



Justice Stephen Lindley. Courtesy photo

NEWS

Appeals Court Stays Ruling Striking Down NY Congressional Map

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Election and Political Law

By Brian Lee

A state appeals court judge on Monday granted an “interim discretionary stay” of last week’s declaration that New York’s congressional and legislative district maps were unconstitutionally gerrymandered in favor of Democrats.

Justice Stephen Lindley of the Appellate Division, Fourth Department, stayed in its entirety acting Steuben County Supreme Court Justice Patrick McAllister’s decision and order from March 31, in a lawsuit filed by a group of Republicans against Gov. Kathy Hochul, the New York Board of Elections and others.

Lindley’s action came after lawyers for Democratic leaders filed an emergency application for a stay.

After it was initially suggested state primary elections scheduled for June 28 may need to be delayed as a result of McAllister’s decision, Lindley’s temporary stay clarifies candidate petitions can be filed with state and local Board of Elections by Thursday.

Lindley also slightly modified the deadlines for submissions on the stay applications, giving the petitioners until noon Tuesday to file opposition papers and a motion to vacate the stay, and the respondents until noon Wednesday to file reply papers.

Oral arguments are scheduled for 1 p.m. Thursday, with Lindley to render his decision by the end of Thursday.

Lindley has not yet set a scheduling order for the appeal, but said it would be issued in the next day or so, setting forth the dates by which briefs must be filed with the Appellate Division and the date that the appeal will be considered by the court.

In light of the upcoming primary election, the appeal will be greatly accelerated and a decision could be rendered within the next three weeks, if not sooner, Lindley indicated.

Monday’s decision for the temporary stay cleared up initial confusion that resulted from McAllister’s order, which had given state officials until April 11 to submit new maps.

Lawyers for the plaintiffs questioned whether McAllister’s order had been stayed.

Meanwhile, the law firm of Cuti Hecker Wang, which is representing Senate Majority Leader Andrea Stewart-Cousins, D-Westchester, on the matter, filed a 59-page memorandum in support of its emergency application for a stay.

Graubard Miller and Phillips Lytle are representing Assembly Speaker Carl Heastie, D-Bronx, in the case.

The firm argued that in the absence of a stay, the trial court's order would prejudice voters statewide, and voters would suffer irreparable harm.

The memo said the order threatened to change district lines, which would necessitate a change of voting dates and polling places.

"Voters may become confused about which candidates are vying to represent them," the memo argued.

Some voters already contributed time and money to support particular candidates, only to have their chosen candidate potentially pushed out of their district if district lines changed, the memo continued, while noting that McAllister's determination "casually observes ... that its order may result in no elections at all."

The Democrats went on to say that the appeals court should adhere to the Purcell Principle, which warns against interfering with imminent elections.

The principle takes its name from *Purcell v. Gonzalez* in which the Supreme Court reversed an October 2006 decision of the U.S. Court of Appeals for the Ninth Circuit that blocked an Arizona voter ID law during a midterm election.

"The so-called Purcell Principle reflects a bedrock tenet of election law: when an election is close at hand, the rules of the road must be clear and settled," the New York Democrats' lawyers argued.

The memo goes on to cite *Merrill v. Milligan*, a federal district court case filed this year in which the Alabama secretary of state seeks a stay on a determination that Alabama's redistricting maps likely violated federal law as a result of gerrymandering.

The court enjoined Alabama from holding congressional elections under the likely illegal maps, although primary elections were scheduled to be held five months later.

In that case, the U.S. Supreme Court granted a stay of the injunction, which allowed the election to proceed under the challenged maps.

U.S. Supreme Court Justice Brett Kavanaugh noted the district court's injunction was "a prescription for chaos."

John Faso Jr., a former congressman and spokesman for the GOP plaintiffs in New York, said in a statement Monday: "While Democrats want to delay the judicial process so that they can run one election on these unconstitutional maps, we are confident the courts will see through that gambit and will order constitutional maps for the 2022 elections."
