

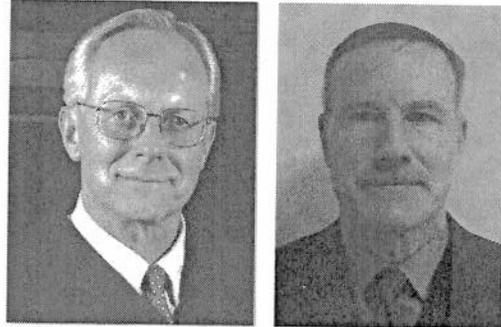


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New York's Tax Cap Statute and Recent Tax *Certiorari*, Eminent Domain and Exemption Cases

BY HON. THOMAS A. DICKERSON
and JOHN MECHMANN, ESQ.

2014 WAS A PARTICULARLY IMPORTANT YEAR for New York State's tax cap statute and recent decisions involving tax *certiorari*, eminent domain and real property tax exemptions.

Tax Cap Statute Is Constitutional, So Far

On June 30, 2011, Governor Cuomo signed into law the property tax cap statute which seeks to "control the ever-rising property tax by limiting the amount by which local taxing entities . . . may increase property taxes each year."¹ Under the statute, General Municipal Law § 3-c, (1) "No local government may increase its property tax levy by more than 2 percent or the rate of inflation (whichever is less);" (2) "A local government may exceed the tax levy cap only if the governing body enacts, by a two-thirds

vote, a local law . . . overriding the tax levy cap;” and (3) “The cap will have limited exceptions.”² There are corresponding changes in provisions of the Education Law.

As noted by Governor Cuomo, the concept of a tax cap³ seeks to help taxpayers by imposing “[d]iscipline, a rigor and a scrutiny to the process . . . It doesn’t ultimately limit or direct, but it challenges the local governments to find savings. It informs the citizens and it’s working.”⁴ There can be little question that the Governor’s tax levy cap program is a game changer in the area of tax *certiorari* and governmental financing.

In February 2013, the New York State United Teachers and others (hereinafter, the “Plaintiffs”), filed suit seeking, *inter alia*, a declaration that provisions of Education Law § 2023-a (a tax cap statute enacted in conjunction with General Municipal Law § 3-c) is unconstitutional. The Plaintiffs asserted that the statute violated the Education Article of the New York State Constitution, and the equal protection, due process, and free speech guarantees under the Federal and New York State Constitutions. The defendants, including the State of New York and Governor Cuomo, moved to dismiss the complaint. On September 23, 2014, Albany County Supreme Court Justice Patrick J. McGrath granted the defendants’ motion to dismiss the complaint pursuant to CPLR § 3211(a)(7) for failure to state a cause of action.⁵

1. Education Article of the New York Constitution

The Plaintiffs asserted that the statute violated the Education Article of the New York State Constitution, which provides, “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.”⁶

The “crux” of the Plaintiffs’ claim was that the statute “erodes local control of education spending, which has the effect of limiting education opportunity everywhere, with a disproportionate impact on the poorest districts.” The Supreme Court deemed this to be a variation of the argument rejected by the Court of Appeals in *Board of Education, Levittown Union Free School District v. Nyquist*.⁷ In *Levittown*, the Court of Appeals rejected the contention that the Education Article requires “that the education to be made available be equal or substantially equivalent in every district.”⁸ The Court of Appeals stated that the Education Article did not provide “either that districts choosing to provide opportunities beyond those that other districts might elect or be able to offer be foreclosed from doing so, or that local control of education . . . be abolished.”⁹ Instead, the Education Article

implemented a system insuring minimal acceptable facilities and services.¹⁰

Here, the Supreme Court concluded that, “[s]ince the constitutional floor is set at a ‘sound basic education’ which can be disparate, plaintiffs’ allegation that the legislation will result in greater disparities does not give rise to a claim under the Education Article.”¹¹ The Court noted that the Plaintiffs were not claiming that the State “‘failed . . . to provide minimally acceptable educational services.’”¹² Rather, the Plaintiffs were arguing that, in enacting the statute, the State made it more difficult for a school district to raise funds above a certain threshold. However, the Supreme Court concluded that, because the decision as to whether to raise funds lies with the voters, the State is not withholding resources or depriving students of a sound basic education.¹³

The court disagreed with the Plaintiffs’ contention that the statute deprived districts of local control. Indeed, a budget rejected by the electorate is the very exercise of local control.¹⁴

