Healy v State of New York
2025 NY Slip Op 35316(U)
October 8, 2025
Supreme Court, Wayne County
Docket Number: Index No. CV092445
Judge: Rory A. McMahon
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PRESIDING: HONORABLE RORY A. MCMAHON

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WAYNE

RICHARD M. HEALY, Wayne County Court Judge
Petitioners,

Against –

DECISION and ORDER
Index No. CV092445

THE STATE OF NEW YORK, NEW YORK STATE OFFICE OF COURT ADMINISTRATION, ROWAN D. WILSON, AS CHIEF JUDGE OF THE COURTS, NEW YORK STATE BOARD OF ELECTIONS, WAYNE COUNTY BOARD OF ELECTIONS.
Respondents.

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The original Petitioners in this action were Arthur B. Williams and Richard M. Healy (hereinafter "Original Petitioners"). Arthur B. Williams is a sitting Wayne County Court Judge and an Acting Supreme Court Justice who will turn 70-years-old on January 16, 2026 (Pet., ¶¶ 17-19) and, as a result, will be mandatorily retired as of December 31, 2026, pursuant to Article VI, §25(b) of the New York State Constitution (the "Constitution") (Pet., ¶20). Petitioner Richard M. Healy is a sitting Wayne County Court Judge and also an Acting Supreme Court Justice who turned 70-years-old on January 20, 2025 (Pet., ¶¶ 21-23), who will be mandatorily retired as of December 31, 2025, notwithstanding his elected term extending through 2026. (Pet., ¶ 24). As a result of prior motion practice, the Court ruled that Arthur B. Williams lacked standing to commence the pending action. (NYSCEF Doc. 67-70). Therefore, only Petitioner Richard M. Healy remains as a petitioner and the caption is hereby amended accordingly.

The pending action was brought as a hybrid Article 78 and declaratory judgment action challenging the continuing applicability of portions of §23 of the New York State Judiciary Law and Article VI, §25 of the Constitution. The Petition alleges that, in light of the newly enacted Equal Rights Amendment adopted by referendum on November 5, 2024 (hereinafter "Equal Rights Amendment"), these two sections fail under a newly-required strict scrutiny scope of review.

The Court previously considered an Order to Show Cause brought pursuant to CPLR §6301, seeking a preliminary injunction. Specifically, the Original Petitioners moved to enjoin Respondents from taking any action to effect their respective mandatory retirements as jurists based upon their contention that the mandatory judicial retirement age contained within both §23 of the Judiciary Law and Article VI, §25 of the Constitution violates the current version of New York's equal protection clause. The Order to Show Cause requested that the Court enjoin Respondents from terminating or declaring the Original Petitioners' seats vacant until their elected term expires. Thereafter, a Motion to Intervene was filed on behalf of Jeannie D'Alessandro, as candidate for Wayne County Court Judge and as a voter in Wayne County, seeking an order pursuant to CPLR §401, §7802(d), §1012 and/or §1013. The State of New York and Governor Kathy Hochul filed a Cross Motion to Dismiss through the Attorney General of New York, seeking an Order pursuant to CPLR §3211(a)(2)(a)(7), §6301 and/or §7804. Finally, the Court received a Motion from the New York Civil Liberties Union for Leave to File a Proposed *Amicus Curiae* brief.

The Court considered arguments from all attorneys on June 4, 2025. At that time, by Oral Stipulation, Petitioners agreed to withdraw the Petition as to certain named

respondents, specifically the Honorable Joseph A. Zayas and Governor Kathy Hochul. The caption in this matter is hereby amended accordingly. Counsel were also permitted to file submissions in furtherance of the motion argument. After briefing and argument was complete, the Court issued a Decision and Order with respect to the various motions presented, denying the application for a preliminary injunction, which was thereafter amended in an Amended Decision and Order. (NYSCEF 67-70). Pursuant to the discretion afforded by CPLR §103©, the Court converted the action to a plenary declaratory judgment action.

The Court held a pretrial conference on August 19, 2025, via Microsoft Teams, at which time the parties agreed that discovery in this matter was complete and that the matter was ripe for final decision based on the previously-submitted record. Thereafter, on August 25, 2025, the parties submitted a proposed Order to the Court, memorializing their agreement, which was entered on August 26, 2025. The Order, based on stipulation of the parties, confirmed completion of discovery and requested that the court resolve all outstanding issues relative to the matter by final order. Accordingly, the Court hereby issues the following decision in furtherance of its August 26, 2025 Order.

