



*State of New York  
Court of Appeals*

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5/28/24

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COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office

**May 17, 2024 through May 23, 2024**

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

**The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.**

MATTER OF CLEMENTS v NY SECRETARY OF STATE:

APL-2024-00054

3rd Dept. App. Div. order of 3/28/24; affirmance;

**Proceeding Against Body or Officer—Whether the Secretary of State violates their obligation, under Executive Law section 381 to establish minimum standards governing code enforcement when they delegate complete discretion to municipalities to determine procedures for addressing violations in rental properties;**

Supreme Court, Albany County, in a proceeding pursuant to CPLR article 78, granted respondent's motion to dismiss the petition; App. Div. with two Justices dissenting, affirmed.

MATTER OF OCEANVIEW v ZUCKER:

APL-2024-56

3rd Dept. App. Div. order of 5/4/23; reversal; leave to appeal granted by the Appellate Division, 5/9/24;

**Health—Adult Care Facilities—Whether Department of Health regulations capping admissions on transitional adult homes for persons with serious mental illness violate the Fair Housing Act; whether challenges to facially discriminatory laws under the FHA are subject to a government interests means-ends balancing test or instead are governed by the Fair Housing Act text and its preemption provision; whether narrow-tailoring under the FHA requires that the challenged actions be the least discriminatory means of achieving the purported interests; whether the “benign discrimination” exception to the FHA, to the extent such an exception exists, requires more than a showing of benefits that outweigh burdens on a protected class; whether such an exception exists;**

Supreme Court, Albany County, in a combined proceeding under CPLR article 78 and action for declaratory judgment, partially granted petitioner’s application to, among other things, declare invalid certain regulations promulgated by respondent Commissioner of Health; App. Div. reversed, dismissed the petition, and declared that the challenged regulations do not violate the Fair Housing Act.

STEFANIK v HOCHUL:

APL-2024-00058

3rd Dept. App. Div. order of 5/9/24; affirmance;

**Elections—Ballots—Whether the New York Early Mail Voter Act (see Election Law § 8-700; L 2023, ch 481), which permits all registered voters in New York to apply to vote early by mail in any election in which the voter is eligible to vote, violates the New York State Constitution;**

Supreme Court, Albany County, inter alia, declared that the New York Early Mail Voter Act is constitutional and granted certain defendants’ motions to dismiss the complaint; App. Div. affirmed.