devoted solely to informing the Board of Parole of its duly codified statutory and regulatory duties in rendering parole determinations, without any fact-specific discussions or legal advice on how to apply the law to particular scenarios.... [T]he general legal principles outlined therein are not confidential."

In a separate partial dissent, another justice said one of the 11 documents was improperly withheld because it contained no legal advice or exempt material. He said two other documents that provided "sample language" and "template paragraphs for denying release" should have been withheld under the intra-agency exemption rather than attorney-client privilege.

Appellate Advocates argues that the training documents are not protected by attorney-client privilege because they do not contain "legal advice on real-world factual scenarios" and, in any event, "the public policy exception to the attorney-client privilege mandates disclosure here."

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For respondent DOCCS: Assistant Solicitor General Frank Brady (518) 776-2054

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To be argued Wednesday, November 15, 2023, in Buffalo

No. 92 People v Michael Bay
No. 93 People v Kevin Sullivan

The prosecutors in these unrelated cases filed a certificate of compliance with discovery obligations under Criminal Procedure Law (CPL) 245.50 and a statement of readiness for trial within the statutory time limit of the speedy trial statute, CPL 30.30. But in both cases they later found and disclosed to the defense additional discovery material, raising the question of whether this rendered the certificate of compliance invalid and statement of readiness illusory, thus risking dismissal of the charges on speedy trial grounds.

Michael Bay was arrested in the City of Cortland in April 2021 for a violation-level offense of harassment based on domestic violence against a family member with whom he lived. After the prosecutor filed a certificate of compliance and statement of readiness, defense counsel asked for a 911 tape and police arrest report, which the prosecutor said did not exist. More than a month later, the prosecutor gave the defense the police report and a domestic incident report. The defense moved to dismiss the case the next day, arguing the prosecution was not actually ready for trial within the 30-day speedy trial limit because its certificate of compliance was invalid. The prosecution turned over the 911 tape hours later. Cortland City Court denied the motion without a hearing, found Bay guilty of harassment, and sentenced him to time served.

Cortland County Court affirmed, saying "it is clear that the People were unaware of the three items of [late] discovery and when made aware of their existence, the items were obtained and disclosed to the defendant within less than one day.... The three items of discovery were not utilized by either the People or defendant" at trial, and the defense "failed to articulate any prejudice ... to the defendant as a result of receiving late discovery.... The record reflects diligence, good faith and actual readiness on the part of the People."

Kevin Sullivan was charged with driving while impaired by drugs and seventh-degree criminal possession of drugs after Amherst Town police found him unconscious in the driver's seat of a vehicle in July 2020. A drug recognition expert (DRE) evaluated Sullivan upon his arrest, but the police did not provide the DRE report to the prosecution before it filed its certificate of compliance and statement of readiness in October 2020. The prosecution repeatedly requested the DRE report from the police, by email and telephone, beginning in November 2020; finally obtained it in April 2021; and gave it to the defense in May 2021.

Amherst Town Court granted the defense motion to dismiss the case, finding the certificate of compliance was invalid. Because the "DRE is listed in the police report," the court said, "it was the duty of the district attorney's office when they got the discovery to make sure that the DRE was in there. I could understand if... the district attorney's office had no knowledge whatsoever that a DRE was even done.... But knowing that the DRE was done because it's listed in the police report, you have an obligation to turn that over before declaring ready" for trial.

Erie County Court reversed, finding the certificate was filed in good faith. "Although the People should have been aware that a DRE existed and had not been disclosed, this does nor take away from the People's exercise of due diligence in their attempts to obtain the report," it said. The court found no prejudice because "no hearings were held, no trial date was scheduled, and no motions were filed" before the DRE was disclosed. "The defense was not forced to engage in courtroom proceedings without reviewing this key piece of evidence, and thus, suffered no prejudice in the defense of the charges."

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