2. Equal Protection

With regard to the Plaintiffs’ challenge to the statute under the Equal Protection Clauses of the Federal and New York State Constitutions, the Supreme Court observed that the Plaintiffs’ entreaty that the court declare education to be a fundamental right requiring heightened scrutiny of related enactments, as opposed to rational basis review, was contrary to well-established case law.¹⁵ In *Levittown*, the Court of Appeals stated that it had previously held that rational basis review applied in reviewing State action implicating the right to free, public education, and that there was no reason to depart from that determination.¹⁶

The defendants asserted that the Legislature in enacting the statute may have believed that an increase in property taxes was driving businesses and jobs away from New York, and that the statute was rationally related to the legitimate interest in slowing the growth of property taxes.¹⁷ The Supreme Court rejected the Plaintiffs’ claim that the statute did not pass rational basis review because linking the cap to inflation was irrational given the inequality in funding and educational opportunity State-wide. The Supreme Court concluded that this amounted to a critique of the fairness of the system, exceeding the scope of rational basis review which merely addresses whether there is a rational basis for upholding the statute.¹⁸

In their fourth cause of action, the Plaintiffs alleged that the tax cap violated their right to equal protection because it treated voters unequal-

ly. Specifically, they alleged that school district residents voting for education funding would be treated differently than “non-school residents” who would benefit from non-education funding. According to the Plaintiffs, a town board could satisfy the supermajority requirement and pass a non-school budget containing a tax levy exceeding the cap with a simple majority, whereas school district residents would be required to achieve a supermajority to raise education funds above the cap.¹⁹ The Supreme Court concluded that these groups were not being treated differently. Rather, the supermajority requirement applied to both classes. Inasmuch as the Plaintiffs’ claim amounted to an “uneven effects” argument, the court rejected it since uneven effects will not constitute an equal protection violation if the law does not treat class members differently.²⁰

In the sixth cause of action, the Plaintiffs asserted that the 60% supermajority requirement violated equal protection, because the “votes of those who favor exceeding the tax cap are given 2/3 the weight of those who oppose”²¹ However, as the Supreme Court observed, “[t]he basic concern of the Equal Protection Clause is . . . legislation whose purpose or effect is to create discrete and objectively identifiable classes.”²² Such classes defined by preexisting status could include classes based on race or religion. However, the Plaintiffs’ challenge was premised not on a preexisting immutable characteristic, but on a classification—those voting with the 60% and those voting against it—which could not possibly arise until after the vote by secret ballot.²³ Thus, “there is no discrete and objectively identifiable class of protected voters that are impacted by the tax cap’s supermajority provision.”²⁴

3. The Right to Vote

The Plaintiffs asserted that the supermajority requirement violated the one-person, one-vote principle. However, the Supreme Court concluded that this principle “simply did not apply to school-tax levy referendums that necessitated supermajority approval.”²⁵ The court, quoting *Brenner v. School District of Kansas City, Missouri*, noted that, in the case of a referendum, as opposed to reapportionment, the one-person, one-vote principle was inapplicable since, in such cases, the voters were deciding whether they should tax themselves.²⁶ Thus, “full and effective participation already is guaranteed because the voters are exercising the franchise directly, rather than through representatives”²⁷ Because the guarantees of fairness applicable in apportionment cases differ from those in referendum cases, “the [United States] Supreme Court’s articulation of the ‘one-[person], one-vote’

apportionment principle does not carry with it . . . a federal Constitutional command that all State school bond and tax levy elections must be decided by a simple majority vote”²⁸

4. Freedom of Expression

The Plaintiffs asserted that the statute violated their right to free speech.²⁹ They claimed that the statute (1) diminished their voting power relative to those who opposed increased spending; (2) improperly compelled the inclusion of the ballot notice; and (3) imposed adverse consequences on those who advocated exceeding the cap.³⁰

The Supreme Court summarily rejected the contention concerning the dilution of voting power, which it previously rejected.³¹

The ballot notice provision requires ballots containing a covered proposal to contain specified language notifying voters of, *inter alia*, the supermajority requirement.³² The Supreme Court concluded that the ballot notice requirement governed the ballot process, to be distinguished from political speech. Additionally, the Court concluded that the ballot notice merely conveyed neutral facts to notify voters of the consequences of their votes.³³

