

Statement in Opposition to HJR Q

First, a question: **How many justices or judges would HJR Q 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** to the 1908 Constitution, Article VII, **by vote of the People in April 1955:**

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 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 of service – 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, 18, 24, 30, or more years. In some states, reaching age 70 means mandatory retirement. In Michigan, judicial officers are allowed to complete their term but are not eligible for a new term.

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 I contend the term limits for legislators 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, retired (elected) judges may receive temporary assignments by the Supreme Court. [Art VI, Sec. 23] 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.]

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. But keep in mind that twice the Michigan Supreme Court has proposed revisions to the Judicial Tenure Commission rules that, if adopted, would have impeded the ability of the JTC to investigate and respond to complaints of judicial misconduct – most recently in 2017 [ADM File No. 2015-14], the same year HJR G and SJR F were reported from committee to eliminate the age limit for judges altogether (neither reached Third Reading). In tandem, changing the age-70 limit with restrictions on the JTC would present a bad combination and I opposed both at the time.

Respectfully,



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