

COURT OF APPEALS NEW FILINGS

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

June 3, 2016 through June 9, 2016

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.

NEW YORK STATE UNITED TEACHERS, &c., et al. v STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 5/5/16; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right; SCHOOLS - CONSTITUTIONALITY OF TAX CAP IMPOSED BY EDUCATION LAW § 2023-a AND REAL PROPERTY TAX FREEZE CREDIT LEGISLATION - WHETHER THE COURTS BELOW PROPERLY HELD THAT THE COMPLAINT FAILED TO STATE CAUSES OF ACTION FOR VIOLATIONS OF THE EDUCATION ARTICLE OF THE STATE CONSTITUTION, THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF THE STATE AND FEDERAL CONSTITUTIONS, AND PLAINTIFFS' FUNDAMENTAL RIGHT TO VOTE AND TO FREE SPEECH;

Supreme Court, Albany County, among other things, granted defendants' motion to dismiss the amended complaint; Supreme Court thereafter, among other things, granted defendants' motion to dismiss the second amended complaint; App. Div. affirmed.

NOVAK (BRIAN), PEOPLE v:

Schenectady County Court order of 1/23/15; affirmance; leave to appeal granted by Rivera, J., 5/16/16;

JUDGES - RECUSAL - WHETHER A JUDGE WHO DECIDED DEFENDANT'S PRETRIAL MOTIONS AND PRESIDED OVER HIS BENCH TRIAL MAY DECIDE HIS APPEAL; CRIMES - INFORMATION - WHETHER A PROSECUTOR'S INFORMATION MAY SUPERCEDE A SIMPLIFIED TRAFFIC INFORMATION; WHETHER TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO IMPOSE A SANCTION FOR THE PEOPLE'S ROSARIO VIOLATION; EVIDENCE - WHETHER TRIAL COURT IMPROPERLY ADMITTED EVIDENCE REGARDING HORIZONTAL GAZE NYSTAGMUS (HGN) WITHOUT FIRST ESTABLISHING ITS SCIENTIFIC VALIDITY; WHETHER EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO PROVE THAT DEFENDANT WAS IMPAIRED BY THE USE OF ALCOHOL;

Schenectady City Court convicted defendant, after a nonjury trial, of driving while ability impaired, speeding, and operating an unregistered motor vehicle, and sentenced him to 15 days to jail, fines and surcharges totaling \$1,000, license suspension and revocation, and participation in a victim impact panel; County Court affirmed.