Finally, the Supreme Court rejected the argument that the ballot notice requirement would chill the speech of pro-education advocates based on adverse consequences. The Court observed that advocates were free to convey their message to the electorate in whatever manner they chose, and, therefore, the inclusion of the ballot notice would not have a chilling effect on speech.³⁴

5. Substantive Due Process

The Plaintiffs claimed that the statute violated, *inter alia*, their liberty interest in the right to provide and receive education. The Supreme Court stated that it was “reluctant to hold that a statute which . . . places the ability to control a school budget in the hands of voters, albeit by a supermajority margin, infringes . . . [on] the liberty of parents . . . to direct the upbringing and education of children.”³⁵ The Court stated that, if it were to accept the Plaintiffs’ argument, “even a majority vote could be said to interfere with the liberty interests of certain parents, in the minority, to direct their child’s education.”³⁶ The Court concluded that the statute did not constitute a deprivation of any liberty interest, and, therefore, did not amount to a substantive due process violation.³⁷

It would appear likely that this case will make its way to the Court of Appeals in the near future. Justice McGrath's well-reasoned opinion suggests that Governor Cuomo's innovative and game changing tax cap statute may, ultimately, survive constitutional review. Certainly, the taxpayers of New York State will be better off for it.

Recent Tax *Certiorari* Cases

1. Valuation

Matter of Hempstead Country Club v. Board of Assessors, 112 A.D.3d 123, 141, 974 N.Y.S.2d 98, 111 (2d Dep't 2013)—In a challenge to the assessment of a private, not-for-profit golf course, it was proper to convert all golf course leases that were not gross leases into gross leases, and to deem municipal leases as gross leases, to estimate the rent-to-revenue ratio of the property. It was also appropriate to apply a capitalization rate with a tax load factor to this amount rather than to treat the taxes (which are alleged to be excessive) as expenses of the property.

Matter of the Application of Rite Aid Corporation v. Town of Schodack Board of Assessment Review, 41 Misc.3d 1221(A), *4, 981 N.Y.S.2d 638 (Supreme Court, Rensselaer County, 2013)—In the absence of clear appellate authority, the Trial Court valued the property according to its condition and use on the tax status date, which was as a "first generation" (built to suit the initial tenant) free-standing drug store encumbered with a long-term lease paying above market rents. While petitioners demonstrated the existence of a valid and credible dispute regarding valuation, the Court declined to accept their appraiser's conclusion of value, which was based upon a fee simple interest approach using market rents, and found that the property was not over-assessed. The Court also accepted, as evidence of value regarding the 2011 and 2012 petitions, evidence of a sale of the property in 2007.

2. Procedure

Matter of Board of Managers of French Oaks Condominium v. Town of Amherst, 23 N.Y.3d 168, 177-78, 989 N.Y.S.2d 642, 648-49 (2014)—Petitioner failed to rebut the presumption of validity attached to tax assessments, since its appraiser failed to support all the "facts, figures, and calculations" in his appraisal, by relying on "forecast financials" rather than specific income and expense figures for each of his comparable properties, and by providing no data from which his derived capitalization rate could be verified.

Matter of Cornwall Yacht Club, Inc. v. Assessor, 110 A.D.3d 1070, 1071, 974 N.Y.S.2d 268, 269 (2d Dep't 2013), *appeal denied*, 23 N.Y.3d 904 (2014)—Where municipality had already entered into a consent order settling RPTL Article 7 tax challenge, School District may seek vacatur of the order (directing school tax refunds) for failure of service by Petitioner under RPTL § 708 (3), unless Petitioner can show good cause for the service failure.

Matter of Long Island Automotive Group, Inc. v. Board of Assessors of Nassau County, 116 A.D.3d 854, 855, 983 N.Y.S.2d 450, 451 (2d Dep't 2014)—Where Petitioner moved to enforce stipulation of settlement compromising RPTL Article 7 Action, which agreed to refunds, Court refused to accept Respondent's assertion that "fiscal chaos" would result from the issuance of the agreed-upon refunds, and affirmed grant of motion to compel adherence to the stipulation.

Matter of Bove v. Town of Schodack, 116 A.D.3d 1111, 1112-13, 985 N.Y.S.2d 160, 162 (3d Dep't), *leave to appeal denied*, 23 N.Y.3d 906 (2014)—Appraisal properly struck, under Rule of Court 202.59, where appraiser failed to include all "facts, figures, and calculations" in his appraisal, specifically income and expense figures from two comparable golf course properties, the identities of which the appraiser kept confidential.

