NEW YORK STATE COURT OF APPEALS

Justices	 Rowan Wilson	 Janet DiFiore	 Eugene Fahey	 Paul G. Geinman	 Jenny Rivera	 Leslie E. Stein	 Michael Garcia
Confidence Score	Mild Democrat	Mild Democrat	Mild Democrat	Mild Democrat	Mild Democrat	Mild Republican	Mild Republican
Opinion Partners	✓				✓		
Dissenting Minority	✓		✓		✓		
Determining Majority		✓		✓		✓	✓
Lone Dissenter					✓		

SUMMARY

- Number of justices: ***7***
- Number of cases: ***82***
- Percentage of cases with a unanimous ruling: ***51.2% (42)***
- Justice most often writing the majority opinion: ***Feinman (31)***
- Per curiam decisions: ***42***
- Concurring opinions: ***16***
- Justice with most concurring opinions: ***Wilson (5)***
- Dissenting opinions: ***40***
- Justice with most dissenting opinions: ***Rivera (16)***

COURT CONTENTION

The New York Court of Appeals was one of the most contentious courts in the nation in 2020. At least one justice disagreed with the majority's ruling in 40 cases, which was 48.8 percent of the time the court issued a ruling.

Opinion partners

The two justices who allied with one another most often in dissent were Justices Rivera and Wilson. Rivera and Wilson dissented together nine times, which was 52.9 percent of all cases with dissents. In our *Ballotpedia Courts: State Partisanship* study, Rivera and Wilson both recorded Mild Democratic Confidence Scores.

Dissenting minority

In 2020, the New York State Court of Appeals decided 13 cases 4-3. The group of three justices who allied most often in dissent were Justices Fahey, Rivera, and Wilson. Justices Fahey, Rivera, and Wilson dissented in the same case six times, which was 46.2 percent of all cases in which three justices dissented. In our *Ballotpedia Courts: State Partisanship* study Justice Fahey recorded a Mild Democratic Confidence Score. Justice Rivera recorded a Mild Democratic Confidence Score. Justice Wilson recorded a Mild Democratic Confidence Score.

Determining majority

In six of the split cases before the New York State Court of Appeals, Justices DiFiore, Feinman, Garcia, and Stein were in the majority, which was 46.2 percent of all split cases. In our *Ballotpedia Courts: State Partisanship* study, DiFiore recorded a Mild Democratic Confidence Score, Feinman recorded a Mild Democratic Confidence Score, Garcia recorded a Mild Republican Confidence Score, and Stein recorded a Mild Republican Confidence Score.

Lone dissenter

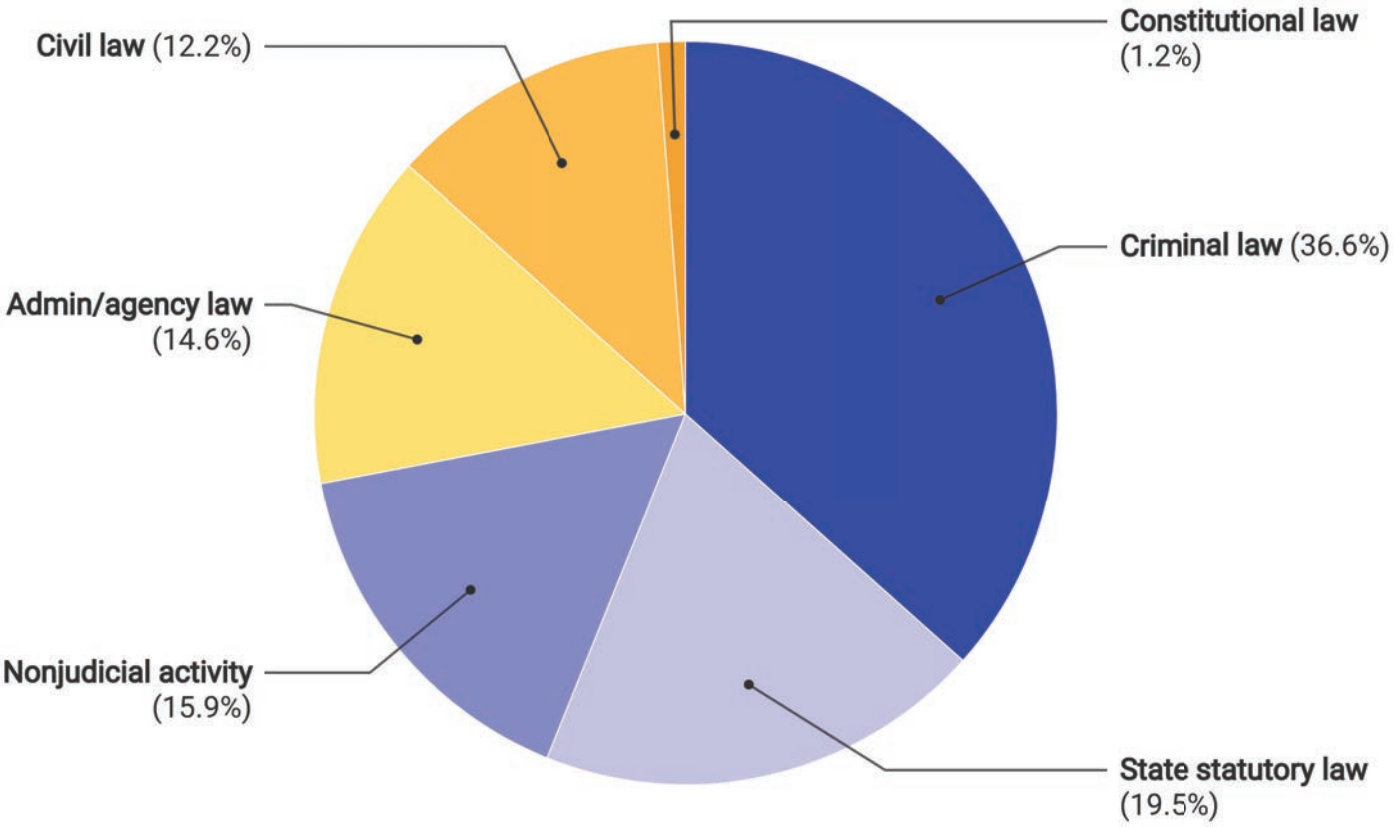
In 2020, Justice Rivera dissented alone four times, which was more than any other justice. There were lone dissenters in eight cases. Justice Wilson dissented alone twice. Justices Fahey and Garcia were each lone dissenters once in 2020.

