

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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ROBERT J. MILLER, RICHARD J. MONTELIBONE,
ORLANDO MARRAZZO,

Petitioner,

- v -

THE STATE OF NEW YORK, NEW YORK STATE OFFICE
OF COURT ADMINISTRATION,

Respondent.

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INDEX NO. 163102/2025

MOTION DATE 10/07/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 36, 37, 38, 39, 41, 42, 43, 44 were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, the order to show cause is denied and the cross-motion to dismiss the petition is granted.

Background

This case presents, what is largely an issue of first impression, and pits a law based on the dynamic of age against a recent voter-mandated example of the current drive to combat discrimination. The New York State Constitution has long contained a judicial age limit provision, mandating retirement of judges past a set age. This limit has been sporadically updated throughout the years as medical and other advancements improve the average person’s lifespan and health outlook. In 1777, for instance, judges were required to retire at the age of 60, an age which the legislature reexamined in 1869. As matters stand now, N.Y. Judiciary Law § 23 and § 115 (the “Judicial Retirement Laws”) operate together to require that justices, upon reaching the age of seventy, must undergo an administrative board certification process attesting to their mental and physical capacity in order to continue serving on the bench. This certification

is only valid for three renewable terms of two years, and when a judge or justice reaches the age of 76, they are required to retire that year. This statutory scheme is pursuant to the mandatory judicial retirement provision found in the New York State Constitution, in Article VI, § 25(b).

In November of 2024, New Yorkers voted in an equal rights amendment (the “ERA”) to Article I, § 11 of the constitution that, among other things, bans any civil rights discrimination based on age. It is the tension between this new ERA and the Judicial Retirement Laws that prompt this present proceeding.

Procedural Background

Petitioners are three New York Supreme Court justices that have turned either 70 or 76 years of age in 2025 and therefore are going to be required to (respectively) begin to undergo the certification process or to retire by the end of 2025. They brought the hybrid Article 78 and declaratory relief proceeding in October of 2025, seeking to have the Judicial Retirement Laws deemed unenforceable under the New York State Constitution as well as the State and City Human Rights laws. They challenge both the certification process that begins at age 70 and the mandatory retirement limit at age 76. Petitioners also seek an injunction barring Respondents, the State of New York and, as a nominal Respondent, the Office of Court Administration, from enforcing the Judicial Retirement Laws. The New York Civil Liberties Union has submitted an *amicus curia* brief on the issue of the effect of the ERA.

Discussion

Petitioners move for a preliminary injunction preventing Respondents from enforcing these provisions of the Judiciary Law. Respondents have opposed the motion, and the State cross-moved to dismiss the petition. They argue that Petitioners fail to establish their burden on all three prongs of the preliminary injunction test. The NYCLU, taking no stance on the overall

merits of the proceeding, has urged the Court to find that the ERA is self-executing and creates a cause of action for any age-related discrimination. For the reasons that follow, the order to show cause is denied and the cross-motion to dismiss the hybrid petition is granted.

The Order to Show Cause Seeking a Preliminary Injunction Is Denied Due to Lack of Irreparable Harm

Petitioners notice of motion seeks a preliminary injunction staying the enforcement of the Judicial Retirement Laws during the pendency of this action. Petitioner Miller, under the current scheme, will be forced to step down at the end of this year. The granting of a preliminary injunction lies in the court's discretion, and it is "an extraordinary provisional remedy which will only issue where the proponent demonstrates (1) a likelihood of success on the merits; (2) irreparable injury absent a preliminary injunction, and (3) a balance of equities tipping in its favor." *Harris v. Patients Med., P.C.*, 169 A.D.3d 433, 434 [1st Dept 2019]. Respondent OCA argues that the motion should be denied for failure to establish irreparable harm¹ and because the balance of the equities favors Respondents.

