FILED: APPELLATE DIVISION - 3RD DEPT 10/05/2026 04:37 PM CV-24-1310
NYSCEF DOC. NO. 94 RECEIVED NYSCEF: 10/05/2026

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 12, 2026 CV-24-1310

In the Matter of CITY OF NEW YORK,
Appellant,
v

RICHARD A. BALL, as Commissioner of Agriculture and Markets, et al.,
Respondents.

OPINION AND ORDER

ANIMAL PROTECTION AND RESCUE LEAGUE et al.,
Proposed Intervenors-Appellants.

Calendar Date: January 6, 2026

Before: Garry, P.J., Reynolds Fitzgerald, McShan, Powers and Mackey, JJ.

Steven Banks, Corporation Counsel, New York City (*Jamison Davies* of counsel), for appellant.

Pease Law, APC, Brooklyn (*Bryan W. Pease* of counsel), for Animal Protection and Rescue League and another, proposed intervenors-appellants.

Letitia James, Attorney General, Albany (*Beezly J. Kiernan* of counsel), for Richard A. Ball and another, respondents.

Keane & Beane, PC, White Plains (*Edward J. Phillips* of counsel), for La Belle Farm, Inc. and another, respondents.

Earthjustice, New York City (*Alexis Andiman* of counsel) and *Earthjustice*, Washington, DC (*Kara Goad* of counsel, admitted pro hac vice), for New York Association of Towns and others, amici curiae.

Jessica H. Zafonte, New York City, for They All Want to Live, amicus curiae.

David Siffert, New York City, for Farm Sanctuary and another, amici curiae.

Mackey, J.

Appeal from a judgment of the Supreme Court (Richard Platkin, J.), entered June 21, 2024 in Albany County, which, among other things, dismissed petitioner's application, in a proceeding pursuant to CPLR article 78, to review a determination of respondent Commissioner of Agriculture and Markets finding that petitioner's local law barring food establishments from selling foie gras in New York City was in violation of Agriculture and Markets Law § 305-a (1) (a).

This appeal centers upon the confluence of local governments' lawmaking authority under the Municipal Home Rule Law and the breadth of the preemptive powers of respondent Commissioner of Agriculture and Markets pursuant to Agriculture and Markets Law § 305-a.

In 2019, petitioner enacted Local Law 202, prohibiting the sale of foie gras in New York City's restaurants and retail establishments (*see* Administrative Code of City of NY § 17-1901 *et seq.*).[1] The law bars any "retail food establishment or food service establishment" from selling "any force-fed product or food containing a force-fed product" (Administrative Code of City of NY § 17-1902). " 'Force-feeding' " is defined under the law as "the practice of forcing, by any means, food or supplements into the throat, esophagus, crop or stomach of an animal," and a "force-fed product" is one produced by "force-feeding a bird . . . with the intent to fatten or enlarge [its] liver" (Administrative Code of City of NY § 17-1901). Foie gras, which translates to English as "fatty liver," is a food product obtained through such forced feeding of a goose or duck,

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[1] Local Law 202 prescribes fines between $500 and $2,000 per violation (*see* Administrative Code of City of NY § 17-1903 [a]).

by which the animal is made to consume large quantities of grain and fat using a pipe that is inserted down the esophagus. This process, which is repeated several times per day, seeks to produce a significantly enlarged liver when compared to that of a non-force-fed bird. Prior to Local Law 202 taking effect, a preliminary injunction was entered by Supreme Court (Sweeting, J.) in a separate action commenced by intervenors respondents La Belle Farm, Inc. and HVFG, LLC (hereinafter collectively referred to as the Farms) which has prevented petitioner from enforcing the law during the pendency of this appeal (NY St Cts Elec Filing [NYSCEF] Doc Nos. 97, 101, Stipulation and Order, in *La Belle Farm, Inc. v City of New York*, Sup Ct, NY County, index No. 656399/2022).

