

Statement in Opposition to HJR O

First, a question: **How many judges would HJR O affect in any given election?** SCAO told me during 2011-12 – when the Supreme Court had proposed elimination of some 40 judgeships by attrition and several judgeships (due to incumbents' ages) might not be eliminated for two decades – that the average age for retirement for judges was 58-1/2 years.

Second: The age 70 provision in the Michigan Constitution was proposed by the Legislature and **added by vote of the People in April 1955**, to the 1909 Constitution, Article VII:

Courts of record; seal; qualifications of justices and judges.

Sec. 17. The supreme court and the circuit and probate courts of each county shall be courts of record, and shall each have a common seal. Justices of the supreme court and judges of all circuit courts in this state elected or appointed after July 1, 1955, shall at the time of such election or appointment be under 70 years of age and licensed to practice law in this state.

Even when the current 1963 Constitution was adopted, age 65 was the generally expected age of retirement and the age upon which social security was predicated. Even today, major law firms in this state retire senior partners at age 65. The limitation of age 70 for appointment or election of a judge was generous for its time and, even with the age for full social security benefits now raised to age 66 years, 6 months, still is.

Third: **Age 70 is a form of term-limits.** House Members have a 3-term, 6-year limit on service and Senators have a 2-term, 8-year limit on service (unless elected to fill a vacancy less than half of a term) – usually with a *contested* election, if not a primary. Contrast that with judgeships: If a person is appointed or elected while in his or her 30's or 40's, that judge – usually without a contested election – may serve 6, 12, 24, 30, or more years. Depending on the timing of an incumbent's birthdate and the election cycle, that service may extend to age 75+ or, for supreme court justices with an 8-year term, to age 77+.

Notwithstanding the ability and mental acuity of judges we may have known as they approach or exceed age 70, elective institutions benefit from turnover where different people bring different experiences to the office. That is part of the rationale for term-limits (although the term limits for legislators to me is too short). Given the historic reluctance to challenge incumbent judges, **how long do we really want to put off that turnover for judges?**

Fourth: I would challenge the Legislature to consider an alternative that would allow the Legislature to create some form of part-time senior judge status akin to but different from the federal system, [Key difference: Federal judiciary is appointive, Michigan's is elective.] Current attempt per MCL 600.557 is only a partial solution; more needs to be done.

Finally: **Be prepared for additional complaints to the Judicial Tenure Commission** should judges be tempted to stay beyond their ability to do the job. Today people may be inclined to wait out the effect of the age-70 limit rather than bring a complaint; they may be less likely to wait if you remove the age-70 limit. Oh, but a caution: Twice the Supreme Court has proposed revisions to the Judicial Tenure Commission rules (most recently in 2017) that, if adopted, would have impeded the ability of the JTC to investigate and respond to complaints of judicial misconduct. HJR O in tandem with such restrictions would present a bad combination and efforts to decelerate the JTC never seem to go away. Accordingly, I have opposed both.

Respectfully,

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