COURT JURISDICTION

The New York Court of Appeals is the state's court of last resort. As the state's highest court, civil and criminal appeals from the supreme courts and appellate division courts in the state are heard by the Court of Appeals. Some cases may be appealed directly to this court from the state supreme courts.

Determinations made by the State Commission on Judicial Conduct regarding judicial misconduct allegations may also be appealed to this court.

Case types decided by State of New York Court of Appeals, 2020



The most common cases heard by the New York Court of Appeals in 2020 were criminal cases. Of the 82 cases it heard, 30 were criminal cases which was 36.6 percent of its caseload for the year. A criminal case involves a final criminal appeal before the court of last resort.

The second most common cases that reached the supreme court were state statutory cases. A state statutory case involves the violation or enforcement of a state statute. The New York Court of Appeals heard 16 state statutory cases in 2020, or 19.5 percent of its total caseload for the year.

The third most common cases that reached the court were nonjudicial. A case is considered nonjudicial activity if it does not involve a formal hearing and discussion before the court. Thirteen cases heard by The New York Court of Appeals in 2020 were nonjudicial activity, or 15.9 percent of its total caseload for the year.

PROMINENT CASES

Peyton v. New York City Board of Standards & Appeals

Justice	Rowan Wilson	Janet DiFiore	Eugene Fahey	Paul G. Feinman	Jenny Rivera	Leslie E. Stein	Michael Garcia
Peyton v. New York City Board of Standards & Appeals	Writing dissenting opinion	Joining majority opinion	Joining majority opinion	Joining Wilson's dissent	Writing majority opinion	Joining Wilson's dissent	Joining majority opinion

- **Contention:** Justice Rivera wrote the majority opinion. She was joined by Justices DiFiore, Fahey, and Garcia. Justice Wilson wrote a dissenting opinion and was joined by Justices Feinman and Stein.
- **Summary:** The New York City Zoning Resolution was adopted in 1961 and requires a minimum amount of open space in high-density residential zoning districts. The minimum amount of open space is determined by a ratio involving the amount of open air on the zoning lot expressed as a percentage of the zoning lot. Originally, the resolution determined that a zoning unit had to be a single lot, but it was amended in 1977 to allow a parcel of lots owned by different owners as a single zone. The zone in question was an urban renewal zone located in Manhattan and comprised three residential buildings. Park West Village, who owned the three residential buildings, acquired ownership of an infill lot and intended to develop additional buildings. They submitted a building permit application to the New York City Department of Buildings (DOB) for a mixed-use building with retail wings, each with a rooftop garden, which they argued constituted open space. Several residents objected that the rooftop gardens were not accessible to them and therefore did not meet the requirements for open space. The DOB rejected the challenge and approved the building. The building was completed in 2010. In 2011 Jewish Home Lifecare, Inc. entered into an agreement with Park West Village to build and operate a nursing facility in the location designated in the 2006 building plan for a community building. The DOB approved the application and agreement. Then, Maggi Peyton, president of the Park West Village Tenants' Association, challenged the issuance of the permit arguing that the nursing home did not satisfy open space requirements. The DOB rejected the challenge. In 2015 Peyton commenced an article 78 proceeding asserting that the interpretation of open space had no legal basis under the zoning resolution. A lower court deferred to the DOB's interpretation of the statute. When Peyton appealed to the New York State Court of Appeals, the court of last resort also deferred to the agency's determination of the resolution in question, denying Peyton's petition and rejecting her contention.
- **Majority argument**: Justice Rivera wrote: "The BSA's interpretation is rational as applied to multi-owner zoning lots. The text, structure, history, and purpose of the definition of open space show that the BSA's interpretation is consistent with—and indeed furthers—the