Petitioner's first and second cause of action seek injunctive and declaratory relief, respectively, based on the contention that the recent expansion of the Constitution's equal protection clause, to include "age" as a protected class, necessarily changed the level of the Court's review of the challenged statutory age limitations contained within the Judiciary Law and the Constitution. Specifically, Petitioner argues that, as a result of the Equal Rights Amendment, the age-based restrictions in the challenged provisions must now be reviewed under a "strict scrutiny" analysis, because "age" is

now deemed a "suspect class"under the Constitution. Were such a review to be conducted, Petitioner contends that the legislative and constitutional restrictions mandating retirement of New York judges at age 70 are not narrowly tailored to serve any compelling governmental interest and, as such, must be deemed unenforceable.

As an initial matter, for the reasons set forth in the Court's earlier Amended Decisions and Orders (NYSCEF 67-70), *if* the challenged age restrictions were contained *solely* in a statute, rather than in the state constitution itself, a strict scrutiny review under the amended New York equal protection clause *might* have yielded a different outcome to Petitioner's request for relief. However, since the challenged restrictions contained within the Judiciary Law, at least as are applicable to Petitioner, are also contained within a separate stand-alone provision of the Constitution, any independent challenge of the Judiciary Law is moot.

Compulsory retirement for jurists at age 70 continues to be enshrined in Article VI, §25 of the Constitution (N.Y. Const. art. VI, §25). As set forth in this Court's earlier Amended Decisions and Orders (NYSCEF 67-70), a separate stand-alone provision in the Constitution cannot be invalidated by an Article 1, §11 equal protection challenge. In other words, one part of the Constitution cannot be used to strike down a separate part of the same Constitution, given that "[a]ll parts of [the Constitution] must be harmonized with each other ... and effect and meaning must, if possible, be given to the entire [Constitution] and every part and word thereof." (McKinney's Cons Laws of NY, Book 1, Statutes, § 98; see also People ex rel. Williams Eng'g & Contracting Co. v. Metz, 193 N.Y. 148, 158–59 [1908]; Burger King, Inc. v. State Tax Comm'n, 51 N.Y.2d 614, 620–21 [1980] ("*It is a familiar and salutary canon of construction that courts, in*

construing apparently conflicting statutory provisions must try to harmonize them."). Moreover, it is well established that, "whenever there is a general and a particular provision in the same statute, the general does not overrule the particular but applies only where the particular enactment is inapplicable." (McKinney's Cons Laws of NY, Book 1, Statutes, §238). Here, Article 1, §11 cannot be interpreted in a way that would overrule, supersede, or render superfluous the separate requirements of Article VI, §25. Rather, rules of construction dictate that these two sections of the Constitution must be harmonized with each other.

As a result of the application of these well-settled rules of statutory and constitutional construction, Petitioner's challenge to the enforcement of the limitations contained within Article VI, §25 of the Constitution must fail, and any challenge to the continued viability of that constitutional provision necessarily "lies to the ballot and to the legislative processes of democratic government, not to the courts." (Baldwin Union Free Sch. Dist. v. Cnty. of Nassau, 22 N.Y.3d 606, 628 [2014]). In light of the above analysis, the Court grants the Respondents summary judgment dismissing Petitioner's first and second causes of action.

Petitioner's third cause of action requests a declaration from the Court that §23 of the Judiciary Law and Article VI, §25 of the Constitution violate the New York State Human Rights Law (NY Executive Law § 296(1)(b)) and the federal Age Discrimination in Employment Act of 1967 ("ADEA") (29 U.S.C. § 630, *et seq.*). Relative to the Petitioner's challenge to Article VI, §25 of the Constitution based on the ADEA, Petitioner fails to meet the definition of "employee" under 29 U.S.C. § 630(f), which expressly excludes "any person elected to public office in any State ...." (See 29 U.S.C.

§ 630(f)). Accordingly, Petitioner's ADEA challenge fails for this reason. (See Diamond v. Cuomo, 130 A.D.2d 292, 297, aff'd, 70 N.Y.2d 338 [1987] (refusing to apply ADEA to elected judges based on 29 U.S.C. § 630(f)).