Following Local Law 202's enactment, the Farms requested that the Commissioner formally determine whether Local Law 202 violates Agriculture and Markets Law § 305-a. The Commissioner subsequently conducted a review of the Farms' consolidated requests and, ultimately, issued a determination in December 2022 concluding that petitioner's enactment of Local Law 202 violated Agriculture and Markets Law § 305-a. Petitioner thereafter commenced a CPLR article 78 proceeding against the Commissioner and Department (hereinafter collectively referred to as the state respondents) seeking to annul the December 2022 final determination (NY St Cts Elec Filing [NYSCEF] Doc No. 1, petition, in *Matter of City of New York v Ball*, Sup Ct, Albany County, index No. 900460/23). Supreme Court (Platkin, J.) annulled the December 2022 determination as arbitrary and capricious and remitted the matter to the state respondents for further proceedings.

Upon remittal, the Commissioner issued a second determination concluding that Local Law 202 violates Agriculture and Markets Law § 305-a and the policy and goals set forth in article 25-AA by unreasonably restricting the Farms' operations without justification by any demonstrated threat to public health or safety. Petitioner commenced the instant CPLR article 78 proceeding against the state respondents seeking to annul that determination on the grounds that it was issued in excess of the state respondents' jurisdiction, was inconsistent with article IX of the NY Constitution and the Municipal Home Rule Law and was arbitrary and capricious. Supreme Court granted the Farms' unopposed motion to intervene, and the state respondents and the Farms answered. Animal Protection and Rescue League and Voters for Animal Rights (hereinafter collectively referred to as the proposed intervenors) also moved to intervene as petitioners. Supreme Court denied the proposed intervenors' motion and, further, dismissed the proceeding, finding that the Commissioner permissibly exercised jurisdiction over Local Law 202 under application of Agriculture and Markets Law §

305-a and that such did not contravene the Municipal Home Rule Law. Petitioner and the proposed intervenors appeal.

It is this state's policy to "encourage the development and improvement of its agricultural lands for the production of food and other agricultural products" by ensuring "the protection of" those lands (NY Const, art XIV, § 4; *see Matter of Town of Brookhaven v Ball*, 239 AD3d 172, 176 [3d Dept 2025], *lv denied* 44 NY3d 904 [2025]). Upholding this policy, the Legislature enacted Agriculture and Markets Law article 25-AA in 1971 "for the stated purposes of protecting, conserving and encouraging the development and improvement of this State's agricultural lands" upon finding that " 'many of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes' due to local land use regulations inhibiting farming, as well as various other deleterious side effects resulting from the extension of nonagricultural development into farm areas" (*Town of Lysander v Hafner*, 96 NY2d 558, 563 [2001] [internal quotation marks, brackets and citation omitted], quoting Agriculture and Markets Law § 300). In addressing this issue, "the Legislature gave county legislative bodies the power to create 'agricultural districts' " that, once established, afford the land and farm operations therein certain protections (*Town of Lysander v Hafner*, 96 NY2d at 563, citing Agriculture and Markets Law § 303).

At issue here, Agriculture and Markets Law § 305-a provides that "[l]ocal governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened" (Agriculture and Markets Law § 305-a [1] [a]). "Upon the request of any municipality, farm owner or operator . . . , the commissioner shall render an opinion . . . as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices" (Agriculture and Markets Law § 305-a [1] [b]). "The Commissioner is further authorized to order municipalities to comply with the Agriculture and Markets Law and to 'bring an action to enforce the statutory provisions' if needed" (*Matter of Town of Brookhaven v Ball*, 239 AD3d at 177 [brackets omitted], citing Agriculture and Markets Law § 36 [1], and quoting Agriculture and Markets Law § 305-a [1] [c]).

This state's strong home rule tradition is indelibly engrained into our Constitution. "Article IX, § 2 of the State Constitution grants significant autonomy to local governments to act with respect to local matters" (*City of New York v Patrolmen's Benevolent Assn. of City of N.Y.*, 89 NY2d 380, 387 [1996]). The NY Constitution grants "every local government . . . [the] power to adopt and amend local laws not inconsistent with the provisions of [the] constitution or any general law relating to its property, affairs or government" (NY Const, art IX, § 2 [c] [i]). In implementing this constitutional mandate, the state Legislature enacted the Municipal Home Rule Law. Thereunder, "[g]eneral law" is defined as "[a] state statute which in terms and in effect applies alike to all counties, all counties other than those wholly included within a city, all cities, all towns or all villages" (Municipal Home Rule Law § 2 [5]). In contrast, a "[s]pecial law" is one that "in terms and in effect applies to one or more, but not all, counties, counties other than those wholly included within a city, cities, towns or villages" (Municipal Home Rule Law § 2 [12]). "Unlike general laws, there is no requirement that a local law be consistent with a special law and may, in a given circumstance, supersede a special law" (*Matter of Ricket v Mahan*, 97 AD3d 1062, 1064 [3d Dept 2012] [citations omitted]).