Matter of Jonsher Realty Corp./Melba, Inc. v. Board of Assessors, 118 A.D.3d 787, 788-89, 988 N.Y.S.2d 203, 205-6 (2d Dep't 2014)—RPTL Article 7 is the normal vehicle to challenge excessive or unlawful real property tax assessments, although CPLR Article 78 is also appropriate to challenge the jurisdiction of the taxing authority, the constitutionality of a tax, or the methodology employed over several properties. Here, Petitioner challenged only excessive assessments, hence this Article 78 action was not appropriate. Petitioner also failed to exhaust its administrative remedies under Article 7 for each of the tax years in question subsequent to that challenged in the initial filing and failed to file Article 7 petitions challenging the assessments in each of those tax years within the applicable 30 day limitations period.

Matter of Jacobowitz v. Board of Assessors for Town of Cornwall, 121 A.D.3d 294, 298, 305-7, 990 N.Y.S.2d 551, 554-55, 560 (2d Dep't 2014)—During a pending Article 7 proceeding, Respondent Assessor sought permission from Petitioner to inspect the home interior for appraisal purposes. Upon refusal, Respondent sought a court order requiring the inspection. Petitioner cross-moved, by direction of the court, to preclude the inspection. The Trial Court granted the motion to compel the inspection and denied the motion to preclude.

The Appellate Division, Second Department reversed, finding initially the Trial Court erred in placing a burden on Petitioner to move to preclude, since the Fourth Amendment to the United States Constitution explicitly protects one from unreasonable searches and seizures. An interior inspection over the opposition of the owner must balance the Respondents' argued need for the inspection with the invasion of privacy that the inspection would entail. Merely challenging an assessment is not a waiver of the owner's right to such privacy. The Respondents, due to the improper burden shift, failed to satisfy their burden, in the context of the Fourth Amendment intrusion, of demonstrating the reasonableness of their requested inspection.

Matter of Better World Real Estate Group v. New York City Department of Finance, 122 A.D.3d 27, 37-8, 992 N.Y.S.2d 247, 255-56 (2d Dep't 2014)—Hybrid CPLR Article 78/RPTL Article 5 action is an appropriate vehicle to challenge erroneous property classifications outside the City of New York, while such challenges, for New York City property owners, may be brought by hybrid Article 78/New York City Administrative Code § 11-206 action. The action here was also timely, having been commenced some three months after the determination challenged.

Tricarico v. County of Nassau, 120 A.D.3d 658, 659-60, 990 N.Y.S.2d 864, 865 (2d Dep't 2014)—Petitioners sought to challenge a change by the assessor in their property classification from "Class One" to "Class Two" Residential by way of a CPLR Article 78 action. While Article 78 may be used to challenge a taxing authority which has exceeded its power, such as by withdrawing a previously-granted exemption or the assessment methodology as it relates to several properties, challenges to excessive, unequal, unlawful assessments, or those resulting from the property being misclassified, must be by RPTL Article 7 action.

Matter of Westchester Joint Waterworks v. Assessor of City of Rye, 120 A.D.3d 1352, 1354, 992 N.Y.S.2d 351, 353 (2d Dep't 2014)—Article 7 action was dismissed against the affected school district, pursuant to RPTL § 708 (3), for failure of Petitioner to serve notice of the action upon the school district. Such dismissal is on the merits, so the action cannot be restored under CPLR § 205(a). In addition, non-aggrieved party (the municipality which was properly served) nevertheless has standing to seek dismissal for the failure to serve notice upon the school district.

3. Real Property Tax Exemptions

Matter of Maetrium of Cybele, Magna Mater, Inc. v. McCoy, 111 A.D.3d 1098, 1102, 975 N.Y.S.2d 251, 254 (3d Dep't 2013), *affirmed*, 24 N.Y.3d

1023 (2014)—Petitioner, a not-for-profit religious organization, met its burden of showing that it primarily used its property for religious and charitable purposes, where testimony established regular communal living, the providing of charity and hospitality, and other religious and charitable uses on the property.