OCA argues that there is no imminent danger of irreparable harm because any harm that Petitioners may suffer can be adequately addressed through money damages. The general rule is that any damages that are calculable and capable of monetary compensation do not constitute irreparable harm in the context of injunctive relief. *See, e.g., OraSure Tech., Inc. v. Prestige Brands Holdings, Inc.*, 42 A.D.3d 348, 348 [1st Dept 2007]. Here, Petitioners argue that the harm they will suffer should injunctive relief be denied includes the possibility of not remaining

¹ The Court notes that OCA's papers repeatedly cite to a First Department case on this issue, *35 N.Y. City Police Officers v. City of New York*, 34 A.D.3d 392 [1st Dept. 2006]. But none of the language quoted in the multiple quotations on page 5 of their memorandum of law came from the First Department. Instead, the quoted language is from a non-binding Suffolk County trial court's interpretation of *35 N.Y. City Police*, found in the case *Kahn Prop. Owner, LLC v. Fruchthandler*, 82 Misc. 3d 494 [Suff. Cty. 2023].

at the same courthouse should Petitioners ultimately succeed and be reinstated, the loss of pension benefits, and the loss of health benefits. The last two are clear examples of damages compensable through money, and the first does not constitute irreparable harm. Petitioners also argue that the deprivation of a constitutional right is *per se* irreparable harm. Given that the heart of this proceeding is a determination on whether there is a constitutional right being infringed, this conclusory argument presumes that Petitioners will be ultimately successful and cannot give a basis for irreparable harm. Petitioners have failed to establish that they are at risk of an irreparable injury that cannot be compensated in money form and therefore have failed to establish entitlement to a preliminary injunction.

For completeness and because there is a motion to dismiss, the Court will discuss the other prongs the petitioners must demonstrate to obtain a preliminary injunction.

The Balance of the Equities Favors Respondents

OCA argues that the balance of the equities favors denying the preliminary injunction because if the Judicial Retirement Laws are ultimately deemed constitutional and valid, any actions that a judge took after the retirement age would be *ultra vires* and open to challenge. Petitioners argue in part that this result could not happen because there is no possibility of the laws being upheld. They further affirm that Petitioner Miller (who is nearing the mandatory retirement date) will limit his activity to case settlement and administrative tasks, in order to avoid taking actions that could later be overturned as taken by one lacking in authority.

While this would likely swing the equities more in the favor of Justice Miller, nonetheless, Justice Miller has failed to satisfy the prong of irreparable harm, and these facts make it clearer that the only harm at stake in this preliminary injunctive relief request is

monetary. As this then becomes almost identical to the irreparable harm prong, this Court finds that the balance of the equities favors respondents.

The Equal Rights Amendment Did Not Repeal Explicitly or by Implication All Laws with Age-Based Restrictions

As an initial matter, Petitioners argue that Section 25(b) of the State Constitution, which sets forth the mandatory judicial retirement ages, is in direct conflict with the ERA and therefore the 2024 ERA impliedly repealed Section 25(b). The State argues that an amendment to one section of the constitution cannot impliedly repeal another, separate section, or that even if that were permissible, the ERA did not so repeal Section 25(b).

As a general rule, repeal by implication is strongly disfavored and one statute can only repeal another by implication if the two “are in such conflict that it is impossible to give some effect to both.” *Alweis v. Evans*, 69 N.Y.2d 199, 204 [1987]. If there can be a construction of both statutes that gives a “reasonable field of operation”, then such a construction must be adopted, and the newer statute does not repeal the older statute. *Id.* Petitioners, citing to various non-binding trial level opinions dealing with repeal by implication, urge the Court to find that the plain language of the ERA impliedly repeals Section 25(b).

