



State of New York
Court of Appeals
Clerk's Office
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COURT OF APPEALS NEW FILINGS

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

August 30, 2024 through September 5, 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 AMEDURE v SNY:

APL-2024-00121

3rd Dept. App. Div. order of 8/23/24; modification;

Elections—Ballots—Whether Election Law § 9-209 (2) (g) is unconstitutional; Supreme Court, Saratoga County, partially granted petitioners' application, in a combined proceeding pursuant to Election Law article 16 and CPLR article 78 and action for declaratory judgment to, among other things, declare that laws of 2021, chapter 763 is unconstitutional; App. Div. modified by reversing so much of the judgment as declared Election Law § 9-209 (2) (g) unconstitutional, dismissed the petition/complaint, declared Laws of 2021, chapter 763 constitutional and valid, and, as so modified, affirmed.

MATTER OF CARTWRIGHT v KENNEDY:

APL-2024-00123

3rd Dept. App. Div. order of 8/29/24; affirmance; sua sponte examination of whether a substantial constitutional question is directly involved to support the appeal taken as of right;

Elections—Residence Requirement—Whether address listed in independent nominating petition was candidate's address within the meaning of Election Law § 1-104 (22); alleged constitutional violations;

Supreme Court, Albany County, inter alia, denied certain respondents' motion to dismiss the petition; Thereafter, Supreme Court, Albany County, granted petitioners' application, in a proceeding pursuant to Election Law §16-102, to declare invalid the independent nominating petition designating certain respondents as candidates of the independent body We The People for the public offices of President of the United States, Vice President of the United States and Electors of President of the United States and Vice President of the United States in the November 5, 2024 general election; App. Div. dismissed the appeal from the order and affirmed the corrected judgment.

FRESH AIR FOR THE EASTSIDE v STATE OF NY:

APL-2024-00122

4th Dept. App. Div. order of 7/26/24; modification; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Environmental Conservation—Air Pollution Control—Whether plaintiff failed to state a cause of action alleging that odors and fugitive emissions from subject landfill violate members of non-profit's environmental rights under the Green Amendment to the New York State Constitution (see NY const, art I, § 19);

Supreme Court, Monroe County, granted the motions of defendants City of New York and Waste Management of New York, LLC, to dismiss the complaint against them and denied the motion of defendants State of New York and New York State Department of Environmental Conservation to dismiss the complaint against them; App. Div. dismissed the appeal of defendant Waste Management of New York LLC and modified the order appealed from by granting the motion of defendants State of New York and New York State Department of Environmental Conservation and dismissed the complaint in its entirety and, as so modified, affirmed.

PEOPLE v HERNANDEZ (ROSEMARY):

APL-2024-00113

1st Dept. App. Div. order of 2/1/24; affirmance; leave to appeal granted by Cannataro, J., 8/20/24;

Crimes—Sentence—Whether the imposition of a term of postrelease supervision is permissible when an individual is convicted of a Class A felony and sentenced pursuant to the Domestic Violence Survivors Justice Act (see Penal Law § 60.12);

Supreme Court, Bronx County, convicted defendant, upon a plea of guilty, of murder in the second degree, and sentenced defendant to a term of imprisonment of 10 years, with five years' postrelease supervision; App. Div. affirmed.

MATTER OF HUDSON VALLEY v CITY OF KINGSTON et al.:

APL-2024-00115

3rd Dept. App. Div. order of 3/21/24; modification; leave to appeal granted by the Appellate Division, 8/22/24;

Landlord and Tenant—Rent Regulation—Whether respondent Common Council's declaration of public housing emergency under Emergency Tenant Protection Act of 1974 (McKinney's Uncons Laws of NY § 8621 et seq. [EPTA]), as permitted by the Housing Stability and Tenant Protection Act of 2019 (L 2019, ch 36), was arbitrary and capricious; whether rent adjustment guideline and fair market rent guideline adopted by rent guidelines board exceeded the board's authority under the ETPA; Supreme Court, Ulster County, partially granted petitioners' application (1) to annul a determination of respondent City of Kingston Common Council declaring a public housing emergency, and (2) to review a determination of respondent Kingston New York Rent Guidelines Board implementing certain guidelines; App. Div. modified, by reversing so much of the judgment as declared that the November 9, 2022 determination of respondent Kingston New York Rent Guidelines Board was invalid and remitted for the purpose of establishing new guidelines; declared said determination valid; and, as so modified, affirmed.

SIMON v FRANCINVEST:

APL-2024-00119

1st Dept. App. Div. order of 7/25/24; denied motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Corporations—Shareholders' Derivative Action—alleged constitutional violations; Supreme Court, New York County, denied plaintiff's motion under CPLR 3025(b) and 5015(a)(3) to amend the third amended complaint to reinstate claims (except as to Jean-Francois Simon and Charles Raab, individually) and parties previously dismissed from the action and to add new claims against new parties based on new evidence; App. Div. affirmed 4/8/22 order; App. Div. denied motion for reargument of or leave to appeal from April 23, 2024 order.

PEOPLE v ANGELA VV.:

APL-2024-00116

3rd Dept. App. Div. order of 7/18/24; affirmance; leave to appeal granted by Fisher, J., 8/23/24;

Crimes—Sentence—Whether defendant established entitlement to resentencing under the Domestic Violence Survivors Justice Act;

Supreme Court, Franklin County, denied defendant's motion for resentencing pursuant to CPL 440.47; App. Div. affirmed.