



Municipalities are political subdivisions of the state. They are created and can be destroyed by the Legislature's will, and exist to carry out their legislatively delegated authority. The courts, however, cannot intrude in "legislative disputes raised by legislative subordinates," the Court of Appeals held recently. Thus, the Court explained, municipalities may not maintain facial constitutional challenges to state statutes, like the New York Voting Rights Act. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

MUNICIPAL LAW, CIVIL PROCEDURE, CONSTITUTIONAL CHALLENGE

Clarke v Town of Newburgh, 2025 NY Slip Op 06359 (Ct App Nov. 20, 2025)

Issue: May a municipality maintain a facial constitutional challenge to the vote dilution provision of the New York Voting Rights Act?

Facts: "Six Newburgh voters sued the Town and Town Board of Newburgh under Section 17-206 of the NYVRA, which provides that no political subdivision shall use a method of election that dilutes the votes of members of a protected class. Plaintiffs allege that Newburgh's at-large system for electing Board members dilutes the voting power of Black and Hispanic residents . . . Plaintiffs allege that (1) voting patterns in Newburgh are racially polarized and (2) the at-large election system effectively disenfranchises Black and Hispanic voters, who cannot elect candidates of their choice or influence the outcome of elections."

The Town moved for summary judgment to dismiss the complaint, arguing that "(1) Section 17-206 is facially unconstitutional because it violates the Equal Protection Clause of both the U.S. and New York Constitutions and (2) its Town Board elections comply with the NYVRA. Supreme Court granted Newburgh's motion for summary judgment and dismissed the complaint, holding that although municipalities ordinarily may not challenge the constitutionality of State laws, Newburgh could because it alleged that it could not comply with the NYVRA without violating the Equal Protection Clause. Supreme Court also held that the NYVRA's vote dilution prohibition is facially unconstitutional, and struck the NYVRA 'in its entirety,' even though Newburgh sought to invalidate only a portion of the Act."

The Appellate Division, Second Department "reversed and denied Newburgh's motion for summary judgment. The Court held that Newburgh could not bring this constitutional challenge to the NYVRA because it failed to demonstrate that its compliance with the NYVRA would force it to violate equal protection. Therefore, Newburgh could not overcome the general rule that legislative entities lack the right to sue to challenge State laws. Additionally, the Appellate Division held that Supreme Court erred in striking down the NYVRA in toto."

Holding: The Court of Appeals affirmed, holding that a municipality, as a "legislatively created political subdivision," cannot bring a facial constitutional challenge to a state statute. The Court explained, "[t]he longstanding rule in New York is that political subdivisions—as creatures of the State that exist by virtue of the exercise of the power of the State through its legislative department—cannot sue to invalidate State legislation . . . That rule is a necessary outgrowth of separation of powers principles. It expresses the extreme reluctance of courts to intrude in the political relationships between the Legislature, the State and its governmental subdivisions. Just as the legislature has the power to create entities to perform its functions, it has the power to change, and even destroy, those entities. Separation of powers principles accordingly demand that courts do not interfere in legislative disputes raised by legislative subordinates. Those principles are the bedrock of our federal and State Constitutions alike."

That rule is not absolute, however. The Court noted that it has recognized four exceptions to the bar against municipal challenges to state statutes: "(1) when there is express statutory authorization to bring the suit; (2) when a municipality's proprietary interest in a specific fund of moneys is adversely affected by State legislation; (3) when the statute impinges upon the constitutional 'Home Rule' powers of a municipality; and (4) where compliance with the statute would force the municipal challengers to violate a constitutional proscription."

Here, the Court held, Newburgh only asserted that the fourth exception could apply—that complying with NYVRA's vote dilution provisions would force it to violate the Equal Protection Clause. Rejecting that argument, the Court noted that the fourth exception is exceedingly narrow, and that it had found no case in which it had actually applied. In fact, the Court held, a facial constitutional challenge cannot fall within the dilemma exception. "Whatever might be said as to a municipality's ability to bring an as-applied challenge, showing that it will be forced to take a course of action that is unconstitutional, Newburgh is pursuing a facial invalidity claim . . . Newburgh seeks invalidation of the entire vote-dilution provision under Election Law § 17-206. For a facial constitutional challenge, principles of judicial restraint counsel strongly against permitting subordinate units of state government from using the judiciary to second-guess the wis-

dom of enacted legislation. A municipality's authority to raise a challenge to a State law is at its lowest ebb when that challenge is a facial constitutional challenge, seeking to invalidate a statute in all possible applications, not merely because it allegedly placed the particular municipality in an allegedly untenable position."