legislative intent of the Zoning Resolution's drafters. Giving due consideration to the BSA's technical knowledge of the implications for the City's development of its application of the statute, we conclude that the BSA's application of the definition of open space to multi-owner zoning lots is not arbitrary, capricious, or contrary to law." (*Peyton v. New York City Board of Standards & Appeals*, No. 88, 38 (N.Y. 2020))

- **Dissenting argument**: Justice Wilson wrote: "There is only one plain way to read that language: unless all persons residing in apartments on a zoning lot can access and use a particular space, that space does not count as 'open space.' Appellant PWV Acquisition, LLC (PWVA) proposes a different reading: because the Zoning Resolution specifies that open space must be accessible to all persons occupying 'a' dwelling unit, the word 'a'—as PWVA notes—can be read to mean that if all the residents of just one apartment on a zoning lot can access and use a space, that space is 'open space'. That reading may be a grammatically correct alternative, but it is absurd. No party contends that New York City's open space requirements could be satisfied by giving a single luxury penthouse apartment a football-field sized private roof deck."(*Peyton v. New York City Board of Standards & Appeals*, No. 88, 40 (N.Y. 2020))

Sutton 58 Associates LLC v. Pilevky

Justice	Rowan Wilson	Janet DiFiore	Eugene Fahey	Paul G. Feinman	Jenny Rivera	Leslie E. Stein	Michael Garica
Sutton 58 Associates LLC v. Pilevsky	Joining majority opinion	Joining majority opinion	Joining Rivera's dissent	Joining majority opinion	Writing a dissenting opinion	Writing majority opinion	Joining Rivera's dissent

- **Contention:** Justice Stein wrote the majority opinion. She was joined by Justices DiFiore, Feinman, and Wilson. Justice Rivera wrote a dissenting opinion and was joined by Justices Fahey and Garcia.
- **Summary:** In 2014, Sutton 58 Owner LLC purchased several adjacent lots on Sutton Avenue and East 58th Street. Lender Sutton 58 Associates LLC provided the needed financing for the project totaling $147.25 million in June 2015. The financing consisted of (1) a mezzanine loan agreement with BH Sutton Mezz LLC for $20,000,000, (2) an acquisition loan agreement with mortgage borrower Sutton Owner for $125,850,000, and (3) a building loan agreement with Sutton Owner for $1,400,000. As part of the financing, Sutton Mezz pledged its 100 percent interest in the mortgage borrower as collateral for the mezzanine loan. Sutton Owner failed to repay the loans on the maturity date, and the Sutton lender commenced a UCC foreclosure sale of the pledged Sutton Mezz interests in the mortgage borrower. Sutton Owner commenced litigation in a lower court seeking to enjoin the

planned foreclosure sale of Sutton Mezz's membership interest in the mortgage borrower. The court denied the request for a preliminary injunction finding that mortgage and mezzanine borrowers failed to show likelihood of success on the merits and irreparable harm. Sutton Mezz filed a voluntary bankruptcy petition on the last business day prior to the foreclosure sale in order to prevent the foreclosure sale and to preserve its equity interest in the mortgage borrower. To facilitate the bankruptcy filing, Sutton Mezz borrowed $50,000 from Prime Alliance Group Ltd., an entity controlled by Philip Pilevsky, to pay a retainer to secure bankruptcy representation from a firm where Pilevsky's nephew was a partner. The loan was not documented in writing and did not bear any interest. An appellate court then reversed the lower court's decision, concluding that Sutton Owner's claims were preempted by federal law because tortious claims only arose because of bankruptcy filing. The New York State Court of Appeals reversed the appellate court's decision holding that Sutton Mezz failed to meet their burden of establishing that bankruptcy law preempted Sutton Owner's tortious interference claims.