"The doctrine of preemption, however, represents a fundamental limitation on home rule powers" (*Matter of Town of Copake v New York State Off. of Renewable Energy Siting*, 216 AD3d 93, 104 [3d Dept 2023] [internal quotation marks and citations omitted], *appeal dismissed* 41 NY3d 990 [2024]; *see Matter of Wallach v Town of Dryden*, 23 NY3d 728, 743 [2014]). Where a statute contains an express preemption clause, "its effect turns on the proper construction of the statutory provision" (*Matter of Norse Energy Corp. USA v Town of Dryden*, 108 AD3d 25, 31 [3d Dept 2013] [internal quotation marks, brackets and citation omitted], *affd* 23 NY3d 728 [2014]). The primary consideration in matters of statutory interpretation "is to ascertain and give effect to the intention of the Legislature," beginning with an examination of the language of the statute itself (*Matter of Strzepek v DiNapoli*, 227 AD3d 1353, 1355 [3d Dept 2024] [internal quotation marks and citations omitted]). "That is, the literal language of a statute controls unless the plain intent and purpose of the statute would otherwise be defeated" (*Matter of Central Hudson Gas & Elec. Corp. v State of N.Y. Pub. Serv. Commn.*, 242 AD3d 33, 37 [3d Dept 2025] [internal quotation marks and citations omitted]). "[T]he legislative history of an enactment may also be relevant and is not to be ignored, even if the words are clear" (*Matter of Markey v Tietz*, 244 AD3d 78, 84 [3d Dept 2025] [internal quotation marks, brackets and citations omitted]).

By its plain language, Agriculture and Markets Law § 305-a preempts local laws that "unreasonably restrict or regulate *farm operations* within agricultural districts" in the absence of demonstrated threats to public health or safety (Agriculture and Markets Law § 305-a [1] [a] [emphasis added]). " 'Farm operation' " is defined under the statute, in relevant part, as the "practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise" (Agriculture and Markets Law § 301 [11]). Significantly, missing from the statutory language is any indication that the Legislature intended the provision to extend to local laws prohibiting the sale of certain livestock products in retail or food service establishments – such as Local Law 202.[2] Indeed, it is informative that Agriculture and Markets Law article 25-AA was expressly enacted to protect agricultural lands from "nonagricultural development extend[ing] into farm areas," as well as "[o]rdinances inhibiting farming," which "often lead[ ] to the idling or conversion of potentially productive agricultural land" (Agriculture and Markets Law § 300). The Legislature thus clearly expressed its intent that Agriculture and Markets Law § 305-a preempt those local laws that result in direct and unreasonable restrictions or regulations upon farming operations and the associated use of land – not the sale of products produced as a result of those operations in retail food and food service establishments, which may be subject to other statutory and regulatory limitations. Reading into the plain language of the statute legislative intent to also preempt local laws that have only an indirect financial effect on farm operations, as is the case here, expands Agriculture and Markets Law § 305-a to a nearly limitless reach as local laws, despite their limited geographical application, frequently have the potential to create economic ripple effects that extend to other areas of the state, and beyond.[3] Had the Legislature intended to grant the Commissioner such extensive power, it could have done so.

Moreover, we agree with petitioner that the statutory text makes clear, and the legislative history confirms, that Agriculture and Markets Law § 305-a applies only to

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[2] It bears reiterating that Local Law 202 regulates the sale of certain agricultural products only at retail food and food service establishments in New York City. Farms may continue to sell foie gras to consumers directly.