To begin with, the Court notes that to take Petitioners’ arguments on their face, any law containing an age-based restriction would have been impliedly repealed by the ERA. They argue that the ERA constitutes a blanket ban on any law that places restrictions based on age. Without resorting to Dickensian hypotheticals involving ten-year-olds purchasing beer on their morning drive to a factory job, the Court notes that “age” encompasses the young as well as the elderly, with obvious ramifications. Such a result cannot have been the intended result of the legislature or the voters in adopting the ERA, nor is such a blanket repeal of all age-based restrictions in law

found in the plain language of the 2024 amendment. Petitioners have not adequately demonstrated that Section 25(b) was repealed by the ERA simply because it contains an age-based restriction, nor have they demonstrated that there was legislative intent to repeal Section 25(b) or any judicial retirement provisions with the ERA.

As the Court of Appeals has said while addressing the constitutionality of the Judicial Retirement Laws (albeit under a rational basis standard), “for the repeal of such provisions, appeal lies to the ballot and to the legislative processes of democratic government, not to the courts.” *Maresca v. Cuomo*, 64 N.Y.2d 242, 249 [1984]. If Section 25(b) was impliedly repealed by the ERA simply because it contains an age restriction, then a host of laws such as those restricting the ability to drive, work, and purchase certain substances are all similarly repealed. There is no indication that such a result was intended or desired by the legislature or the voters.

Under Binding Precedent and Plain Language Interpretation, the Equal Rights Amendment Prohibits Discrimination of a Person’s Civil Right Instead of All Forms of Discrimination

Turning to the issue of harmonization, it is clear that the two provisions can be harmonized. The ERA added age to the list of protected categories under the second sentence of Article 1, the Civil Rights Clause. This provision “prohibits [private and State] discrimination only as to civil rights where are elsewhere declared by Constitution, statute, or common law.” *People v. Kern*, 75 N.Y.2d 638, 651 [1990]. Therefore, in order to find Section 25(b) unconstitutional in light of the ERA, the Court would need to find that Section 25(b) impermissibly discriminates based on age against a civil right elsewhere declared. In other words, Petitioners would need to establish that the right to continue being a judge is a civil right that Section 25(b) now impermissibly limits based on age. They have not made such a showing.

The NYCLU has urged the Court to find that the ERA is self-executing and that it does not require a reference to civil rights elsewhere in order to constitute grounds for a discrimination claim. They cite to the intent of the framers as support for this argument. However, this fails to defeat the plain language of the constitution as amended. If the ERA operates to create causes of action for any form of discrimination based on the listed characteristics, the emphasized language in “[n]o person shall [...] be subjected to any discrimination *in their civil rights*” becomes superfluous and unnecessary. Clearly, by the plain and explicit language of the statute, it is discrimination against a person’s *civil rights* based on the enumerated characteristics that is prohibited.

It is the plain language of a statute that provides the best evidence of the legislature’s intent. *Kimmel v. State of New York*, 29 N.Y.3d 386, 392 [2017]; *see also Commonwealth of the N. Marina Is. V. Canadian Imperial Bank of Commerce*, 21 N.Y.3d 55, 60 [2013] (noting that the plain language of a statute is the starting point and if the language is clear, the construing court must “give effect to the plain language of the words used”). And as a matter of hornbook law, an interpretation of a statute that renders language superfluous is impermissible. *See, e.g., Matter of Mestecky v. City of New York*, 30 N.Y.3d 239, 243 [2017]. The legislature had the opportunity to redraft the Civil Rights clause to remove the qualifying language of “in their civil rights” and chose not to do so. The Court cannot ignore the civil rights limiting language in the constitution. And as the Court of Appeals has noted on this very clause, “[o]bviously such rights are those elsewhere declared.” *Dorsey v. Stuyvesant Town Corp.*, 299 N.Y. 512, 531 [1949].