- **Majority argument**: Justice Stein wrote: "Defendants have failed to meet their heavy burden of establishing that federal bankruptcy law preempts plaintiff's tortious interference claims that are based on pre-petition conduct and asserted against non-debtor defendants. Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to the Appellate Division for consideration of issues raised but not determined on the appeal to that Court." (*Sutton 58 Associates LLC v. Pilevsky*, No. 80, 14 (N.Y. 2020))
- **Dissenting argument**: Justice Rivera wrote: "Plaintiff seeks to recover for damages allegedly caused by bankruptcies that it accuses defendants of facilitating solely to prevent recovery of collateral owed to plaintiff by one of the bankruptcy debtors. Plaintiff chose to forgo the array of federal remedies available to a creditor, like plaintiff, for such alleged misuse of the bankruptcy system. Plaintiff could have sought dismissal of the bankruptcy proceedings, relief from the automatic stay preventing plaintiff's recovery of the collateral, foreclosure on the property, or sanctions against the debtors for their improper conduct. Instead, plaintiff took a different course and allowed the bankruptcy claims to proceed, causing the alleged damages to accrue, only to file this separate action in state court against defendants for tortious interference with contract to recover the same damages... To put it bluntly, federal law preempts plaintiff's workaround of the bankruptcy system." (*Sutton 58 Associates LLC v. Pilevsky*, No. 80, 15 (N.Y. 2020))

Trustees of Columbia University in City of New York v. D'Agostino Supermarkets, Inc.

Justice	Rowan Wilson	Janet DiFiore	Eugene Fahey	Paul G. Feinman	Jenny Rivera	Leslie E. Stein	Michael Garica
Trustees of Columbia University in City of New York v. D'Agostino Supermarkets, Inc.	Joining DiFiore's dissent	Writing a dissenting opinion	Joining majority opinion	Joining majority opinion	Writing the majority opinion	Joining DiFiore's dissent	Joining majority opinion

- **Contention:** Justice Fahey wrote the majority opinion. She was joined by Justices Feinman, Garcia, and Rivera. Justice DiFiore wrote a dissenting opinion and was joined by Justices Stein and Wilson.
- **Summary:** The trustees of Columbia University and D'Agostino Supermarkets entered into a 15 year commercial lease for the rental of the ground floor and basement levels of a building owned by Columbia University. Thirteen years after the initiation of the contract D'Agostino Supermarkets was facing financial difficulties and entered a surrender agreement that terminated the lease in exchange for D'Agostino's surrender of the premises and a staggered payment of $261,751.73. When D'Agostino could not make payments, Columbia commenced action to enforce the damages provision of the surrender agreement. A lower court sided with D'Agostino. Upon appeal, The New York State Court of Appeals held that the damages sought by Columbia were grossly disproportionate to the full amount due according to the surrender agreement.
- **Majority argument**: Justice Rivera wrote: "Under our well-established rules of contract, the Surrender Agreement's liquidated damages provision does not fairly compensate plaintiff for defendant's delayed installment payments. The provision calls for a sum more than sevenfold the amount due if defendant had complied fully with the Surrender Agreement. We cannot enforce such an obviously and grossly disproportionate award without offending our State's public policy against "the imposition of penalties or forfeitures for which there is no statutory authority" (Truck Rent-A-Ctr., 41 NY2d at 424, citing City of Rye v Public Serv. Mut. Ins. Co., 34 NY2d 470, 472-473 [1974]). Accordingly, there was no error in rejecting plaintiff's liquidated damages provision." (*Trustees of Columbia University in City of New York v. D'Agostino Supermarkets, Inc.*, No. 40, 38 (N.Y. 2020))
- **Dissenting argument**: Justice DiFiore wrote: "Because there was nothing unfair about the settlement crafted by these well-counseled sophisticated parties, public policy affords no basis to alter their contract. Since the back rent payments were already substantially overdue, Columbia reasonably sought assurance that D'Agostino would uphold its end of the bargain under the Surrender Agreement (something it failed to do under the lease). As reflected in the plain language of the agreement, Columbia was willing

to forego pursuit of its then-existing right to collect both unpaid back rent and future rent only if D'Agostino timely made the back rent installment payments (the owner gave up its right to receive more money overall but would be assured of prompt payment of a discounted amount on a regular schedule, without the need for litigation). Of course, that is not what happened. By eliminating the element that induced the owner to give up its rights, the majority creates a distorted, one-sided settlement in which—despite its default—D'Agostino was able to enjoy the full benefit of the bargain. Because freedom of contract should "prevail[] in [this] arm's length transaction between sophisticated parties" (159 MP Corp., 33 NY3d at 359) and there is no countervailing public policy basis that would justify relieving D'Agostino of the bargain it struck in the Surrender Agreement, I respectfully dissent." (*Trustees of Columbia University in City of New York v. D'Agostino Supermarkets, Inc.*, No. 40, 39 (N.Y. 2020))