

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **28th day of January, 2022** are as follows:

BY Griffin, J.:

2021-O-01078

IN RE: JUDGE JOHNELL M. MATTHEWS
BATON ROUGE CITY COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA

JUDICIARY COMMISSION'S RECOMMENDATION REJECTED. NO
DISCIPLINE IMPOSED. SEE OPINION.

Weimer, C.J., dissents and assigns reasons.
Crain, J., dissents and assigns reasons.
McCallum, J., dissents and assigns reasons.

SUPREME COURT OF LOUISIANA

No. 2021-O-01078

**IN RE: JUDGE JOHNNELL M. MATTHEWS
BATON ROUGE CITY COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA**

Judiciary Commission of Louisiana

GRIFFIN, J.

This matter arises from the recommendation of the Judiciary Commission of Louisiana (“the Commission”) that Judge Johnell M. Matthews of Baton Rouge City Court be removed from office because she is constitutionally barred from remaining in judicial office having reached the mandatory retirement age of seventy prior to the commencement of her term.¹ After considering the facts, circumstances, and applicable law, we reject the recommendation of the Commission and impose no discipline.

FACTS AND PROCEDURAL HISTORY

On January 8, 2020, Judge Matthews qualified for the special election to fill the vacancy of Division “C” of the Baton Rouge City Court. The primary election was scheduled for April 4, 2020 with a runoff election on May 9, 2020, if necessary. Due to the unprecedented COVID-19 global pandemic and the rising cases within the State of Louisiana, the governor declared a State of Emergency and issued two proclamations that postponed the special election twice.² The initial proclamation

¹ Although Johnell M. Matthews did not become a judge until September 9, 2020, at all times herein, she is referred to as “Judge Matthews.”

² On May 11, 2020, Governor John Bel Edwards issued Proclamation Number 25 JBE 2020 – PUBLIC HEALTH EMERGENCY – COVID-19, declaring a State of Emergency. On March 13, 2020, the Secretary of State certified that a state of emergency existed, and requested that the Governor issue an executive order postponing the elections. On March 13, 2020, the Governor issued Proclamation Number 28 JBE 2020 – ELECTIONS RESCHEDULED DUE TO STATEWIDE STATE OF EMERGENCY CAUSED BY COVID-19, rescheduling the April 4, 2020 special/primary election to June 20, 2020, and rescheduling the May 9, 2020 runoff/general election to July 25, 2020. On April 2, 2020, Governor Edwards extended the State of Emergency.

set the primary election on June 20, 2020 with the general election on July 25, 2020. The subsequent proclamation reset the primary and general elections to July 11, 2020 and August 15, 2020, respectively.

On June 7, 2020, Judge Matthews turned seventy years old. In the primary election, Whitney Higgenbotham Greene received 32% of the vote and Judge Matthews received 29% of the vote. Prior to the runoff election, a suit was filed against the Louisiana Secretary of State, the Louisiana Attorney General, and Judge Matthews, requesting that Judge Matthews' name be removed from the ballot because she had attained the age of seventy before the primary election. The district court dismissed this suit on procedural grounds. The court of appeal and this Court denied writs. *Luther v. Ardoin*, 20-0726 (La.App. 1 Cir. 8/13/20) (unpublished), *writ denied*, 20-1007 (La. 8/14/20), 300 So.3d 877.

Judge Matthews won the runoff election, having received 63% of the vote. Her opponent filed suit challenging the results of the election due to Judge Matthews' age. The district court dismissed the suit. During the pendency of the appeal, Judge Matthews received her commission from the governor and took her oath of office. The court of appeal affirmed. *Greene v. Ardoine*, 20-0810 (La.App. 1 Cir. 9/11/20), 313 So.3d 298. This Court declined to consider Ms. Greene's writ application on timeliness grounds. *Greene v. Ardoin*, 20-1110 (La. 9/23/20), 301 So. 3d 1184.