WORKERS' COMPENSATION LAW, WORLD TRADE CENTER RECOVERY PARTICIPANT BENEFITS

Matter of Garcia v WTC Volunteer, 2025 NY Slip Op 06360 (Ct App Nov. 20, 2025)

Issue: Does the extension of time for the filing of certain World Trade Center recovery benefits claims, under Workers' Compensation Law § 168, apply to persons other than a statutorily defined "participant" in the recovery efforts?

Facts: Workers' Compensation Law § 16 provides for the award of death benefits to an injured employee's survivors if the injury causes the employee's death. Section 28 of the Workers' Compensation Law provides a two-year statute of limitations to bring those claims, which runs from the accident or disablement, or "if death results therefrom within two years after such death and, for certain occupational diseases, after the claimant knew or should have known that the disease is or was due to the nature of the employment." To address latent injuries resulting to employees or volunteers who participated in the World Trade Center recovery efforts following the September 11th terrorist attacks, the Legislature enacted Workers' Compensation Law article 8-A, which provides that volunteers in the recovery are eligible for benefits, when they would not otherwise be.

"In essence, Article 8-A provides a mechanism for both employees and volunteers injured as a result of the 9/11 recovery efforts to obtain benefits, both through new substantive provisions in that article and by cross-referencing and adjusting the procedures found in other sections of the Workers' Compensation Law related to notice and filing claims." As relevant here, the Legislature amended the article in 2008 to add Workers' Compensation Law § 168, "which provides that a claim by a participant in the World Trade Center rescue, recovery or cleanup operations whose disablement occurred during a certain time frame shall not be disallowed as barred by Workers' Compensation Law § 18 or § 28 if filed by a set deadline depending on when the disablement occurred."

Decedent here was a volunteer in the World Trade Center recovery and received lifetime benefits for "multiple medical conditions he contracted through exposure to toxins while volunteering with the American Red Cross . . . He died in July 2016, and in February 2020, claimant [his surviving spouse] filed a claim for death benefits with the Workers' Compensation Board." Although a Workers' Compensation Law Judge initially granted the claim, the Board reversed, determining that "the claim was untimely on its face and that the claimant in the death claim must comply with WCL 28. The WCB also rejected claimant's assertion that WCL 28 does not apply to Article 8-A claims and concluded that the Board Panel is constrained . . . to find that Article 8-A does not apply to this death claim." The Appellate Division, First Department affirmed, agreeing that Workers' Compensation Law § 168 does not extend the time for asserting death benefits claims beyond the two-year statute of limitations in Workers' Compensation Law § 28. The Court held that claimant could not "piggyback upon [decedent's] entitlement [to bring claims during the extension period offered under section 168], as her claim for death benefits accrued at the time of decedent's death and is a separate and distinct legal proceeding from decedent's original disability claim."

Holding: The Court of Appeals affirmed, holding that "Workers' Compensation Law § 168 does not apply to claims brought by anyone other than the statutorily defined participant . . . The statute explicitly refers to 'a claim by a participant,' permits such participant's claim to be filed within the enumerated extended time period, and again repeats 'any such participant' when stating that certain previously denied claims 'shall be reconsidered by the board.' The phrase 'claim by a participant' does not encompass claims by the surviving beneficiaries of those individuals . . . Workers' Compensation Law § 168's use of the phrase 'a claim by a participant' must therefore be understood to mean that only a claim brought by a participant, and not by the survivors or beneficiaries of a participant, may benefit from the extended time limits of Workers' Compensation Law § 168."