[3] By way of example, local laws banning public smoking (*see* Administrative Code of City of NY § 17-503), and those requiring that calorie information be displayed on menus (*see* Administrative Code of City of NY § 81.50; *see also* King Cnty, Wash, Bd of Health Code § 5.10.016) undoubtedly affect demand for various agricultural products and, thus, supply chains for those products locally and throughout the state.

measures enacted by local governments whose jurisdiction falls "*within* agricultural districts" (Agriculture and Markets Law § 305-a [1] [a] [emphasis added]). Nothing supports the conclusion that the Legislature intended for local governments' lawmaking authority under home rule to be limited by potential effects to agricultural districts elsewhere in the state. Indeed, the statute's use of "within" indicates that the preemptive provision is to apply to local governments existing inside of an agricultural district. To hold otherwise would be tantamount to permitting one local government's establishment of an agricultural district under the Agriculture and Markets Law to effectively limit the lawmaking of outside local governments across the entire state, in addition to presenting practical obstacles to local lawmaking that such a scheme would pose. Rather, the scheme created under Agriculture and Markets Law article 25-AA for the creation and coordination of agricultural districts ties the program to the specific territory comprising a specific agricultural district. Of note, section 303 concerning the creation of such districts requires notice "to those municipalities whose territory encompasses the proposed district" (Agriculture and Markets Law § 303 [2] [a]) and section 303-a pertaining to the county-led review of agricultural districts similarly requires notice to "municipalities whose territory encompasses the district" (Agriculture and Markets Law § 303-a [2] [a]), however, outside local governments are not among those required to receive any such notice or an opportunity to be heard. Significantly, a review of the legislative history confirms that the Agriculture and Markets Law was amended in 1992 to include section 305-a to "enhance cooperation and coordination between *local land use decision-making* and the agricultural districts program" (Sponsors' Mem, Bill Jacket, L 1992, ch 534 at 5 [emphasis added]).[4]

In sum, we find nothing in the statutory language, nor any indication in the legislative history, that the Legislature intended to circumvent home rule and grant the Commissioner preemptive power over all local government lawmaking when any agricultural district located within the state is affected or where the only impact upon farming operations is indirect and financial in nature. To the contrary, the foregoing

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[4] To the extent that the state respondents correctly note that the Senate Memorandum in Support of the 1997 amendments to Agriculture and Markets Law § 305-a describes same as "expanding the scope of [section 305-a] to apply to all local laws, ordinances, rules or regulations" (Senate Mem in Support, Bill Jacket, L 1997, ch 357 at 9), the context of such statement was the Legislature's deletion of the term "land use" in the former statutory text "local land use laws, ordinances, rules or regulations," such that a local law need not be classified as a land use law in order to fall within the scope of section 305-a (L 1997, ch 357, § 11).

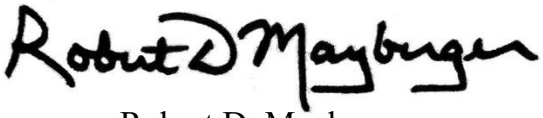
reflects the Legislature's intent to balance the "vitality of agriculture in this state" (Agriculture and Markets Law § 300) with our strong tradition of home rule. Accordingly, as Local Law 202 was thus not preempted by the limitations of Agriculture and Markets Law § 305-a, Supreme Court should have granted the petition and annulled the Commissioner's determination.

In view of the foregoing, we need not address whether petitioner demonstrated that the enactment of Local Law 202 addressed threats to public safety or health for purposes of Agriculture and Markets Law § 305-a. The parties' remaining contentions, including the proposed intervenors' challenge to the dismissal of their motion to intervene (*see generally Matter of Global Cos. LLC v New York State Dept. of Envtl. Conservation*, 155 AD3d 93, 96-97 [3d Dept 2017], *lv denied* 30 NY3d 913 [2018]; *Borst v International Paper Co.*, 121 AD3d 1343, 1345-1346 [3d Dept 2014]), have either been rendered academic by our determination or considered and found to be lacking in merit.

Garry, P.J., Reynolds Fitzgerald, McShan and Powers, JJ., concur.

ORDERED that the judgment is reversed, on the law, without costs, determination annulled and petition granted.

ENTER:



Robert D. Mayberger
Clerk of the Court