



Justice Stephen K. Lindley

## Lawyer for Democratic Assembly Says GOP Lacks Standing to Sue Entirety of Political Maps

Fourth Department Justice Stephen Lindley, in arguments over New York's congressional redistricting, questioned whether a constitutional amendment calling for a bipartisan process amounted to “mere window dressing,” in view of that fact that the measure didn't appear to take away the legislature's sole and exclusive authority to draw maps as they see fit.

April 20, 2022 at 06:43 PM

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Election and Political Law

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Litigation Reporter

The substantive intent of a 2014 constitutional amendment by New York voters to redraw legislative and congressional districts in a bipartisan manner was significant, a Rochester appellate judge said Wednesday.

However, the procedural approach may have been anything but, Justice Stephen Lindley of the Appellate Division, Fourth Department said.

Lindley questioned whether the constitutional provision amounted to “mere window dressing,” in view of that fact that it didn't appear to take away the legislature's sole and exclusive authority to draw maps as they see fit.

The court is mulling a lawsuit filed by a group of Republicans in February that accuses Democrats of unconstitutionally gerrymandering maps in the latter's favor, enhancing a 19-8 Congressional District advantage by the Democrats, to 22-4.

The Appellate Division, Fourth Department, heard arguments Wednesday, after Lindley had ordered a partial stay of a lower court judge's March 31 ruling that said congressional, Senate and Assembly districts were gerrymandered.

The GOP's lawsuit alleges the Democratic-led legislature and Gov. Kathy Hochul did not have the authority to enact congressional and senate district maps as they did.

Craig Bucki, the attorney representing Assembly Speaker Carl Heastie, D-Bronx, said the approximately dozen Republicans who are suing lack standing to do so, because they represent just a portion of the state.

“If you have a problem with your district lines you need to live in the district in order to raise the challenge,” Bucki said, pointing out the GOP plaintiffs weren't represented in 18 of the 26 proposed congressional districts.

Bucki, a partner in Phillips Lytle in Buffalo, asked the court to reverse acting Steuben County Supreme Court Justice Patrick McAllister's decision and order in its entirety.

He said the petitioners failed to demonstrate beyond a reasonable doubt that the legislation was unconstitutional, and in particular, the legislation should have been invalidated as a last unavoidable result, after every reasonable mode of reconciliation with the constitution was resorted to.

Bucki noted that McAllister invalidated the map of the districts for the 150 members of the state Assembly, even though the petitioners did not ask for that map to be invalidated.

“They acknowledged that there was in fact bipartisan agreement concerning that map,” he said. “Nobody asked to challenge that map, and yet the judge threw it out anyway and we would submit that the fact that it wasn’t challenged really speaks to the lack of merit of the so-called procedural unconstitutionality...”

The attorney argues the legislature had complete, unrestricted, unfettered and exclusive power and authority to fashion its own redistricting plan.

Attorney Jeffrey Lang, who represents the governor and lieutenant governor in the case, said the 2014 amendments “are simply silent” as to what happens when the New York Independent Redistrict Commission deadlocks and does not submit a second set of maps.

The IRC’s failure to act “has to be curable by someone,” Lang said.

The attorney also asked the court to reverse McAllister’s order in full, but if any remedial map is applied, he said, it should be for the following election cycle. Lang noted “the confusion and chaos that would result at this point in the election cycle,” with the primary on June 28.

“The designating petition process has already almost reached its completion of court challenge. The deadline for court challenges are (Thursday),” he said.

Alice Reiter, of Cuti Hecker Wang, who’s representing the Democratic Senate respondents, said the “everybody agrees” Republicans were going to lose two incumbent congressmen upstate, an already Democratic-leaning district grew more blue in the bipartisan consensus of how those districts should be drawn, and a popular Republican who managed to retain a district had announced their retirement. Reiter said that accounts for half of the respondents’ claim of “the case-ending shift.”

The plaintiffs lawyer, Misha Tseytlin, said New York voters made clear in their vote of the 2014 amendment that they wanted constant gerrymandering by the legislature every decade to stop.

“Yet, in the very first election cycle, governed by the 2014 amendment, two of the branches of New York government, the executive branch and the legislative branch, engaged in an egregious, nationally embarrassing gerrymandering.”

He said the governor made public remarks that she was going to use her influence of the redistricting process to help out Democrats in Congress.

“And boy did the legislature deliver,” Tseytlin said. “They ignored the IRC process. They didn’t consult with Republicans at all.”

The attorney said this wasn’t just a matter of Republicans daring to go to Steuben County to seek out McAllister, as the respondents’ lawyers have suggested.

“It’s every good government group, left, right and center saying this, including the League of Women Voters, the state’s preeminent nonpartisan election fairness organization that submitted a powerful amicus brief explaining everything that we’ve been saying, at least in the procedure in this case,” he said.

Brian Quail, lawyer for The State Board of Elections, informed McAllister the board isn't taking a position on the merits of the case, but would be available to provide all parties with information regarding the political calendar or any other relevant issue.

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