Matter of Greater Jamaica Development Corporation v. New York City Tax Commission, 111 A.D.3d 937, 939-40, 975 N.Y.S.2d 749, 752 (2d Dep't 2013), *leave to appeal granted*, 23 N.Y.3d 908 (2014)—Respondent City of New York revoked the tax exemption enjoyed by the owner's property, a public parking lot. The owner challenged the determination in a CPLR Article 78 action, which was dismissed on motion. The Appellate Division, Second Department reversed finding the Respondent failed to meet its burden (due to its having revoked the exemption) to demonstrate that the use of the property for public parking was not a tax-exempt use by the owner of the parcel. A property owner, which is an entity whose not-for-profit status has been recognized by the Internal Revenue Service and whose property is used solely for charitable purposes, has made a presumptive showing of entitlement to the exemption.

Board of Education of Poughkeepsie City School District v. City of Poughkeepsie, 113 A.D.3d 801, 803, 979 N.Y.S.2d 380, 382 (2d Dep't 2014)—Exempt property, held by City due to tax foreclosure, remains exempt from school taxes.

Matter of St. William's Church, of Troy, N.Y. v. Dimitriadis, 115 A.D.3d 1031, 1033, 981 N.Y.S.2d 837, 839-40 (3d Dep't 2014)—Assessor sought to revoke tax exempt status from church property whose active use decreased and for which sale was sought. So long as exempt property is used exclusively for a religious purpose, neither less-frequent use nor an attempt by the owner to sell property, deprive the property of its tax-exempt status.

Matter of Buffalo Niagara Business Park, LLC v. Board of Assessment Review for City of Buffalo, 118 A.D.3d 1315, 987 N.Y.S.2d 290, *leave to appeal denied*, 120 A.D.3d 1612 (4th Dep't 2014)—Dismissal was proper, as failure to serve the municipal Defendants and file thereafter is an absolute defense to an RPTL Article 7 proceeding.

Oorah, Inc. v. Town of Jefferson, 119 A.D.3d 1179, 1181-82, 990 N.Y.S.2d 669, 672-73 (3d Dep't 2014)—Petitioner succeeded in demonstrating eligibility of property for a religious, educational, or charitable exemption. A property owner recognized as a not-for-profit by the Internal Revenue Service, whose property is used solely for charitable purposes, is

presumptively entitled to an exemption. Also, Respondent failed to show building or fire code violations which would have deprived the property of its tax exempt status.

Small Claims Assessment Reduction (SCAR) Proceedings

Matter of Manouel v. Board of Assessors, 111 A.D.3d 735, 974 N.Y.S.2d 806, 807 (2d Dep't 2013), *leave to appeal granted*, 22 N.Y.3d 862 (2014)—Respondent properly raised jurisdictional objection, where the subject parcel was not owner occupied, since Petitioner's mother, and not Petitioner, lived there. Therefore, denial of small claims assessment review was proper.

Recent Eminent Domain Cases

1. Valuation

Matter of State of New York (KKS Properties, LLC), 119 A.D.3d 1033, 1035-37, 990 N.Y.S.2d 105, 108 (3d Dep't 2014)—Trial court rejected Claimant's appraisal expert since, among other things, he failed to use his experience to make adjustments to the comparable properties he used, or to explain his calculations. The Court on appeal affirmed the rejection of Claimant's appraisal but also found the trial court had improperly determined that the highest and best use of the property was for residential development, and thus the condemnor's appraisal (premised on such use) was of no probative value. (*See below for procedural issues that also were addressed.*)

Matter of Western Ramapo Sewer Extension Project, 120 A.D.3d 703, 704-5, 990 N.Y.S.2d 895, 896-97 (2d Dep't 2014)—Valuation methodology properly included contract of sale since Respondent failed to prove it was abnormal or not an arm's length transaction. Trial Court also properly excluded expert testimony for failure to notice same pursuant to CPLR § 3101(d), and took adverse inference against Respondent's appraiser and engineer, where they destroyed prior reports.

2. Procedure

Matter of State of New York (KKS Properties, LLC), 119 A.D.3d 1033, 1037, 990 N.Y.S.2d 105, 109 (3d Dep't 2014)—Trial Court rejected claimant's appraisal expert, and the Appellate Division on appeal also found that the condemnor's appraisal (finding residential as the highest and best use) was of no probative value. Since both appraisals were in error, the Trial Court and the Appellate Division on appeal were without competent proof

upon which to base a judgment on valuation; so, the matter was remitted for further proceedings, consistent with the current zoning classification of hamlet and commercial hamlet. (See above for detail on valuation issues addressed.)