Petitioner also contends that §23 of the Judiciary Law and Article VI, §25 is a violation of NY Executive Law § 296(1)(b). As an initial matter, that section, by its terms, prohibits discrimination by "employment agencies," and would therefore have no applicability to Petitioner's claims. However, even if the Petition is interpreted as asserting a claim under NY Executive Law § 296(1)(a), Petitioner has still failed to establish a viable basis for his claim for declaratory relief. NY Executive Law § 296(1)(a) makes it unlawful for an employer "to refuse to hire or employ or to bar or to discharge from employment" an individual or otherwise "discriminate ... in compensation or in terms, conditions or privileges of employment" based on their membership within a protected class. (See NY Executive Law § 296(1)(a)). A plaintiff alleging discrimination in employment must show that "(1) [he] is a member of a protected class; (2) [he] was qualified to hold the position; (3) [he] was terminated from employment or suffered another adverse employment action; and (4) the discharge or other adverse action occurred under circumstances giving rise to an inference of discrimination." (Forrest v. Jewish Guild for the Blind, 3 NY3d 295, 305 [2004]).

Here, Petitioner has failed to demonstrate all the elements of a prima facie case of age discrimination. In particular, the evidentiary record fails to establish that the Respondents took an adverse employment action against the Petitioner. Rather, his position will automatically expire in December of 2025 by operation of law—i.e., "by constitutional mandate"—and not based on the discretionary decision of any one of the

Respondents. (See Gesmer v. Admin. Bd. of New York State Unified Ct. Sys., 194 A.D.3d 180, 187 [2021]). In Gesmer v. Admin. Bd. Of New York State Ct. Sys., the Appellate Division rejected a discrimination claim by a Justice brought pursuant to the NY Executive Law § 296(1)(a), alleging that his mandatory retirement was a prohibited discharge based on age. (Id.) The Third Department held that there was no actual adverse employment action because "the term of each petitioner Justice expired on December 31, 2020, by constitutional mandate." (Id.) The court also held that the defendant's actions in enforcing the then existing law would not reasonably permit an inference that the loss of employment occurred "under circumstances giving rise to an inference of discrimination." (Id.) The record here, like in Gesmer, does not permit a reasonable inference of actionable discrimination under the Executive Law.

On a more fundamental level, the Petitioner seeks to challenge a state constitutional provision utilizing a separate state legislative act. When the state legislature added "age" as a protected class to the NY Executive Law in 1969, they were presumed to be aware of the age restrictions on jurists contained within Article VI, §25, which was enacted in 1964. Under the rules of statutory construction mentioned above, the Court is not permitted to interpret the general provisions of NY Executive Law § 296(1)(a) in a way that would invalidate the specific requirements of Article VI, §25 of the State Constitution. (*See* Nat'l Org. for Women v. Metro. Life Ins. Co., 131 A.D.2d 356, 358 [1987]) (*"a special statute in irreconcilable conflict with a general statute covering the same subject matter is controlling insofar as the special act applies";* See also c.f., Constantine v. White, 166 A.D.2d 59 [1991])(*"insofar as the general age discrimination provisions of Executive Law § 296 (3-a) (a) conflict with the specific age limitations imposed on the hiring practices of the State Police by Executive*

Law § 215 (3), the general provisions must yield to the specific"). For the foregoing reasons, Court grants the Respondents summary judgment dismissing Petitioner's third cause of action.

Accordingly, based upon the record presented and after due deliberation, it is hereby;

ORDERED and ADJUDGED, that the caption is hereby amended to reflect the Court's prior Amended Decisions and Orders (NYSCEF Doc. 67-70), and the Petitioner now be listed as Richard M. Healy, as the Court previously ruled that Arthur B. Williams lacked standing; and it is further

ORDERED and ADJUDGED, that the caption is hereby amended to remove the Honorable Joseph A. Zayas and Governor Kathy Hochul, based upon the Oral Stipulation entered June 4, 2025; and it is further

ORDERED and ADJUDGED, that in accordance with the Court's prior Amended Decisions and Orders (NYSCEF Doc. 67-70), and the analysis above, Respondents are hereby GRANTED summary judgment with respect to the First, Second and Third Cause of Action which are hereby DISMISSED.

Dated: October 8, 2025

Honorable Rory A. McMahon
Supreme Court Justice