The Court reasoned that its plain language interpretation was consistent with its purpose, as explained in the legislative history. "The legislative history demonstrates a concern that many individuals who worked at these sites would be barred from recovering because of the latency of the relevant illnesses. The Senate Introducer's Memorandum in Support of the original 2006 bill explained that 'in the case of participants in World Trade Center rescue, recovery, and cleanup operations, little is known about what diseases and conditions might develop later on based on their exposure to uniquely hazardous conditions.' A letter in support of the 2018 amendments to Article 8-A explained that 'many symptoms of those illnesses are only now starting to manifest themselves.' Based on these concerns, the statute gives explicit extensions of time to both employees and volunteers who may begin to manifest these illnesses well outside the limitations period of Workers' Compensation Law § 28. For the survivors of these individuals, where the claim is being made that exposure during rescue and recovery efforts caused the death of the participant, such concerns about latency and delay in the manifestation of the disease have far less force as a rationale for extending the limitations period beyond that provided in Workers' Compensation Law § 28."

CRIMINAL LAW, CONSTITUTIONAL RIGHT TO JURY OF 12

People v Sargeant, 2025 NY Slip Op 06361 (Ct App Nov. 20, 2025)

Issue: May a criminal defendant forfeit the constitutional right to trial by a jury of 12 persons by engaging in misconduct?

Facts: Following “a violent confrontation with a 20-year-old escort,” defendant was charged and tried for assault in the third degree, criminal obstruction of breathing or blood circulation, criminal possession of a weapon in the second degree, and criminal possession of forgery devices. During the course of the trial, one of the jurors was excused, and the only alternate juror was seated in his place.

After the jury’s deliberations began, defendant claimed to experience a migraine and “asked the court to suspend deliberations until the following day. The court directed defendant to contact his counsel after going to urgent care and to come back the next morning. The court adjourned. That afternoon, however, the court received a call from the jury foreperson, who said that ‘something happened’ and he could no longer be impartial. In addition, a Brooklyn assistant district attorney, who was uninvolved in the case but was a friend of the foreperson, reported to the court that the foreperson called him earlier in the day and said that defendant had confronted him at his home. The court reconvened in the afternoon with both counsel present to inform them of those calls, issued a warrant for defendant’s arrest, and promised to address the issues in the morning.”

The Court then held a hearing in the morning, segregated the foreperson from the other jurors, and directed the jury to cease deliberations until the issue was resolved. The foreperson explained to the court that a man approached him on defendant’s behalf outside of his home, “said that defendant was innocent and ‘being extorted,’” handed him three documents, and explained that he has found the foreperson’s home by searching the public records. Because he was concerned for his family’s safety, the foreperson explained to the court that he could no longer be impartial in the trial. “With the agreement of the parties, the court discharged him from the jury, reminded him that the case was ongoing, and instructed him not to speak to anyone about his experience.

The People moved to proceed to verdict with the remaining 11 jurors. They argued that defendant had forfeited his right to trial by a jury of 12 by intentionally procuring the foreperson’s absence. The People observed that the foreperson was ‘extremely upset’ on the witness stand and argued that he had not identified defendant in court as the one who approached him because he was afraid to do so. The People noted that the documents that were handed to the foreperson were legal documents to which defendant had access, and that defendant had not come to court with proof that he had gone to urgent care. The People argued that, in light of this clear and convincing evidence of defendant’s ‘egregious’ misconduct, defendant forfeited the right to a jury of 12. Defendant declined to waive his right to trial by a jury of 12 and moved for a mistrial on the ground that it would be “inappropriate” to continue with 11 jurors.”

The trial court granted the People’s motion and denied a mistrial, reasoning that “defendant had forfeited his right to trial by a jury of 12.” The Court “relied on federal and state cases concerning forfeiture of constitutional rights generally and federal and state cases permitting verdicts by juries composed of 11 persons. The court likened defendant’s act of jury tampering to cases of witness tampering wherein defendants have been found to have forfeited their right to confrontation. The court applied the standards for forfeiture of that right as set forth in *People v Geraci* (85 NY2d 359 [1995]) and found by clear and convincing evidence that defendant, believing he could obtain a favorable verdict or a mistrial, intentionally engaged in jury tampering, conduct that resulted in the foreperson’s inability to continue to serve as a juror. The court thus concluded that defendant forfeited his right to trial by a jury of 12, and it further concluded that continuing trial with the remaining 11 jurors was reasonable and justifiable.” After the 11-person jury convicted defendant of some but not all of the charges, and defendant appealed, the Appellate Division, Second Department affirmed.