Endnotes

- 1 Governor's Program Bill 2011 (Program Bill #1 Revised).
- 2 *Id.*
- 3 There may have been some confusion initially about exactly what was to be capped, *i.e.*, the tax levy or the individual homeowners tax bill. It is clear that the individual homeowner's taxes will not be capped. See *Harrison Oks 4.713 percent tax rate hike* at www.lohud.com (December 19, 2011) ("Local property owners will see their town tax rate go up again-this time by 4.713 percent...the Republican-amended version which was ultimately passed stayed within the state's 2 percent cap on tax levy increases"). It is also clear that some municipalities may not abide by the statute. See *Tax Cap Springs Leaks: Towns Call Law Unsustainable Amid Capital Projects, Pension Hikes* at www.lohud.com (December 5, 2011).
- 4 *Cuomo defends 'rigor' of tax-levy cap; few towns plan to override it* at www.lohud.com (November 6, 2011).
- 5 *New York State United Teachers ex. rel Iannuzzi v. State of New York*, 46 Misc. 3d 250, 271, 993 N.Y.S.2d 475, 491 (Sup. Ct., Albany Cty., 2014). A second opinion was rendered by the Court on March 15, 2015 dismissing a Second Amended Complaint challenging Education Law 2023-b, the Property Tax Freeze Credit Law.
- 6 See N.Y. Constitution, Article XI, § 1.
- 7 *Board of Education, Levittown Union Free Sch. Dist. v. Nyquist*, 57 N.Y.2d 27, 453 N.Y.S.2d 643 (1982), *appeal dismissed*, 459 U.S. 1138, 1139 (1983).
- 8 *Id.* at 47.
- 9 *Id.*
- 10 *Id.*
- 11 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 262, 993 N.Y.S.2d at 485.
- 12 *Id.*
- 13 *Id.*
- 14 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 264, 993 N.Y.S.2d at 486.

- 15 U.S. Constitution, Amendment XIV; N.Y. Constitution, Article I, § 11.
- 16 *Board of Education, Levittown Union Free Sch. Dist.*, 57 N.Y.2d at 43, 453 N.Y.S.2d at 650-51, citing *Matter of Levy*, 38 N.Y.2d 653 (1976), *appeal dismissed sub. nom, Levy v. City of New York*, 429 U.S. 805, *rehearing denied*, 429 U.S. 966 (1976).
- 17 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 264, 993 N.Y.S.2d at 486.
- 18 *Id.*
- 19 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 265, 993 N.Y.S.2d at 487.
- 20 *Id.*, citing *Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 271-72 (1979).
- 21 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 265, 993 N.Y.S.2d at 487.
- 22 *San Antonio Sch. Dist. v. Rodriguez*, 411 U.S. 1, 60 (Stewart, J., concurring), *rehearing denied* 411 U.S. 959 (1973).
- 23 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 266, 993 N.Y.S.2d at 488, citing *Brenner v. Sch. Dist. of Kansas City, Mo.*, 315 F. Supp. 627 (W.D. Mo. 1970), *aff'd* 403 U.S. 913 (1971).
- 24 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 266, 993 N.Y.S.2d at 488 (internal quotation marks omitted).
- 25 *Id.*
- 26 *Id.*, quoting *Brenner*, 315 F.Supp. at 635.
- 27 *Id.*
- 28 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 266-67, 993 N.Y.S.2d at 488-89, quoting *Brenner*, 315 F.Supp. at 635.
- 29 U.S. Constitution, Amendment I; N.Y. Constitution, Article I, § 8.
- 30 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 267, 993 N.Y.S.2d at 489.
- 31 *Id.*
- 32 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 268-9, 993 N.Y.S.2d at 489-90. Education Law § 2023-a(6)(b) requires applicable ballots to contain language stating, "Adoption of this budget requires a tax levy increase of _____ which exceeds the statutory tax levy increase limit of _____ for this school fiscal year and therefore exceeds the state tax cap and must be approved by sixty percent of the qualified voters present and voting."

33 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 269, 993 N.Y.S.2d at 490.

34 *Id.*

35 *New York State United Teachers ex. rel Iannuzzi*, 46 Misc. 3d at 271, 993 N.Y.S.2d at 491.

36 *Id.*

37 *Id.*

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