On April 13, 2020, the Secretary of State certified to the Governor that a state of emergency continued to exist that would affect the electoral process, pursuant to La. Rev. Stat. 18:401.1. On April 14, 2020, Governor Edwards issued Proclamation Number 46 JBE 2020- ELECTIONS RESCHEDULED DUE TO STATEWIDE STATE OF EMERGENCY CAUSED BY COVID-19, rescheduling the April 4, 2020 primary election from June 20, 2020 to July 11, 2020, and rescheduling the May 9, 2020 general election from July 25, 2020 to August 15, 2020. Qualifying for the special election was never reopened (Section 2 of Governor's Proclamations) and none of the candidates were required to re-qualify for the delayed election dates.

On February 5, 2021, the Commission filed a Notice of Hearing against Judge Matthews, alleging that she violated Canons 1³ and 2A⁴ of the Code of Judicial Conduct and La. Const. art. V, § 23(B)⁵ by continuing to serve as a judge despite being constitutionally barred from remaining in office. The Hearing Officer found that Judge Matthews did not violate Canon 1, Canon 2A, or La. Const. art. V, § 23(B). The Commission disagreed and submitted its own conclusions of law finding that Judge Matthews is violating the Code of Judicial Conduct and the Louisiana Constitution by continuing to serve as a judge and recommended she be removed from judicial office. This Court docketed the matter for oral argument pursuant to Louisiana Supreme Court Rule XXIII, § 14.

DISCUSSION

The sole issue before us is whether this Court should accept the recommendation of the Commission and remove Judge Matthews from office. Article V, § 25(C) of the Louisiana Constitution vests this court with exclusive and

³ Code of Judicial Conduct Canon 1 provides:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code are to be construed and applied to further that objective. As a necessary corollary, the judge must be protected in the exercise of judicial independence.

⁴ Code of Judicial Conduct Canon 2A provides:

A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

As used in this Code, “impartiality” or “impartial” denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

⁵ La. Const. art. V, §23 (B) provides:

Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday. A judge who attains seventy years of age while serving a term of office shall be allowed to complete that term of office.

original jurisdiction in judicial disciplinary proceedings and provides the substantive grounds for disciplinary actions against a judge.⁶

The Commission argues that Judge Matthews is constitutionally barred from remaining in office pursuant to the plain and unambiguous language of La. Const. art. V, § 25(B), having reached the mandatory retirement age of seventy prior to the commencement of her term. Her continued retention of judicial office is therefore in violation of Canons 1 and 2A of the Code of Judicial Conduct. *See Small v. Guste*, 383 So. 2d 1011, 1014 (La. 1980) (a judge who remains in office past the mandatory retirement age is guilty of misconduct). However, the Commission suggests a judicially created exception to La. Const. art. V, § 23(B) may be appropriate given the unique circumstances present and that this issue has arisen due to the executive branch's action in delaying a judicial election.

Judge Matthews counters that she was under the age of seventy at the time of her qualification for candidacy. *See* La. Const. art. V, § 24 (not specifying an age limit on qualification); La. R.S. 18:451 (“except as otherwise provided by law, a candidate shall possess the qualifications for the office he seeks at the time he qualifies for that office”). She further argues the Commission's interpretation of La. Const. art. V, § 23(B) leads to the absurd consequence wherein should a duly

⁶ La. Const. art. V, §25 (C) provides:

On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

qualified attorney that legitimately runs for judge for the first time wins, they must then be removed upon taking office.⁷

We need not create a judicial exception or force a strained interpretation of the Louisiana Constitution. Although the plain language of La. Const. art. V, § 23(B) provides that “a judge shall not remain in office beyond his seventieth birthday,” the plain language of La. Const. art. V, § 25(C) provides that this Court *may* remove a judge from office based on the recommendation of the Commission. The word “may” is permissive and not mandatory. *See* La. R.S. 1:3; La. C.C.P. art. 5053. The Court therefore is not bound to accept the Commission’s recommendation as the language of La. Const. art. V, § 25(C) is discretionary. *See* Lee Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 LA. L. REV. 765, 828 (1976).

This Court has supervisory and plenary authority over all other courts and original jurisdiction in all disciplinary matters related to the bench and bar. *See* La. Const. art. V, § 5. “This constitutional grant of supervisory authority has always been held to be plenary, unfettered by jurisdictional requirements, and exercisable at the complete discretion of the court.” *See* Albert Tate, Jr., *Supervisory Powers of the La. Courts of Appeal*, 38 TUL. L. REV. 429, 430 (1964); *see also In re Best*, 15-2096, p. 14 (La. 6/29/16), 195 So.3d 460, 468 (“the primary purpose of the Code of Judicial Conduct is the protection of the public rather than to simply discipline judges”) (citing *In re Marullo*, 96-2222, p.6 (La. 4/8/97), 629 So.2d 1019, 1023).

⁷ In *Greene v. Ardoin*, Judge Holdridge acknowledged “there may be a constitutional flaw which would allow [Judge] Matthews to run and be elected judge of the Baton Rouge City Court, but would prohibit her from being able to sit and serve as judge of that court.” 20-0810, 313 So. 3d at 306 (Holdridge, J. concurring). Nonetheless, he further noted that Judge Matthews’ interpretation of La. Const. art. V, §23(B) “would allow a lawyer of any age to be elected and serve a term as a judge” and also “allow a sitting judge over the age of seventy to resign, qualify as a candidate for judicial office, and if successful, to serve another term.” *Id.*

Exercising this discretion, we find that judicial discipline is not warranted in this matter. The facts in this case are driven by the pandemic and subsequent proclamations issued by the governor which delayed the elections. But for these delays, Judge Matthews would have taken office prior to attaining the age of seventy.

DECREE

For the foregoing reasons, the Commission's recommendation is rejected and no discipline is imposed. We emphasize that this decision is limited to the individualized circumstances surrounding this case and election.

RECOMMENDATION REJECTED; NO DISCIPLINE IMPOSED

SUPREME COURT OF LOUISIANA

No. 2021-O-01078

**IN RE: JUDGE JOHNELL M. MATTHEWS
BATON ROUGE CITY COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA**

Judiciary Commission of Louisiana

WEIMER, C.J., dissenting.

This matter presents a challenging issue brought on by a worldwide pandemic that caused a judicial election date to be delayed. If the election had been held when originally scheduled, Johnell Matthews would likely have been elected to serve as a judge, and this matter would not be before the court. However, the election had to be postponed for public health reasons related to the ongoing pandemic.

By clear and unambiguous language, the Louisiana Constitution prohibits anyone over the age of 70 to serve as a judge unless that individual began serving a term of office as a judge prior to turning 70. La. Const. art. V, § 23(B).¹ The Louisiana Constitution is the supreme law of the state. **Louisiana Fed’n of Teachers v. State**, 13-0120, p. 22 (La. 5/7/13), 118 So.3d 1033, 1048. When the language of the constitution is clear and unambiguous, it must be applied as written. This court is not free to create an ambiguity where none exists, or to revise or rewrite the language of the constitutional provision under the guise of interpretation. **City of New Orleans v. Louisiana Assessors’ Ret. and Relief Fund**, 05-2548, p. 30 (La. 10/1/07), 986 So.2d 1, 22. Thus, the constitution cannot be altered or amended by judicial fiat.

¹ On November 4, 2014, a proposed amendment to La. Const. art. V, § 23 to eliminate the mandatory age-based retirement requirement was placed on the ballot. The citizens of Louisiana rejected the amendment.

The majority opinion does not disagree that Judge Matthews is constitutionally barred from remaining in judicial office under Article V, § 23(B), having reached the mandatory retirement age of 70 prior to the commencement of the term of office in question. However, the majority opinion nonetheless allows Judge Matthews to sidestep this prohibition by simply choosing not to apply the constitutional mandate. Louisiana Const. art. V, § 25(C) provides this court with discretion to discipline a judge (“On recommendation of the judiciary commission, the supreme court **may** censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute”) (emphasis added); however, that discretion does not authorize this court to ignore constitutional mandates, particularly when this court has consistently removed judges for the very reason the Judiciary Commission brought charges in this case—lack of compliance with the constitutional age restriction. Notwithstanding Judge Matthews’ good faith belief that she had the right to remain in office, or her capable service as a judge, this court has held that “a judge’s willful retention of office beyond [the] mandatory retirement age is grounds for removal by this court.” **In re Wingerter**, 621 So.2d 1098, 1101 (La. 1993). Both in **Wingerter** and **In re Levy**, 427 So.2d 844 (La. 1983), this court removed/involuntarily retired judges for continuing to occupy judicial office after reaching the mandatory retirement ages applicable to them. Moreover, in **Small v. Guste**, 383 So.2d 1011 (La. 1980), this court explained that if a judge willfully refuses to perform his constitutional and ethical duty to retire upon reaching mandatory retirement age and such action is publicized, it is possible the judge will be found guilty of “persistent and public conduct prejudicial to the

administration of justice that brings the judicial office into disrepute.” *Id.* at 1014 (citing La. Const. art. V, § 25).

The word “may” in Article V, § 25(C) affords the court the necessary discretion to not impose discipline for any number of reasons, such as a failure to meet the burden of proof of charges or finding no legal grounds for the charges. If the constitution used the word “shall” instead of “may” in Article V, § 25(C), it would have compelled this court to discipline every judge against whom the Judiciary Commission brings charges—an absurd result. Furthermore, it is wholly inappropriate to expand the word “may” in this context to justify ignoring the plain language of Article V, § 23(B). Section 23(B) clearly provides, in mandatory language, that a person beyond 70 years of age shall not serve as a judge unless elected to a term commencing prior to the age of 70. See **Rathborne Lumber & Supply Co. v. Falgout**, 218 La. 629, 635, 50 So.2d 295, 297 (La. 1950) (“It is well recognized, however, that although words of a statute are permissive, ... sometimes they may require an interpretation giving them mandatory effect, this occurring where the context or subject matter compels such construction or where it is necessary to carry out the clear policy and intention of the Legislature.”). Accordingly, Judge Matthews is legally prohibited, in mandatory language, from remaining in office based on the Louisiana Constitution, and her refusal to resign from judicial office must, therefore, be deemed to constitute grounds for discipline. By declining to impose discipline in the form of removal/involuntarily retirement, the majority opinion is enabling Judge Matthews to retain her seat on the Baton Rouge City Court in violation of La. Const. art. V, § 23(B). Although this matter arises from an unprecedented set of circumstances, other citizens of this state cannot be expected to respect the law as it is written if a judge does not.

An argument has been raised that this court's action in **Comm. To Re-Elect Judge Moore o/b/o Moore v. Ardoin**, 20-0941 (La. 7/24/20), 300 So.3d 403, as authority for this court to allow Judge Matthews to remain in office by taking into account the unique circumstances surrounding Judge Matthews' case. I find this case distinguishable and irrelevant to the issue before the court. In **Moore**, this court issued a per curiam allowing Judge Moore's campaign committee chairman (rather than the candidate, Judge Moore) to sign the certificate of candidacy required by La. R.S. 18:463(A)(2)(a). This court's order required the candidate to sign the certificate no later than 11/2/20, and once signed, the order provided that the document would be attached to and relate back to the date of the original certificate. This lack of formal compliance with the election law statute was allowed because the candidate was hospitalized with Covid-19 on the date the certificate was due. Notably, **Moore** arose in the context of statutory law, not in the context of evaluating a constitutional provision. Thus, **Moore** did not involve a very specific constitutional provision which limits who can serve as a judge to those who are less than 70 years old when elected. The election law at issue in **Moore** essentially involved a ministerial requirement: the candidate's signature on a document. The statements attested to in the document were not at issue. Moreover, this court actually required the candidate to comply with the mandates of that statute within a specific time. Thus, this court did not completely eliminate the statute's requirements.² By contrast, this case involves a substantive, specific constitutional provision. Judge Matthews' age cannot be altered. And the age requirement is a substantive element that cannot be

² Statutorily, La. C.C. art. 9 allows an exception when the strict application of the statute leads to an absurd result. In **Moore**, the candidate was temporarily handicapped. Any number of handicaps could have prevented him from physically signing a qualification paper. Regardless, he still potentially faced the electorate after qualifying.

subsequently and/or retroactively remedied. The court's action in **Moore** does not give the court leave to ignore or refuse to apply the specific constitutional provision related to judicial retirement.

There is no dispute regarding the relevant facts. The primary purpose of the Code of Judicial Conduct is to protect the public, rather than to discipline a judge. **In re Marullo**, 96-2222, p. 6 (La. 4/8/97), 692 So.2d 1019, 1023. Although this matter arises in a disciplinary setting, I do not view this as a lapse in Judge Matthews' character or an issue of misdeeds; rather, this is an instance in which the constitution dictates Judge Matthews shall not serve. Louisiana's laws have always drawn lines related to age, which in certain circumstances may seem arbitrary. However, once a line is drawn, particularly in the constitution, that line must be acknowledged and enforced. During her service, Judge Matthews has undoubtedly encountered situations wherein she felt a law was inequitable, but she applied the law because that is the obligation of a judge. I am compelled by the law to do so in this matter.

By all accounts, Judge Matthews has served well and is a respected jurist. The Judiciary Commission indicated in brief to this court, and I agree, that her character and her right to initially qualify to seek judicial office are not in question. The facts of this case dictate an unfortunate result. I have devoted significant time and effort to evaluating the law to determine if there was a legal path to enable Judge Matthews to continue to serve.³ This nation prides itself on being a nation of laws, and not of men or women.⁴ The constitution emanates from the people. The people expect

³ In my opinion, this matter should have been resolved earlier this year because the salient facts are not at issue and the law is clear. See In re: Confidential Party, 20-1492 (La. 1/14/21), 309 So.3d 727 (Weimer, C.J., dissenting, noting all of the relevant facts are undisputed, the issue is purely one of law, and the matter should have been expeditiously resolved).

⁴ John Adams said, "We are a nation of laws, not of men." This means the laws apply to everyone equally and that no one is above the law. *Dura lex, sed lex*.

judges to apply the law as written. Although I dislike the result in this case, ultimately I am constrained to apply the law as it is written, despite the equities in Judge Matthews' favor. Therefore, I am compelled to very respectfully dissent.

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No. 2021-O-01078

**IN RE: JUDGE JOHNELL M. MATTHEWS
BATON ROUGE CITY COURT
EAST BATON ROUGE PARISH
STATE OF LOUISIANA**

Judiciary Commission of Louisiana

Crain, J., dissenting.

I join Chief Justice Weimer’s well-written dissent entirely, and write separately only for emphasis. La. Const. art. V, § 23(B) provides:

Except as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday. A judge who attains seventy years of age while serving a term of office shall be allowed to complete that term of office.

This constitutional mandate is clear: “a judge shall not remain in office beyond his seventieth birthday.” The directive is subject to one--*and only one*--exception: “A judge who attains seventy years of age while serving a term of office shall be allowed to complete that term of office.” The section does not allow for exceptions found in other parts of the constitution. Judge Matthews was seventy years-old when she took office. The Louisiana Constitution clearly provides she “shall not remain in office” unless she “attain[ed] seventy years of age while serving a term of office.” Judge Matthews did not turn seventy while serving her term; she turned seventy *before* her term began.¹

Section 23(B) does not contain an exception for a pandemic or for an executive proclamation that delays an election. It is the only constitutional provision that sets the age after which a judge cannot serve. The Commission erroneously

¹ While Judge Matthew’s election was rescheduled twice, qualifying for the election was never reopened and none of the candidates were required to re-qualify for the delayed election dates. Thus, she met all qualifications to serve at the time of qualifying. It was not until later that she became constitutionally barred from serving as judge. *Compare Clark v. State*, 20-00914 (La. 7/21/20), ___ So. 3d ___ (2020WL4251388 p. 1) (“We hold that a person constitutionally barred from serving as judge cannot be a candidate for judicial office.”).

suggests a judicially created exception to Section 23(B) “may be appropriate” under these unique circumstances, and the majority purports to resist that suggestion. But, there are no circumstances under our three-branch constitutional form of government where the judiciary is at liberty to create an exception to an express constitutional provision. The constitution is the supreme law of this state. *See* La. Civil Code art.1; *M.J. Farms, Ltd. V. Exxon Mobil Corp.*, 07-2371 (La. 7/1/08), 998 So.2d 16, 31-32. Unequivocal constitutional provisions are not subject to judicial construction and should be applied by giving words their generally understood meaning. *Ocean Energy, Inc. v. Plaquemines Parish Government*, 04-0066 (La. 7/6/04), 880 So.2d 1, 7. “Those who wish to change the mandatory retirement age provisions in Art. V, § 23(B) are provided an avenue for doing so by La. Const. Art. XIII, § 1. (‘An amendment to this constitution may be proposed by joint resolution at any regular session of the legislature...’).” *Clark*, 2020WL4251388 p. 1.

The constitutional validity of Section 23(B) is not in doubt. *See Clark v. State*, 20-00914 (La. 7/21/20), ___ So. 3d ___ (2020WL4251388 p. 1); *Giepert v. Wingerter*, 531 So. 2d 754, 755 (La. 1988); *see also Gregory v. Ashcroft*, 501 U.S. 452, 471, 111 S. Ct. 2395, 2407, 115 L. Ed. 2d 410 (1991). Forced application of this mandate is not a pleasant exercise. As recognized in *Clark*, inequities are inevitable when the law “draws a line at a certain age” to compel a judge to retire. *Clark*, 2020WL4251388 p. 1. There, we noted that “depending on when a judge’s birthday falls in his term, this provision permits some judges to serve years longer than a colleague who may only be weeks or days older.” *Id.* We are again confronted with difficult inequities caused by the application of Section 23(B). A person duly-elected to serve as judge is now constitutionally barred from serving. However, “despite these inequities, the provision has a rational basis in a legitimate state interest,” has been repeatedly upheld by this court, and must be applied as mandated by the electorate. *See Clark*, 2020WL4251388 p. 2.

I am sympathetic to Judge Matthews' situation. Through no fault of her own, the election for this judicial seat was postponed due to Covid-19 until after Judge Matthews turned seventy. She did nothing wrong to create the predicament that now disqualifies her from serving. Sympathy, however, is not a basis for disregarding or amending the constitution.

Judge Matthews will now serve because the majority has embraced as "discretion" the choice not to enforce an express provision of the Louisiana Constitution. They justify this by relying on the word "may" to suggest this court has unfettered discretion to reject a recommendation of the Commission. Chief Justice Weimer's dissent clearly articulates why the word "may" does not always permit discretion. I agree with his conclusion—our action here is mandatory. Equitable considerations cannot prevail when in conflict with the positive written law. *See* La. Civ. Code art. 4; *Luther v. IOM Co. LLC*, 13-0353 (La. 10/15/13), 130 So.3d 817, 826.

Until now, this court has always enforced the age requirements for judges. *See In re Wingerter*, 621 So.2d 1098, 1101 (La. 1993); *In re Levy*, 427 So.2d 844, 847 (La. 1983); *Small v. Guste*, 383 So.2d 1011, 1014 (La. 1980) ("A judge's willful retention of office beyond his mandatory retirement age is grounds for removal by this Court."). There is no legal authority for ignoring the clear and unequivocal law that constitutionally bars Judge Matthews from serving. I wish that was not so. But, for these reasons and those articulated by Chief Justice Weimer, I believe Judge Matthews must be removed from office.

SUPREME COURT OF LOUISIANA

No. 2021-O-01078

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BATON ROUGE CITY COURT
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Judiciary Commission of Louisiana

McCALLUM, J., dissents with reasons.

I respectfully dissent. This case presents yet another example of an unfortunate consequence of the pandemic and the government's reaction to it; namely, the decision to change the date of the election. Through no fault of her own, Judge Matthews became a casualty of this decision. Although empathetic to Judge Matthews' situation, I do not find any circumstance by which this Court may ignore the express and unambiguous terms of the Louisiana Constitution and, in my view, her age at the time of the election prevents her from remaining on the bench.

The facts are not in dispute. Judge Matthews was 69 years old and not a judge when she qualified to run for a judicial vacancy on the Baton Rouge City Court. Had the Governor not rescheduled the original special primary and general election dates in April and May 2020 because of the unprecedented COVID-19 pandemic, Judge Matthews could have assumed judicial office before her seventieth birthday on June 7, 2020, without any issue. However, this is not the case.

Louisiana Const. art. V, § 23(B), relative to mandatory retirement of judges, provides, “[e]xcept as otherwise provided in this Section, a judge shall not remain in office beyond his seventieth birthday. A judge who attains seventy years of age while serving a term of office shall be allowed to complete that term of office.” The language of Article V, § 23(B) is clear and unambiguous. Unless a judge turns seventy while serving a term of office, the judge shall not remain in office beyond

his or her seventieth birthday. Judge Matthews assumed judicial office on September 9, 2020, after she turned seventy years old. Accordingly, she is presently a “judge,” is “remain[ing] in office,” and is “beyond [her] seventieth birthday.” Furthermore, because Judge Matthews turned seventy prior to her term in office, the second sentence of La. Const. art. V, § 23(B) does not apply, or allow Judge Matthews to complete her term of office. Thus, every day that Judge Matthews sits in office, she is “remaining” in office beyond her seventieth birthday in violation of La. Const. art. V, § 23(B).

To arrive at the conclusion that a person over seventy and not previously a judge can serve one and only one term in office, Judge Matthews is interpreting the verb “remain” to mean “stay in office after the expiration of a term in office” (or something similar thereto). However, that interpretation not only contorts the generally understood meaning of “remain,”¹ it makes the second sentence of La. Const. art. V, § 23(B) superfluous. If the first sentence of La. Const. art. V, § 23(B) only prohibited a judge from assuming another term in office after reaching seventy years of age, then a judge could clearly complete his or her term in office and there would have been no need to amend Section 23(B) in 2003 to permit a judge “who attains seventy years of age while serving a term of office [to] be allowed to complete that term of office.”

Alternatively, Judge Matthews may be asserting that the verb “remain” somehow simultaneously holds two different meanings depending upon whether the judge in question was newly elected or had previously served a term of office. Again, that is not what the plain language of La. Const. art. V, § 23(B) provides. Section 23(B) uses the term “a judge” and does not distinguish between judges who have and have not previously served a term in office.

¹ The generally understood meaning of “remain” is “to stay in the same place” or “to continue unchanged.” See MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/remain> (last visited July, 2021).

Judge Matthews' interpretation impermissibly lends itself to absurd consequences that cannot be the intent of the law. *See* La. C.C. art. 9. As Judge Holdridge stated in his concurring opinion, concurring in the result in *Green v. Ardoin*, 20-0810 (La. App. 1 Cir. 9/11/20), 313 So. 3d 298 (Holdridge, J., concurring), Judge Matthews' interpretation "would allow a lawyer of any age to be elected and serve a term as a judge," and "[i]t is hard to imagine that the voters of this state thought they were voting to allow eighty and ninety year old lawyers to be judges but prohibiting current judges who are seventy to remain in office." *Id.*, 20-0810, p. 2, n.4, 313 So. 3d at 306. Such an interpretation would also, incredibly, "allow a sitting judge over the age of seventy to resign, then qualify as a candidate for judicial office, and if successful, to serve another term." *Id.* It would also "allow any lawyer with the requisite years of experience to run for judge at any age while a sitting judge could not run if he or she was over seventy at the time of qualifying." *Id.* Such illogical scenarios and absurd results cannot be the desired result of a constitutional provision that imposes mandatory retirement upon judges at the age of seventy.²

The Court has twice removed/involuntarily retired judges for continuing to occupy judicial office after reaching the mandatory retirement ages applicable to them. *See In re: Wingerter*, 621 So. 2d 1098, 1101 (La. 1993); *In re: Levy*, 427 So. 2d 844 (La. 1983). Because the Judiciary Commission found that Judge Matthews is constitutionally barred from remaining in office, having reached the mandatory retirement age of seventy prior to the commencement of her term, it recommended that she be removed/involuntarily retired from office.

² Judge Matthews argues that to accept the Judiciary Commission's interpretation would potentially "expose the Baton Rouge City Court to the reversal of every matter that has come before" her since she was elected to judicial office. The Commission rejected this concern as misplaced in light of the *de facto* officer doctrine, which "confers validity upon acts performed by a person acting under the color of official title even though it is later discovered that the legality of that person's appointment or election to office is deficient." *State v. O'Reilly*, 00-2864, p. 12 (La. 5/15/01), 785 So. 2d 768, 777 (quoting *Ryder v. United States*, 515 U.S. 177, 180 (1995)).

While I greatly empathize with Judge Matthews and her most unfortunate circumstances, I have no authority, even as an elected justice to the state's highest court, to ignore the Louisiana Constitution. As to the function and power of the Supreme Court, the Court, in *Twenty-First Jud. Dist. Ct. v. State*, 548 So. 2d 1208, 1209 (La. 1989), explained:

Our state constitution divides governmental power into separate legislative, executive and judicial branches and provides that no one branch shall exercise powers belonging to the others. La. Const. Art. II, §§ 1, 2 (1974). This trichotomous branching of authority furnishes the basis for the existence of an inherent judicial power which the legislative and executive branches cannot abridge. *Singer, Hutner, Levine, etc. v. LSBA*, 378 So.2d 423 (La.1979); *Saucier v. Hayes Dairy Products*, 373 So.2d 102, 109, 114 n.3 (La.1979) (Calogero, J., On Rehearing) (Dennis, J., dissenting from the opinion on original hearing); Hargrave, *The Judiciary Article of the Louisiana Constitution of 1974*, 37 La.L.Rev. 765, 786 (1977). As the Supreme Court is the head of the judicial system, it is the final arbiter of the exercise of those inherent judicial powers. La. Const.1974, Art. V, §§ 1, 5(A), 6; see *Imbornone v. Early*, 401 So.2d 953, 957, 961 (La.1981) (Per Curiam On Rehearing) (Dennis, J., dissenting from the opinion on original hearing). Although the Supreme Court's inherent judicial powers are not explicitly defined, they include powers of administration, the power of judicial review, power over officers of court, and the contempt power. Hargrave, *supra* at 787. Moreover, La. Const. Art. V., § 5(A) grants the Supreme Court "general supervisory jurisdiction over all other courts," providing another basis for the court's administrative control over lower courts, see Hargrave, *supra* at 787, and provides that the Supreme Court "may establish procedural and administrative rules not in conflict with law. . . ." The scope of the Supreme Court's power to make administrative and procedural rules is not limited, except that they cannot conflict with law. *Id.* These constitutional provisions explicitly and implicitly establish in the Supreme Court a centralized authority to supervise the judicial system, not only in legal interpretation and adjudication, but also in the manner the lower courts conduct their affairs procedurally and administratively. *Id.*

If I were to agree with the majority of this Court to exercise its inherent judicial power to allow Judge Matthews to retain her seat on the Baton Rouge City Court, I would be ruling in direct conflict with La. Const. art. V, §23(B). Explicit constitutional provisions are not subject to judicial construction. See *Cajun Elec. Power Co-op., Inc. v. Louisiana Pub. Serv. Comm'n*, 544 So. 2d 362, 363 (La. 1989).

I believe this Court, when interpreting the constitution, should give effect to language that is plain and unambiguous. *See id.*

The removal of a judge elected to office by the citizens of this state is a grave responsibility, and one I take seriously and prefer not to exercise, particularly in a case such as this one. Given that the record demonstrates that the OSC presented clear and convincing evidence³ that Judge Matthews is constitutionally barred by La. Const. art. V, § 23(B) from remaining in office, having reached the mandatory retirement age of seventy prior to the commencement of her term, I must dissent from the majority opinion, and would uphold the Louisiana Constitution by adopting the Judiciary Commission's recommendation.

³ The charges against a judge must be proved by clear and convincing evidence before this Court can impose discipline. *In re Hughes*, 2003-3408, p. 12 (La. 4/22/04), 874 So. 2d 746, 760.