The NYCLU points to the addition of subsection (b) to the ERA and argue that it supports the argument that the ERA can overturn laws involving age restrictions. This subsection opens with “[n]othing in this section shall invalidate or prevent the adoption of any law,

regulation, program, or practice that is designed to prevent or dismantle discrimination on the basis of a characteristic listed in this section.” Under a plain language interpretation, this language does not give a basis for finding other sections of the constitution have been repealed because they place restrictions based on a listed characteristic. Instead, it eases the adoption of any future law that attempts to combat discrimination, a laudable goal that nevertheless does not overturn Section 25(b). The subsection continues to state that “nor shall any characteristic listed in this section be interpreted to interfere with, limit, or deny *the civil rights* of any person based upon any other characteristic identified in this section” (emphasis added). The Court finds that this provision only further bolsters the plain language of the Civil Rights Clause in requiring discrimination of a civil right. Furthermore, while subsection (b) may give a basis for finding that a governmental law or action could impermissibly conflict with the ERA and therefore be unconstitutional, it does not state that *any* form of discrimination based on a listed characteristic is now unconstitutional. Therefore, this subsection does not explicitly or implicitly repeal Section 25(b).

Equal Protection Cannot Be a Civil Right

While the NYCLU’s primary position is that the ERA is self-executing and does not require identification of a civil right, they also argue that should the Court find that the ERA prohibits discrimination of a civil right, equal protection itself constitutes a civil right. As with the other proposed interpretation of the Civil Rights Clause, the fundamental problem with this interpretation is that it once again renders all references to “discrimination in a civil right” superfluous and unnecessary. The two Section 11 clauses together read: “[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of [the enumerated characteristics] be subjected to any discrimination in their civil rights

[...]” Under the NYCLU’s interpretation, if equal protection and civil rights were interchangeable, the second specific sentence would merely repeat the protections of the broader first sentence but emphasize the availability of equal protection based on the listed characteristics. In other words: All persons are entitled to equal protection, and all persons are entitled to equal protection due to their race, age, etc. Such an interpretation is not permitted by the canons of statutory construction and goes against the long-standing Court of Appeals case law treating the two clauses as legally distinct.

As such, as the petitioners will be unable to prove their case, dismissal is appropriate at this stage of the litigation.

Conclusion

To sum up, in order to succeed Petitioners would need to establish that Section 25(b) and the two Judiciary laws establishing the certification scheme for mandatory retirement laid out in Section 25(b) has been overturned by the ERA. They can do this by showing that the ERA either explicitly or implicitly makes Section 25(b) unconstitutional. They cannot show that the ERA makes all age restriction laws explicitly unconstitutional – certainly, this Court is not prepared to hold that all laws containing an age restriction, such as driving, drinking, working laws, and so on, are now void, given the drastic and assuredly unforeseen impact this would have on a functioning society. And in order to find that the ERA implicitly repealed Section 25(b), by the plain and unmistakable language of the ERA the Petitioners would need to show that Section 25(b) discriminates against a civil right of theirs. This Petitioners have not shown, nor is the Court aware of, a civil right consisting of the ability to remain a judge. Because Petitioners have not demonstrated that Section 25(b) and the accompanying Judicial laws are unconstitutional, their claims for declaratory relief and under the state and city human rights laws necessarily fail.


The Court would like to make clear that in so holding, it is not taking a stance in support of the wisdom of mandatory judicial retirement laws, or the certification scheme as it currently exists. As this Court noted in oral argument, there are serious public policy concerns with the current judicial mandatory retirement age scheme.

However, whatever this Court may believe regarding the ability of the average justice to perform the duties of their job past the age of 76, the fact remains that the judicial retirement scheme is mandated by our state’s constitution, and the Court has no authority to override that mandate. The Court may be able to add its voice to those urging the New York legislature to reconsider the issue of mandatory judicial retirement ages, but that remains all it has the power to do. Accordingly, it is hereby

ADJUDGED that the order to show cause is denied; and it is further

ADJUDGED that the cross-petition is granted; and it is further

ORDERED that the petition be dismissed.


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11/21/2025
DATE

LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED DENIED
SETTLE ORDER
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER
REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: