STATE OF NEW YORK
SUPREME COURT COUNTY OF MADISON

MARK E. SALTARELLI, Individually and as City Court Judge of the City of Tonawanda, NY,
MICHAEL MISIASZEK, Individually and as City Court Judge of the City of Oneida, NY,
ALL PETITIONERS AND AS CITY COURT JUDGES.

Petitioners/Plaintiffs,

vs.

THE STATE OF NEW YORK,
NEW YORK STATE OFFICE OF COURT ADMINISTRATION,
ROWAN D. WILSON, AS CHIEF JUDGE OF THE COURTS,
JOSEPH A. ZAYAS,
AS CHIEF ADMINISTRATIVE JUDGE OF THE UNIFIED COURT SYSTEM,
JAMES MURPHY, AS DEPUTY ADMINISTRATIVE JUDGE, and
KATHY HOCHUL, AS GOVERNOR,

Respondents/Defendants.

DECISION & ORDER
Index No. EF2025-1969

APPEARANCES

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OPINION OF THE COURT

Patrick J. O'Sullivan, J.S.C.

Nature of Action

This is a hybrid declaratory judgment action, Article 78 proceeding and civil action seeking damages for age discrimination in violation of Article 1, §11 of the New York State Constitution and New York State Human Rights Law [Executive Law §296(1)] ("NYSHRL").[1] The matter was brought on by Order to Show Cause and respondents/defendants, State of New York, Rowan D. Wilson (Wilson), as Chief Judge of the Courts, Joseph A. Zayas ("Zayas"), as Chief Administrative Judge of the Unified Court System, James Murphy ("Murphy"), as Deputy Administrative Judge and Kathy Hochul, as Governor ("Governor") (hereinafter collectively referred to as the "State"), cross-moved in lieu of answering, pursuant to CPLR §3211, seeking to dismiss the petition and complaint.[2] Respondent/defendant New York State Office of Court Administration ("OCA") interposed a Verified Answer.

Background

On November 5, 2024, a majority of New Yorkers voted in favor of adopting Proposal One entitled *Amendment to Protect Against Unequal Treatment,* informally known as the Equal Rights

1. Petitioners withdrew their federal Age Discrimination Employment Act of 1967 (ADEA) claim on the record at oral argument.

2. Petitioners agreed to discontinue the action against the Governor on the record at oral argument.

Amendment ("ERA"), which took effect on January 1, 2025. The ERA amended Article 1, §11 by, *inter alia*, expanding the list of protected classes to include, age.

Both Petitioners are 70 years old and serve as elected City Court Judges for cities outside the city of New York, pursuant to the Uniform City Court Act (UCCA). Petitioner, Mark Saltarelli ("Saltarelli"), is a Tonawanda City Court Judge whose term is set to expire on December 31, 2025. Saltarelli alleges that he did not seek re-election based upon the State representing that he was ineligible due to his age pursuant to Judiciary Law §23. The Mayor for the City of Tonawanda was also notified by the State that Saltarelli could not be appointed as a part-time City Court Judge because of the age restriction. Petitioner, Michael Misiaszek ("Misiaszek") an Oneida City Court Judge, whose term was set to expire on December 31, 2029, alleges he has wrongfully been required to vacate his office on December 31, 2025, pursuant to Judiciary Law §23 by virtue of the State holding an election for the vacancy.[3]

Analysis

Declaratory Judgment Action

The first issue that needs to be addressed is whether Judiciary Law §23, as it relates to City Court Judges outside the city of New York, passes constitutional muster in light of the ERA. Petitioners contend that Judiciary Law §23, as it relates to City Court Judges outside of the city of New York, violates the ERA by discriminating against them solely based upon their age.

3. The judgeships currently held by both petitioners were up for election on Tuesday, November 4, 2025, and this court took judicial notice of the fact that the winners of those judgeships were Tonawanda City Court Judge-Elect Dean E. Lilac, Jr. and Oneida City Court Judge-Elect Todd Dexter.

It is well settled that a declaratory judgment action in the Supreme Court is an appropriate vehicle for challenging the constitutionality of a statute (*see Cass v State,* 58 NY2d 460, 463 [1983]). In addition, the State is the proper party to such an action because of its obvious interest in and right to be heard on matters concerning the constitutionality of its statutes (*id*).

Alleged equal protection violations are primarily evaluated using either a "strict scrutiny" or a "rational basis" standard of review (*People v Aviles,* 28 NY3d 497, 502 [2016]) . Where governmental action disadvantages a suspect class or burdens a fundamental right, the conduct must be subjected to "strict scrutiny," and will be upheld only if the government can establish a compelling justification for the action and it is narrowly tailored to achieve that purpose (*id* at 502 [2016]; *Golden v Clark,* 76 NY2d 618, 623 [1990]). Petitioners argue that, as a result of the ERA, the age-based restrictions in the challenged provisions of the statute must be reviewed under a strict scrutiny analysis, because age is now deemed a suspect class under Article 1, §11. None of the respondents, except for the State, take a position as to the constitutionality of Judiciary Law §23, as it relates to City Court Judges outside of the city of New York.

The State contends that Judiciary Law §23 passes constitutional muster because the mandatory judicial retirement provisions are enshrined in the Article VI, §25(b) of the Constitution. The State opines that it has been consistently understood that Article VI, §25(b), which was ratified in 1961, and Judiciary Law §23 to be coterminous. The State argues that under the rules of constitutional construction the ERA must be harmonized with Article VI, §25(b) (*citing Healy v. State of New York, et. al.*, Index No. CV092445 Wayne Co. Sup. Ct., at p. 5.) The glaring problem with the State's position, unlike the recently decided *Healy/Williams* case involving county court judges and *Miller* case involving supreme court justices, is that City Court Judges

outside of the city of New York are not under any constitutional retirement obligation.[4]

Article VI, §25(b) reads as follows:

> "Each judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court, judge of the surrogate's court, judge of the family court, judge of a court for the city of New York established pursuant to section fifteen of this article and judge of the district court shall retire on the last day of December in the year in which he or she reaches the age of seventy."

Article VI, §25(b) does not require City Court Judges outside of the city of New York nor Village or Town Court justices, who have similar subject matter jurisdiction, to retire at age 70.[5] Judiciary Law §23 was added in 1945 by Chapter 649 of the laws of that year. Unlike the detailed constitutional language of Article VI, 25(b), the language of Judiciary Law §23 is much broader:

> "No person shall hold the office of judge, justice or surrogate of any court, whether of record or not of record, except a justice of the peace of a town or police justice of a village, longer than or until and including the last day of December next after he shall be seventy years of age . . ."

The language of the Statute contrasts with the language of the Constitution, thereby demonstrating that if the framers of Article VI, §25(b) intended to include City Court Judges outside of New York City in the category of judges required to retire at 70, it would have stated so explicitly or followed the broad language of Judiciary Law §23. Moreover, Article VI, §25(b) has been amended several times since 1961 (1999, and again in 2001), and City Court Judges

4. *Williams v State of New York*, 239 NYS3d 435 (Wayne Co. Sup. Ct. June 16, 2025); *Healy v. State of New York, et. al.*, Index No. CV092445 (Wayne Co. Sup. Ct. Oct. 8, 2025) and *Miller v State of New York*, 2025 NY Misc LEXIS 9576 (New York Co. Sup. Ct. Nov. 21, 2025).

5. It should be noted, that with the exception of the monetary jurisdictional differences, City Court Judges, outside the city of New York, under the Uniform City Court Act, and Town & Village Courts, under the Uniform Justice Court Act, have nearly identical criminal and civil subject matter jurisdiction.

outside of New York City were not added to the category of judges required to retire.[6]

It is a basic tenet of constitutional and statutory interpretation that the clearest and "most compelling" indicator of the drafters' intent is the language itself (*see Hernandez v State of New York,* 173 AD3d 105, 111 [3d Dept 2019], citing *People v Carroll,* 3 NY2d 686, 689 [1958]; *Burton v NYS Dept. of Taxation & Fin.,* 25 NY3d 732, 739[2015]). When this language is clear and leads to no absurd conclusion there is no occasion, and indeed it would be improper, to search beyond the instrument for an assumed intent (*see People v Carroll,* 3 NY2d 686, 689 [1958]; *Tompkins v Hunter,* 149 NY 117, 122 [1896]). In the present case, under the absurdity doctrine, it would be illogical to interpret the law as requiring petitioners as City Court Judges—who often manage smaller populations with similar subject matter jurisdiction to that of Town Judges—to retire at 70 while Town Judges face no such mandate.[5,7]

While courts interpret constitutional text in light of historical context and intent, it should refrain from simply adding language that is absent from the text. (*see Fossella v Adams,* 2025 NY LEXIS 340 [2025]). This is especially true when you are restricting the *civil rights* of an individual.[8] This approach ensures that constitutional changes are made through the prescribed amendment process, which "lies to the ballot and to the legislative processes of democratic

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6. It is noteworthy that the Uniform District Court Act was not adopted until 1963 (2 years after Article VI, §25(b) was ratified), yet the constitutional amendment specifically includes District Court Judges.

7. As of 2025, the population of the City of Tonawanda (Saltarelli Court), in Erie County is approximately 14,984, while the Town of Tonawanda has an estimated population of approximately 71,411. (The Town of Amherst, in Erie County has population of 130,209, Town of Cheektowaga, Erie County of 89,201. Indeed, 10 towns in Erie County exceed the population of that of the City of Tonawanda.) Moreover, the City of Oneida (Misiaszek Court), Madison County has an estimated population of 10,066, while the Town of Sullivan, in Madison County has an estimated population of 14,587.

8. Executive Law §291(1).

government, not to the courts" (*see id.; Baldwin Union Free Sch. Dist. v. Cnty. of Nassau*, 22 N.Y.3d 606, 628 [2014]; *Maresca v Cuomo*, 64 NY2d 242, 249 [1984]). Here the language of the constitutional provision states its meaning with sufficient clarity to make further inquiry unnecessary. City Court Judges outside of the city of New York are not under any constitutional retirement obligation under Article VI, §25(b).

Therefore, unlike the *Healy* and *Miller* cases, it is unnecessary to harmonize the ERA with Article VI, §25(b) which led those courts to utilize a rational basis standard of review for aged-based restrictions.[5] In this case, the challenged age-based restriction, as to City Court Judges outside of the city of New York, is limited to Judiciary Law §23.

The State next argues, in the alternative, that even if Article VI, §25(b) does not apply, Judiciary Law §23 passes constitutional muster under the new ERA because "age" was not elevated to a suspect class.

Article I, §11 of the State Constitution reads as follows:

> "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, ethnicity, national origin, ***age***, disability, creed, religion, or sex, including sexual orientation, gender identity, gender expression, pregnancy, pregnancy outcomes, and reproductive healthcare and autonomy, be subjected to any discrimination in their civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state, pursuant to law." (***emphasis added***)

As the Court of Appeals has explained, Article 1, §11 consists of two distinct parts: the first sentence is an Equal Protection clause which, like the Federal equal protection right (U.S. Const., 14th Amendt., §1), is addressed to "State action", while the Civil Rights clause contained in the second sentence prohibits private, as well as, State discrimination as to civil rights. (*People v.*

Kern, 75 N.Y.2d 638, 650-51 [1990]).

As to the equal protection clause, the State notes that the ERA did not alter the wording of first sentence. Thus, the State appears to imply that this is proof that the scope of suspect classes under the equal protection clause is unchanged and remains coextensive with the equal protection clause of the Federal Constitution. The State points out that "age" has historically been subject to a rational basis test under the Federal equal protection clause.[9] This court is not persuaded by the respondents' argument on this issue.

The legislative intent behind the ERA was to provide ***"legal protections that go above and beyond the protections of the Federal Constitution"*** (NY Senate Bill S108A, p. 2 [2023]) (***emphasis added***). Thus, it would be incorrect to contend that the equal protection clause of the ERA remains coextensive with the equal protection clause of the Federal Constitution. Moreover, as Justice McMahon recently noted in the *Williams* case, ". . . since its inception, Article 1, §11 has defined 'suspect class' in terms of those groups enumerated in the second sentence of the provision" (*Williams v State of New York*, 239 NYS3d 435, Sup Ct, Wayne County [2025]). Indeed, one of the direct purposes of the ERA was to expand the list of suspect classes, including that of "age". As noted in the memorandum in support of the bill:

> "The purpose of this amendment is to ensure that our State Constitution extends to all New Yorkers, particularly those who have faced severe and pervasive injustice, the right to be free from discrimination. It does so by ***expanding the list of classes affirmatively protected by the New York Constitution*** in

9. *See Maresca v. Cuomo*, 64 N.Y.2d 242 (1984); *Diamond v. Cuomo*, 70 N.Y.2d 338 (1987); *Gregory v. Ashcroft*, 501 U.S. 452 (1991). It should be noted that the justifications set forth in *Maresca* and *Diamond* have little to no application to the present case because the courts were relying upon legitimate state interests, the most lenient tier, for age-restriction under a rational basis standard. Unlike the present case, those cases involved judges contemplated under Article VI, §25(b). In this matter, the state must establish a compelling government interest, the highest standard.

> recognition of the need for a comprehensive, ***enforceable***, and intersectional equality under the law.
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> . . .
>
> ***[E]ven in the absence of specific executing legislation, the section operates to prohibit the application of laws and governmental action that discriminate on the basis of an enumerated protected category.*** . . . . And by clarifying that the amended section ***applies to all government actions taken "pursuant to law,"*** this amendment ***is intended to apply to any action with force of law, including action by the executive or legislative branch, local governments, or any subdivision thereof.***" (NY Senate Bill S108A, p. 2 [2023]). (***emphasis added***).

In light of the foregoing, it is the opinion of this Court that "age" is a suspect class under the equal protection clause of the ERA.

The Civil Rights clause contained in the second sentence of ERA provides that "[n]o person shall, because of . . . age . . . be subjected to any discrimination in their civil rights by . . . the state or any agency or subdivision of the state, pursuant to law." (*see* Article I, §11). The Court of Appeals has held that the Civil Rights clause is not self-executing, however, and prohibits discrimination only as to civil rights which are "elsewhere declared" by Constitution, statute, or common law *(see People v Kern,* 75 N.Y.2d 638, 651[1990]; *Dorsey v Stuyvesant Town Corp.,* 299 NY 512, 531[1949]).[10] In the present case, petitioners invoke the New York State Human Rights Law (Exec. Law art 15 ["NYSHRL"]), for employment discrimination on the basis of age which is recognized as and declared to be a ***civil right.*** (*see* Exec. Law §291[1]) (***emphasis added***). It an unlawful discriminatory practice for an employer to bar or discharge from employment an

10. The Bill memorandum states that the ERA was intended to be immediately legally enforceable and *self-executing* to prohibit discrimination on the basis of any protected category. The sponsors noted that, while courts had historically read the Civil Rights clause to be non-self-executing, specifically citing *Kern*, *Brown*, and *Dorsey* cases, the amended section would establish a *self-executing* prohibition on the application of laws and governmental action that discriminate on the basis of an enumerated protected categories. (NY Senate Bill S108A, p. 2 [2023]).

individual due to their age. (*see* Exec. Law §296[1][a]). For purposes of NYSHRL, the state of New York is considered to be an employer of any elected official, ***including persons serving in any judicial capacity***. (*see* Exec. Law §292 [5][a]) (***emphasis added***).[11] Thus, Judiciary Law §23 disadvantages a suspect class and burdens a civil right under the Civil Rights clause of the ERA.

In light of the foregoing, it is the opinion of this court that a *strict scrutiny* standard of review is warranted to determine whether compulsory retirement at age 70, pursuant to Judiciary Law §23, as it relates to City Court Judges outside the city of New York passes constitutional muster under the ERA.

Under strict scrutiny, a state statute will withstand a constitutionality challenge only when the State can show that the law furthers a *compelling state interest* by the *least restrictive means* practically available (*Aliessa v Novello,* 96 NY2d 418, 431 [2001]). The government bears the burden of demonstrating the exactitude of the relationship between the means chosen and the legislative end to be served and establish that the end is justified by a compelling state interest. (*Bd. of Ed., Levittown Union Free Sch. Dist., Nassau Cnty. v. Nyquist*, 83 AD2d 217, 235 [2nd Dept 1981], *modified sub nom.* 57 NY2d 27 [1982]).[12]

The State contends that the compelling government interest being furthered by the age

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11. It should also be noted that City Court Judges outside of New York City are part of NYS Unified Court System and their salaries are paid by the State of New York through state-appropriated funds administered by the Office of Court Administration (*see Judiciary Law §39; Judiciary Law 221-i;* and *Uniform City Court Act §2300[b]*). Where the State pays the judges wages and benefits and controls their conduct as far as setting forth permissible holidays and can exercise it authority to effectuate termination of employment (i.e., COVID) it should also be considered an employer under Exec. Law §292(5) for purposes of liability. (*see Gryga v Ganzman,* 991 F. Supp. 105 [E.D.N.Y. 1998]). Moreover, the unified court system for the state includes the district, town, city and village courts outside the city of New York, as hereinafter provided. (Art VI, § 1).

12. Indeed, where a suspect class is involved, strict scrutiny is "usually fatal" to laws intending to differentiate based on that class (*see Bd. of Ed., Levittown Union Free Sch. Dist., Nassau Cnty. v. Nyquist, 83 AD2d 217, 234-235 [2nd Dept 1981]; Williams v State of New York, 239 NYS3d 435, Sup Ct, Wayne County [2025]).*

restriction is to ensure the quality of its judiciary. The State reasons that an unfortunate fact of life is that physical and mental capacity sometimes diminish with age, and the people may wish to replace some older judges in order to satisfy the compelling public interest in maintaining a judiciary fully capable of performing judges' demanding tasks.

The problem with the State's argument is that they provide no evidence to demonstrate the exactitude between the advancement of general considerations of judicial competence and the attainment of age 70 by jurists. In fact, it could equally be stated that many experienced jurists reaching the age of 70 are more efficient than their younger, less experienced, colleagues (*Williams v State of New York*, 239 NYS3d 435, Sup Ct, Wayne County [2025]). As noted by the United States Supreme Court, "It is far from true that all judges suffer significant deterioration in performance at age 70. It is probably not true that most do. It may not be true at all." (*Gregory v Ashcroft,* 501 U.S. 452, 473 [1991]). Moreover, there are Judges at the same level of responsibility as City Court Judges, to wit, Town and Village Justices who are excluded from Judicial Law §23. If there is a compelling state interest in the competency of its City Court Judges, logic and reason would dictate that that same would be applicable to Town and Village Justices.[5,7]

The State also has the heavy burden of proving that the law furthers the compelling state interest by the least restrictive means practically available (*Aliessa v Novello,* 96 NY2d 418, 431 [2001]). To satisfy the least-restrictive-means test, the State must prove no equally effective, less discriminatory alternative exists. The State contends that mandatory retirement age set forth in Judicial Law §23 is the least restrictive means because any alternative would be administratively burdensome as well as personally intrusive and potentially embarrassing to the jurist. The court finds this contention to be unpersuasive.

A categorical prohibition on judicial service over the age of 70 is an arbitrary and discriminatory method of achieving any ostensible public interest. Indeed, there already are alternative methods available to the State that can accomplish the same goal in a less discriminatory manner. A judge may be removed for various reasons, including incapacity, by the New York State Commission on Judicial Conduct. The Commission functions for the very purpose of deciphering and discerning the competency of Judges. A Judge may become mentally incompetent well prior to age of 70. The remedy in that instance would be a proceeding before the Commission on Judicial Conduct.

City Court Judges, like Town and Village justices, are also subject to regular elections, and may be removed from the bench through the elective process if they cease to be effective or competent in their position. Similarly, a judge may be impeached by the legislature for cause. These methodologies provide due process, with an individualized determination of incapacity, rather than arbitrary and discriminatory age-based approach of the kind prohibited by the ERA.

It is the opinion of this court that the State has failed to meet its burden under a *strict scrutiny* analysis and finds that Judiciary Law §23, as it relates to City Court Judges outside of the city of New York, violates the ERA by discriminating against petitioners solely based upon their age. Thus, this court finds Judiciary Law §23, as it relates to City Court Judges outside of the city of New York, to be unconstitutional.

Damage Claims under ERA and NYSHRL

Petitioners' move for partial summary judgment, pursuant to CPLR §3212, on the issue of liability seeking monetary damages for alleged violations of the ERA and NYSHRL [Exec. Law

§296] for aged-based discrimination. The State cross-moved, pursuant to CPLR §3211, seeking to dismiss the amended complaint.[13]

To establish a prima facie case of employment discrimination on the basis of age, petitioners must demonstrate that (1) the petitioners are a members of a protected class; (2) the petitioners were qualified to hold the position; (3) the petitioners suffered an adverse employment action; and (4) the adverse action occurred under circumstances giving rise to an inference of discrimination (*see Ayers v Bloomberg, L.P.*, 203 AD3d 872, 874 [2d Dept 2022]; *Blackman v Metropolitan Tr. Auth.*, 206 AD3d 602 [2d Dept 2022]).

Accepting the facts as alleged in the amended complaint as true, and affording petitioners the benefit of every favorable inference, the allegations are sufficient to give rise to an inference of discrimination based upon age (*see Ayers v Bloomberg, L.P.*, 203 AD3d 872, 874 [2d Dept 2022]; *Hosking v Memorial Sloan-Kettering Cancer Ctr.*, 186 AD3d 58, 67 [2020]; Grella v St. Francis Hosp., 149 AD3d 1046, 1048 [2017]; *Melman v Montefiore Med. Ctr.*, 98 AD3d 107, 115 [2012]). However, in the opinion of the Court, the only proper respondent/defendant in this matter is the State (*see Cass v State,* 58 NY 460 [1983]). Moreover, material questions of fact exist as to what specific adverse actions were taken by the State which caused Saltarelli not to seek re-election and Misiaszek to retire before his term was to expire on December 31, 2029.

Injunctive Relief

Petitioner Saltarelli seeks injunctive relief enjoining the State from refusing his

13. Respondent OCA did not move to dismiss petitioners' amended complaint but submitted a Memorandum of Law *(NYSCEF Doc. No. 30)* in opposition to petitioners' Order to Show Cause and Petition.

appointment as a part-time City Court Judge for the City of Tonawanda (*see* ¶ 31 Amended Verified Petition and Complaint [*NYSCEF Doc. No. 10*]). Preliminary injunctive relief is a drastic remedy that is not routinely granted (*see Sutherland Glob. Servs., Inc. v. Stuewe*, 73 AD3d 1473, 1474 [4th Dept 2010]). It is well-settled that to obtain preliminary injunctive relief, the movant must show, by clear and convincing evidence: (1) a likelihood of success on the merits; (2) irreparable injury in the absence of provisional relief; and (3) a balancing of the equities in its favor. (*see Doe v Axelrod*, 73 NY2d 748, 570 [1988]; *Emerald Enters. of Rochester v Chili Plaza Assoc.*, 237 AD2d 912, 912 [4th Dept 1997]; *Destiny USA Holding, LLC v Citigroup Glob. Markets Realty Corp.*, 69 AD3d 212, 216 [4th Dept 2010]). As the party seeking the injunction, petitioner bears the burden of proof on each element. (*see Camardo v Board of Educ. Of City School Dist.*, 50 AD2d 1073 [4th Dept 1975]).

Petitioner Saltarelli cannot establish irreparable harm, because any harm he incurs can be redressed through an award of monetary damages. Harm that can be redressed through monetary damages is not "irreparable." (*see Fabio v Omnipoint Communications, Inc.*, 66 AD3d 635, 636-37 (2d Dept 2009). Petitioner has failed to establish that he is at risk of an irreparable injury that cannot be compensated in money form and therefore has failed to establish entitlement to a preliminary injunction.

Article 78 Application

As a final request for relief, Saltarelli seeks an order pursuant to Article 78 that: (1) he be appointed as designated by the Mayor as the part-time City Court judge for the City of Tonawanda and (2) declare that the determination of the State's Deputy Administrative Judge for Courts

outside New York City that he is ineligible to serve as a part-time judge violates ERA *(see NYSCEF Doc. No. 11)*.

As to the appointment request, it appears that petitioner is seeking a *mandamus to compel.* A mandamus to compel is a judicial command to an officer or body to perform a specified ministerial act that is required by law to be performed (*see Hamptons Hospital & Medical Center, Inc. v Moore,* 52 NY2d 88, 96 [1981]). Only ministerial acts that involve no exercise of judgment or discretion are subject to mandamus to compel (*id* at 96; *Gimprich v Board of Educ. of City of New York,* 306 NY 401, 406 [1954]). Saltarelli alleges that the former mayor for the City of Tonawanda was going to appoint him as the part-time City Court Judge.[14] The problem with the requested relief is that the appointment is a discretionary matter, therefore a mandamus to compel would not be appropriate (*see Hamptons* and *Gimprich*). Moreover, even if it were appropriate, the new mayor would be necessary party to this action (CPLR §7802). As such, the requested relief is denied.

As to the determination of the Deputy Administrative Judge for Courts outside New York City, it appears that petitioner is seeking a *mandamus to review* which is a judicial review of an administrative determination involving the exercise of discretion (*see Scherbyn v. Wayne-Finger Lakes Bd. of Coop. Educ. Servs.*, 77 NY2d 753, 757 [1991]). The standard of review in such a proceeding is whether the agency determination was arbitrary and capricious or affected by an error of law (*id* at 758). In the present matter, it would appear that Saltarelli is alleging that determination was an error of law. In the opinion of the court, the requested relief is unnecessary

14. At oral argument the court was informed that on November 4, 2025, William L. Strassburg II, was elected mayor defeating incumbent, John L. White.

or duplicative since this court has already declared that Judiciary Law §23, as it relates to City Court Judges outside of the city of New York, violates the ERA.

NOW, upon the reading of Petitioners/Plaintiffs' Order to Show Cause filed on October 3, 2025 *(NYSCEF Doc. No.: 8)*; Amended Verified Petition and Complaint verified on October 7, 2025, with attached exhibit "1" *(NYSCEF Doc. Nos.: 10 and 11)*; Defendants/Respondents, State of New York, Rowan D. Wilson, as Chief Judge of the Courts, Joseph A. Zayas, As Chief Administrative Judge of the Unified Court System, James Murphy, as Deputy Administrative Judge and Kathy Hochul, as Governor's Notice of Motion #3 filed on November 7, 2025 *(NYSCEF Doc. No.: 23)*; Attorney Affirmation of Timothy P. Mulvey, Esq., in support of Motion #3, affirmed on November 7, 2025, with attached exhibits "A" and "B" *(NYSCEF Doc. Nos.: 24-26)*; Verified Answer of Respondent/Defendant, New York State Office of Court Administration, affirmed on November 7, 2025*(NYSCEF Doc. No.: 29)*; and after hearing oral argument on November 25, 2025; and upon due deliberation, it is hereby

ORDERED and **ADJUDGED** that petitioners' motion seeking a declaratory judgment, pursuant to CPLR §3001, is GRANTED. The Court hereby declares that Judiciary Law §23, as it relates to City Court Judges outside of the city of New York, is unconstitutional, and it is further

ORDERED and **ADJUDGED** that petitioners' motion seeking partial summary judgment, pursuant to CPLR §3212, on the issue of liability for alleged violations of the ERA and NYSHRL [Exec. Law §296] for aged-based discrimination is DENIED, and it is further

ORDERED and **ADJUDGED** that petitioner Saltarelli's motion seeking injunctive relief is DENIED, and it is further

ORDERED and **ADJUDGED** that petitioners' motion seeking relief under Article 78 is DENIED, and it is further

ORDERED and **ADJUDGED** that respondents/defendents' cross-motion, pursuant to CPLR §3211, seeking to dismiss the amended verified petition and complaint is DENIED, and it is further

ORDERED and **ADJUDGED,** that Kathy Hochul, as Governor, shall be dismissed from the action by Stipulation of the parties and the captioned shall prospectively be amended accordingly, and it is further

ORDERED and **ADJUDGED,** that petitioners/plaintiffs' Age Discrimination in Employment Act of 1967 (ADEA) [29 U.S.C. 621-634] claim is hereby withdrawn by Stipulation of the parties.

Dated: January 2, 2026

ENTER:

HON. PATRICK J. O'SULLIVAN, J.S.C.

FILED IN
MADISON COUNTY CLERKS OFFICE
01/02/2026