Holding: The Court of Appeals affirmed, holding that “in these exceedingly rare circumstances where there was clear and convincing evidence that defendant engaged in egregious conduct affecting a sworn juror after the jury commenced its deliberations, requiring the discharge of that juror, defendant forfeited the right to a jury of 12 persons and, there being no alternate jurors to substitute for the dismissed juror, the trial court did not abuse its discretion in proceeding with the remaining 11 jurors.” The Court explained, “[C]enturies before our country’s founding, the common law afforded those accused of serious offenses a trial by a jury of 12. Colonial New York codified the common-law right to a jury of 12 over a century before the ratification of the U.S. Constitution, and our first State Constitution guaranteed that the right to a ‘trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall . . . remain inviolate forever.” Although the right to a jury of 12 persons was initially absolute, the Constitution was amended in 1938 to provide that the right could be waived if done in writing with the permission of the trial judge. “Because the constitutional amendments and decisions since *Cancemi* transformed the constitutional guarantee of a jury of 12 into a personal right, defendant may waive the right or, in a case such as this one, forfeit it by engaging in misconduct.”

“Whether forfeiture applies to the right to a jury of 12 is an issue of first impression, but forfeiture has been applied to many constitutional rights in the criminal procedure context. For example, a defendant may forfeit the right to counsel by engaging in egregious conduct, albeit only as a matter of extreme, last-resort analysis in cases involving brutal, violent, or persistent abuse. Use of violence, threats or chicanery to make a witness unavailable may result in the forfeiture of the right to confront the witness. A defendant may forfeit the right to be present at all stages of trial by engaging in courtroom conduct so disruptive that the trial cannot proceed in their presence. Likewise, a pro se defendant’s disruptive conduct may result in the forfeiture of the right to self-representation. We see no reason to exclude the right to trial by a jury of exactly 12 persons from the universe of forfeitable rights. While the reason the common law settled on that precise figure is lost to history, we cannot say that the precise number is any more crucial to protecting defendants than the rights we have

already determined may be forfeited. There can be no serious debate that the assistance of counsel is essential to assure the defendant a fair trial because, in the vast majority of criminal prosecutions, defendants could better defend with counsel's guidance than by their own unskilled efforts. And, without the right to confront one's accusers, juries may convict defendants based on out-of-court statements by witnesses who cannot be cross-examined. If a defendant may forfeit those essential constitutional rights by engaging in misconduct, the same is true of the right to a jury of precisely 12."

The Court explained that waiver of that right will be exceedingly rare. "Indeed, in the 342 years that the right to trial by a jury of 12 persons has been codified in New York, we know of no other cases that involve forfeiture of that right." To find a waiver, "only egregious conduct toward a sworn juror can result in a forfeiture of the right to a jury of 12. Black's Law Dictionary defines 'egregious' as 'extremely or remarkably bad' or 'flagrant.' The Merriam-Webster Online Dictionary defines 'flagrant' as 'conspicuously offensive,' and especially as 'so obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.' Conduct cannot be deemed egregious unless it rises to this level. The fact that a juror might refuse to continue jury service due to a defendant's bad behavior will not be sufficient by itself to establish egregious conduct.

While the removal of a deliberating juror is not a sufficient condition of a forfeiture, it is most assuredly a necessary condition. For as long as a lawful jury of 12 exists or can be composed through the lawful substitution of an alternate juror, the court has no occasion to consider questions of forfeiture." And here, the Court held, "the totality of the facts and circumstances demonstrates the egregiousness of defendant's conduct. He did not merely protest his innocence to a sitting juror or leave court papers at the juror's home. His conduct was not accidental or spontaneous but instead involved a great deal of preplanning over at least two days. He searched public records for juror's home address and confronted the juror outside his front gate, wearing a disguise and pretending to be someone else. He also deceived the court and his own counsel in feigning a medical condition so that he would have the afternoon free to confront the juror at his home. Defendant thus undertook a persistent course of conduct revealing a deliberate and methodical attempt to interfere with the impartial nature of the jury. He violated the juror's privacy and the sanctity of his home and in doing so reasonably and foreseeably, and perhaps intentionally, caused the juror to fear for the safety of his family. Defendant's behavior, viewed in totality, is so clearly performed with aforethought and so inappropriate as to place his misconduct well outside the realm of ordinary bad behavior."

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