



*State of New York
Court of Appeals*

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*Lisa Le Cours
Chief Clerk and
Legal Counsel to the Court*

*Clerk's Office
20 Eagle Street
Albany, New York 12207-1095*

COURT OF APPEALS NEW FILINGS

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

April 12, 2024 through April 18, 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.

FOSELLA v ADAMS:

2nd Dept. App. Div. order of 2/21/24; modification;

Parties—Standing—Whether plaintiffs lacked standing to assert certain causes of action; Local Laws—Adoption of Local Laws—Whether Local Law No. 11 (2022) of the City of New York, which created a new class of voters eligible to vote in municipal elections consisting of individuals who are not United States citizens and who meet certain enumerated criteria, was enacted in violation of the New York Constitution and Municipal Home Rule Law;

Supreme Court, Richmond County, denied the motion of the defendants Eric Adams, as Mayor of the City of New York, and the City Council of the City of New York, for summary judgment dismissing the complaint insofar as asserted against them and, in effect, declaring that Local Law No. 11 (2022) of City of New York is lawful and valid,

(2) denied the defendants-intervenors' motion, among other things, for summary judgment dismissing the complaint insofar as asserted against them and, in effect, declaring that Local Law No. 11 (2022) of City of New York is lawful and valid, and (3) granted the plaintiffs' motion for summary judgment declaring Local Law No. 11 (2022) of City of New York null and void on the grounds that it violates the New York State Constitution, the New York State Election Law, and the Municipal Home Rule Law, and permanently enjoining the implementation or enforcement of that law; App. Div. modified the order by deleting the provision thereof denying that branch of the City defendants' motion which was for summary judgment dismissing the second cause of action insofar as asserted against them and, in effect, declaring that the Local Law does not violate the New York State Election Law, and substituting therefor a provision granting that branch of the motion, deleting the provision thereof denying that branch of the intervenors' motion which was for summary judgment dismissing the second cause of action insofar as asserted against them and, in effect, declaring that the Local Law does not violate the New York State Election Law, and substituting therefor a provision granting that branch of the motion, and deleting the provision thereof granting that branch of the plaintiffs' motion which was for summary judgment declaring the Local Law null and void on the ground that it violates the New York State Election Law, and substituting therefor a provision denying that branch of the motion; and, as so modified, affirmed the order; and remitted the matter to Supreme Court, Richmond County, for the entry of a judgment, inter alia, declaring that the Local Law is null and void on the grounds that it violates the New York State Constitution and the Municipal Home Rule Law.

MATTER OF HARPER v NEARY:

2nd Dept. App. Div. order of 3/6/24; confirmed determination; sua sponte examination of whether a substantial constitutional question is directly involved to support an appeal as of right;

Proceeding Against Body or Officer—Whether application of the CPLR article 78 standard of review to the determination of a pistol licensing officer violates the Second Amendment; whether the Appellate Division denied petitioner/plaintiff's Second Amendment rights by affirming the denial of petitioner/plaintiff's application; whether the Appellate Division improperly applied section 400.00 of the Penal Law in violation of the Second Amendment;

App. Div. in a hybrid proceeding under CPLR article 78, among other things, to review a determination of respondent, a Justice of Supreme Court, Westchester County, dated November 10, 2022, which denied the application of petitioner/plaintiff for a pistol license, and action for declaratory and injunctive relief, confirmed determination, denied petition, and dismissed proceeding/action.

PEOPLE v MARTINEZ-FERNANDEZ (EDWARD):

1st Dept. App. Term order of 6/26/23; affirmance; leave to appeal granted by Halligan, J., 4/4/24;

Motor Vehicles—Aggravated Unlicensed Operation—Whether the accusatory

instrument charging aggravated unlicensed operation of a motor vehicle was jurisdictionally defective because it failed to provide reasonable cause to believe that defendant knew, or had reason to know, that his license was suspended; whether accusatory instrument was facially insufficient as to charge of reckless driving; New York City Criminal Court, Bronx County, convicted defendant, upon a plea of guilty, of aggravated unlicensed operation of a motor vehicle in the third degree, and imposed sentence; App. Div. affirmed.

MATTER OF SCHULZE v CITY OF NEWBURGH FD:

3rd Dept. App. Div. order of 2/9/23; affirmance; leave to appeal granted by the Court of Appeals, 2/20/24;

Workers' Compensation—Reimbursement—Whether employer is entitled, pursuant to Workers' Compensation Law § 25 (4) (a) or § 30 (2), to reimbursement of General Municipal Law § 207-a (2) payments made to firefighter receiving performance of duty retirement allowance under Retirement and Social Security Law § 363-c;

Workers' Compensation Board ruled that the City of Newburgh Fire Department was not entitled to reimbursement or credit of payments made to claimant under General Municipal Law § 207-a (2); App. Div. affirmed.

MATTER OF WARREN v TOWN OF WEST SENECA:

4th Dept. App. Div. order of 3/22/24; affirmance; sua sponte examination of whether the Appellate Division order appealed from that affirmed Supreme Court's December 2023 order finally determines the proceeding/action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

Environmental Conservation—Whether the standard of review in a CPLR article 78 proceeding seeking to annul a SEQRA determination was modified by an amendment to the State Constitution (NY Const, art I, § 19); whether the Appellate Division erred;

Supreme Court, Erie County, in a proceeding pursuant to CPLR article 78 and declaratory judgment action, among other things, granted the cross-motion of respondent-defendant Planning Board of the Town of West Seneca to dismiss the proceeding/action; Supreme Court, Erie County, settled the record on appeal; App. Div. affirmed order settling record; App. Div. affirmed judgment.